



safe work australia

Key Workers' Compensation Information, Australia



2011

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Background

- Australian workers' compensation systems were originally based on nineteenth century British law. Before the implementation of modern workers' compensation arrangements, an injured worker's only means of receiving compensation was to sue their employer for negligence at common law.
- The basic principle behind workers' compensation is that as it is employers that profit from the labour of others, they should bear the full cost of that labour, including costs associated with work related injury. Injury in this sense includes the full range of physical injuries, ailments, illnesses, aggravation or acceleration of pre-existing injuries.
- All Australian jurisdictions have workers' compensation laws which are 'no fault'. That is to be eligible, workers only have to prove that their injuries were work related - they do not need to prove negligence on the part of an employer.
- There are ten major workers' compensation systems in Australia, six Australian States and both Territories have developed their own workers' compensation laws and the Commonwealth has two schemes: the first is for Australian Government employees and the employees of licensed authorities, and the second for certain seafarers.

What is Workers' Compensation?

- It is a compulsory levy imposed by government on employers to fund their potential liabilities associated with injured workers.
- It provides income replacement and coverage of medical costs to eligible workers.
- It currently covers about 90% of the workforce (~ 9.88 million workers).
- The schemes do not cover the self employed, sole traders and independent contractors (about 1.03 million people) who need to take out personal injury insurance through private sector insurance.

What is an injured worker entitled to?

- Income replacement while they are recovering from their injury. This is the most expensive part of compensation, accounting for more than half of scheme costs.
- Medical treatment is usually reimbursed. This includes medical, ambulance and other related medical costs, household help, aids and appliances, etc.
- Return to work plans, involving work-related rehabilitation, modification of workplaces and work duties usually involve a third party such as occupational therapists, physiotherapists, and sometimes vocational retraining programmes.
- Death benefits including special provisions for children and funeral costs.
- Lump sum compensation for permanent impairment including loss of limb, loss of function (eyes and ears), loss of body function such as walking, loss of amenity of life, disfigurement, reduction in life expectancy and pain and suffering.

Who is Eligible?

- Australia's schemes are no fault schemes - that is an injured worker does not need to prove negligence on the part of the employer.
- There are three preconditions to receiving compensation which are:
 - the worker is an employee as defined in the law of their jurisdiction
 - the worker has a medical condition that was diagnosed by a qualified practitioner who stated that the condition arose out of or in the course of employment, and
 - the worker has suffered a financial loss (such as loss of income or has incurred medical costs).
- Workers' compensation is *not* given for general 'harm', such as hurt feelings or emotional distress or as the result of discrimination.

What does it cost?

- In 2008–09, there were 128 730 serious workers' compensation claims involving one or more week of time lost from work, a permanent incapacity or fatality. This equates to 13.0 claims for serious injury for every 1000 employees.
- In 2008–09, the total amount paid by workers' compensation schemes was \$6.9 billion. This consisted of:
 - \$3.79 billion of direct payments (incapacity, permanent impairment and common law) (54.6%)
 - \$1.58 billion in medical and other services, including rehabilitation (22.8%)
 - \$1.23 billion of insurance operations costs (17.7%), and
 - \$338 million of other administrative costs (4.9%).
- Premiums are usually expressed as a percentage of the employer's payroll. The standardised average Australian premium in 2008–09 was 1.52% of payroll but for an individual employer, premiums can be as high as 12% for certain high risk trades (e.g. logging) or lower than 0.2% for low risk work (e.g. clerical work).
- Self-insurance allows employers to manage their own workers' compensation liabilities, provided that they can prove they are capable of doing so, by having effective management systems and are financially viable.
- Note: figures quoted are based on data from the 12th edition of the Comparative Performance Monitoring report.

Agencies responsible for workers' compensation functions

Different agencies in each jurisdiction are responsible for different aspects of the workers' compensation process.

Table 1 - Responsible Agencies

Jurisdiction	Policy Regulator	Premium	Claims	Disputes
NSW	WorkCover NSW for both	WorkCover NSW	7 private sector agents contracted to WorkCover NSW & self insurers	Workers Compensation Commission
VIC	Victorian WorkCover Authority (WorkSafe Victoria) for both	WorkSafe Victoria	6 private sector agents contracted to the VWA & self insurers	WorkSafe Victoria, Accident Compensation Conciliation Service (ACCS), Magistrates' or County Court
QLD	Dept. of Justice and Attorney-General Q-Comp	WorkCover Queensland	WorkCover Queensland & self insurers	Q-COMP, Industrial Magistrate, Industrial Relations Commission, Industrial Court
WA	WorkCover WA for both	Insurers subject to WorkCover WA oversight	8 private sector insurers & self insurers	Dispute Resolution Directorate, Commissioner, District Court

SA	WorkCover SA for both	WorkCover SA	1 private sector agent & self insurers	Workers Compensation Tribunal
TAS	Dept. of Justice WorkCover Tasmania	Licensed private sector insurers, subject to WorkCover Tas oversight	8 private sector insurers & self insurers	Workers Rehabilitation and Compensation Tribunal, Supreme Court
NT	Dept. of Justice NT WorkSafe	Private sector agents (licensed insurers)	5 private sector insurers & self insurers	NT WorkSafe (mediation), Work Health Court
ACT Private	Chief Minister's Office - Office of Industrial Relations ACT WorkCover	Private sector agents (licensed insurers)	7 approved insurers & self insurers	Conciliation, Arbitration, Magistrates Court
C'wealth	Dept. of Education, Employment & Workplace Relations Comcare, Seacare	Comcare Private sector insurers (Seacare)	Comcare & self-insurers Insurers (Seacare)	Comcare, AAT, Federal Court

Legislation

Each jurisdiction has its own legislation covering workers' compensation.

Table 2 - Workers' Compensation Legislation in Australia

Jurisdiction	Legislation
NSW	Workplace Injury Management and Workers Compensation Act 1998 and Workers Compensation Act 1987
VIC	Accident Compensation Act 1985 and Accident Compensation (WorkCover Insurance) Act 1993
QLD	Workers' Compensation and Rehabilitation Act 2003
WA	Workers' Compensation and Injury Management Act 1981
SA	Workers Rehabilitation and Compensation Act 1986 and WorkCover Corporation Act 1994
TAS	Workers Rehabilitation and Compensation Act 1988
NT	Workers Rehabilitation and Compensation Act 2008
ACT Private	Workers Compensation Act 1951
C'wealth	Safety, Rehabilitation and Compensation Act 1988 Seafarers Rehabilitation and Compensation Act 1992

Statistics

The table below lists important statistical data for the jurisdictions.

Table 3 - Australian Workers Compensation Statistics 2008-09

Jurisdiction	Employees Covered	Serious Claims	Incidence Rate ²	Frequency rate ³	Durable RTW Rate ⁴	Dispute Rate	Fatalities	Standardised Average Premium Rate
NSW	3 008 600	42 640	14.2	8.4	72%	7.0%	69	1.83%
VIC	2 447 800	24 130	9.9	6.1	69%	15.5%	34	1.38%
QLD	1 857 900	31 060	16.7	10.1	73%	3.3%	78	1.07%
WA	1 047 700	12 670	12.1	7.0	n/a	3.9%	24	1.14%
SA	705 100	9010	12.8	7.9	71%	16.7%	8	2.82%
TAS	211 800	3500	16.5	10.5	80%	7.5%	5	1.38%
NT	109 800	1290	11.7	6.5	81%	7.7%	6	1.74%
ACT	128 800	1640	12.7	8.0	n/a	n/a	3	2.13%
Comcare	362 300	2660	7.3	4.1	88%	8.9%	6	0.95%
Seacare	4700	140	30.5	6.8	67%	15.5%	0	3.86%
Australia	9 884 500	128 730	12.9	7.8	72%	7.5%	223	1.52%

1. Serious claims include all claims for which one or more weeks of compensation has been recorded.

2. Incidence rate of serious injuries (claims per 1000 employees, projected 2008–09).

3. Frequency rate of serious injuries (claims per million hours worked, projected 2008–09).

4. The durable RTW rate is the proportion of injured workers who have returned to work and were still working at the time of interview in a survey conducted by Campbell Research and Consulting, seven to nine months after their claim.

Work-related injury

Each jurisdiction has slightly different definitions of an injury and degree to which employment contributes to the injury for a claim to be accepted.

Table 4 - Injury and contribution of employment

Jurisdiction	Definition of 'injury' for purposes of coverage	Employment contribution
NSW	'... personal injury arising out of or in the course of employment ...'	A substantial contributing factor
VIC	'... an injury arising out of, or in the course of, any employment.'	A significant contributing factor for heart attack or stroke, disease, or a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease
QLD	'... a personal injury arising out of, or in the course of, employment ...'	Significant contributing factor
WA	'... a personal injury by accident arising out of or in the course of the employment ...'	To a significant degree (for diseases only)

SA	'... a disability is compensable if it arises out of or in the course of employment.'	'... not compensable unless it is established on the balance of probabilities that it arises from employment.' Substantial cause (for psychiatric disabilities only) Contribution required for secondary and unrepresentative disabilities, and diseases.
TAS	'An injury, not being a disease, arising out of, or in the course of employment' 'An injury, which is a disease, to which employment contributed to a substantial degree'	For diseases, employment must have contributed to a substantial degree, i.e. employment must have been 'the major or most significant factor'
NT	'... a physical or mental injury ... out of or in the course of employment ...'	To a material degree (for diseases and gradual process)
ACT Private	'a physical or mental injury...includes aggravation, acceleration or recurrence of a pre-existing injury...arising out of, or in the course of, the worker's employment'	A substantial contributing factor
C'wealth	'... a physical or mental injury arising out of, or in the course of, the employee's employment ...' or '... an aggravation of a physical or mental injury (other than a disease) ...'	Comcare: To a significant degree (for diseases) Seacare: To a material degree (for disease)

Journey claims

Entitlements for journey claims vary across the various workers' compensation schemes.

Table 5 - Coverage of journey claims

Jurisdiction	Journey to & from work	Journey undertaken for work purposes
NSW	Yes (some restrictions)	Yes
VIC	No (covered under separate statutory no-fault transport accident scheme)	Yes (some restrictions)
QLD	Yes (some restrictions)	Yes
WA	No	Yes
SA	Generally no. Only in very limited circumstances are journeys covered	Yes
TAS	No (some exceptions)	Yes
NT	Yes (some restrictions)	Yes
ACT Private	Yes	Yes
C'wealth	Comcare: No Seacare: Yes	Comcare: Yes Seacare: Yes

Main benefits

Important notes:

- The level and degree of entitlements in the accompanying tables are stated for illustrative purposes. These will not automatically apply to every injured employee and similarly not every injured employee will have his or her entitlement limited to one component.
- Amounts of compensation, other than for lump-sum payment to dependants in the case of work related death or permanent impairment will be based on the degree of financial loss a worker suffers as a result of a work-related injury.
- The amount of financial loss, including lost income, is determined differently in each jurisdiction.

What are the incapacity benefits

- Each scheme provides (within limits) a period of near-full income replacement of pre-injury earnings for workers who cannot return to work following their work-related injury.
- Incapacity benefits, also known as weekly payments, are 'stepped down' after a period of time, by a percentage or to a set amount, for workers who cannot earn an income because of their work-related injury.
- The range of incapacity benefits and step downs across the jurisdictions are shown in Table 6. In almost all arrangements, detailed provisions are made to further reduce the benefit based on an injured person's capacity to earn.

Table 6 - Incapacity payments as at 30 September 2010

Jurisdiction	100% wage replacement (wks)	Final step-down (After week . . .)	Minimum amount after final step-down	Variation	Employer Excess	Financial Limit	Time limit	Age limit
NSW	26	26	The lesser of 90% AWE or \$321.10	More for dependants, less capacity to earn	One week's weekly payment	\$1760.40 per week	-	Retirement age + 12 months
VIC	13 (95% replacement)	13	80%	Less current weekly earnings	First 10 days, first \$592 medical costs	\$1810 per week	130 weeks unless no current work capacity	65 unless lower industry retirement age. If injured within 130 weeks of retirement, max. 130 weeks
QLD	26	104	Greater of 75% NWE or 70% QOTE ¹	-	Up to first \$1228 weekly payment	Until weekly compensation equals \$265 485	5 years	-
WA	13	13	85%	Subject to award rates	No	Limit on weekly payments of 2.0 x ABS AWE (\$1904.40). Statutory max \$183 394	-	65 unless worker is over 64 at time of injury, then max 1 year

SA	13	26	80%	Less capacity or deemed capacity to earn	First 14 days of incapacity payment	\$2381.60 per week	130 weeks unless no current & continuing work capacity	65 unless lower industry retirement age. If injured within 2 years of retirement then max 2 years
TAS	26	78	80%	Less capacity to earn	First weekly payment, first \$200 of other benefits	-	9 years (more for WPI>15%)	65 unless worker is over 64 at time of injury, then max 1 year
NT	26	26	75% (up to 90% for low income earners)	More for dependants, less capacity to earn	First day	-	-	65 unless worker is over 64.5 at time of injury, then max 6 months
ACT Private*	26	26	65% of pre-injury earnings or statutory floor (\$543.78) whichever is more	More for dependants, less capacity to earn	No	-	-	65 unless worker is over 63 years at time of injury, then max 2 years
C'wealth	45	45	Lesser of 75% or statutory amount (\$402.06)	More for dependants, less capacity to earn	No	150% of AWOTEFA ² (\$1884.45)	-	65 unless worker is over 63 years at time of injury, in which case max 2 years

* as at 30 June 2010

1. If the work related impairment is over 15%.

2. Average Weekly Ordinary Time Earnings of Full-time Adults.

The medical treatment benefits

The table below shows the maximum amounts that a person can be compensated for the *reasonable* costs of medical treatment following a work-related injury.

Table 7 - Maximum amounts for medical treatment as at 30 September 2010

Jurisdiction	\$ limit	Other
NSW	No limit	Medical expenditure above \$50 000 requires regulator approval
VIC	No limit	Ceases 52 weeks after weekly payment entitlement ceases, or after 52 weeks if compensation is payable only for medical and like services
QLD	No limit	-
WA	\$55 018	Additional \$50 000 where the worker's social and financial circumstances justify it. An additional \$250 000 beyond the \$50 000 may be ordered by an arbitrator under certain circumstances
SA	No limit	-
TAS	No limit	Ceases 52 weeks after weekly payment entitlement ceases, or after 52 weeks if compensation is payable only for medical and like services
NT	No limit	-
ACT Private*	No limit	Total amount must not be more than the maximum amount (agreed between employer and worker) or \$617.63 for each treatment
C'wealth	No limit	-

* as at 30 June 2010

Permanent impairment entitlements

Some work related injuries result in medical conditions that will never resolve, such as loss of a limb or chronic conditions. Jurisdictions provide lump sum payments for permanent impairment where the degree of impairment is above a threshold percentage. There may be additional amounts payable for other loss, such as pain and suffering, or caps on the amounts that could be obtained through the courts.

Table 8 - Permanent impairment thresholds and entitlements as at 30 September 2010

Jurisdiction	% of impairment	Lump Sum	Additional
NSW	Physical injury 1%	\$220 000 plus additional 5% for PI of spine	Maximum amount of \$50 000 for pain and suffering.
	Hearing loss 6% binaural		
	Primary psychological injury 15%		
VIC	10% except for psychiatric impairments and additional 10% for further hearing loss except for total losses compensated under different table	\$511 920	\$511 920 (less any statutory impairment benefit paid)
	5% for some musculoskeletal injuries with a date of injury on or after 2 December 2003		
	30% for psychiatric impairment not secondary to physical injury		
QLD	1%	\$265 485	\$265 485
	Hearing loss 5%		

Table 8 - Permanent impairment thresholds and entitlements as at 30 September 2010 continued

Jurisdiction	% of impairment	Lump Sum	Additional
WA	1%	\$183 394	-
	Hearing loss initial 10% and subsequent loss 5%		
SA	None except hearing loss 5%	\$426 255	-
TAS	5% WPI,	\$266 376	-
	>0% fingers and toes,		
	10% psychiatric impairment,		
	5% binaural hearing loss		
NT	5%	\$239 928	-
ACT Private*	1%	\$123 525	-
	6% hearing	single loss. \$185 288 multiple loss	
C'wealth	10% WPI; 5% hearing; >0% fingers, toes, taste, smell	\$159 236	\$59 714

* as at 30 June 2010

Death entitlements

Each jurisdiction has a benefit structure in place that provides for lump sum payments, funeral costs and weekly payments for dependants. Some jurisdictions provide additional payments for spouses and counselling.

Table 9 - Death entitlements as at 30 September 2010

Jurisdictions	Lump sum	Weekly payments / child	Funeral	Other
NSW	\$449 850	\$114.30	\$9000	
VIC	\$511 920	95% (first 13 weeks) of pre-injury earnings for dependent spouse and/or children to max \$1810 per week. 50% of earnings for 14 weeks to 3 years	\$9300	Counselling for family \$5410 max Up to \$30 530 for expenses incurred by non-dependent family members
QLD	\$497 285	10% of QOTE payable weekly to each dependent family member until 16 or a student (where spouse is totally dependent)	Reasonable	\$13 285 paid to totally dependent spouse - reduced by the total amount of weekly payment of compensation \$26 560 paid to dependants under 16 or students
WA	\$251 412	A child's allowance of \$48.10 per week for each dependent child up to to 16 or 21 if a student	Reasonable up to \$8606	

Table 9 - Death entitlements as at 30 September 2010 continued

Death benefits	Lump sum	Weekly payments / child	Funeral	Other
SA	\$426 255	Orphaned child - 25% of deceased's notional weekly earnings Not orphaned – 12.5% of deceased's notional weekly earnings	\$7570	Weekly payments of up to 50% of notional weekly earnings for a totally dependent spouse or domestic partner, less depending on degree of dependency
TAS	\$266 376	A dependent child is entitled to 15% of the basic salary, commencing on the expiration of 13 weeks after the date of death (\$96.28 pw)	Reasonable cost of burial or cremation	Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated: - first 26 weeks: 100% of weekly payments 26-78 weeks: 90% of weekly payments 78 weeks-2 years: 80% of weekly payments.
NT	\$299 910	\$115.35 per child (max 10 children)	\$5998	-
ACT Private*	\$185 288	\$61.76	\$4941	-
C'wealth	\$442 178	\$121.60	\$10 138	-

* as at 30 June 2010

Common law

With the introduction of statutory 'no-fault' workers' compensation schemes, access to common law has been significantly restricted and the worker has to prove the employer's negligence before any common law action can succeed.

Some jurisdictions have abolished the right to access common law; introduced *threshold tests*; placed restrictions on *types* of damages that an injured worker can receive; and/or placed caps on the amount of damages that can be awarded. If injured workers elect to pursue common law, they may have to reimburse their employer or WorkCover Authority for any statutory benefits paid out.

Table 10 - Access to Common Law as at 30 September 2010

Jurisdiction	Access	Type of damages	Threshold	Damages
NSW	Yes	Past and future economic loss	15% WPI ¹	No cap
VIC	Yes (post 20 Oct 1999)	Pain & suffering, and/or economic loss	30% WPI ¹ or narrative test: Permanent 40% Loss of earnings	Pain & suffering: min \$50 440, max \$511 920 Economic loss: min \$52 220, max \$1 184 600
QLD	Yes	Economic and non-economic loss	No	Pain & suffering: \$294 500. Economic loss: 3 X QOTE (\$3684.60) pw for each week of lost earnings
WA	Yes	Economic and non-economic loss	Min. 15% WPI ¹	\$385 130 (<25% WPI ¹), no cap (min. 25% WPI ¹)
SA	No			n/a

Table 10 - Access to Common Law as at 30 September 2010 continued

Jurisdiction	Access	Type of damages	Threshold	Damages
TAS	Yes	Economic and Non-economic loss	Min 20% WPI ¹	No cap
NT	No			n/a
ACT Private*	Yes (outside WC)	Economic and non-economic loss	No	No cap
C'wealth	Yes	Non-economic loss	Successful PI ³ claim	\$110 000

* as at 30 June 2010

1. WPI – Whole Person Impairment.

2. WRI – Work Related Impairment.

3. PI – Permanent Impairment.

Sources

All information on workers' compensation arrangements is derived from the annual publications *Comparison of Workers' Compensation Arrangements in Australia and New Zealand* and the *Comparative Performance Monitoring Report* published by Safe Work Australia.

More detailed information on workers' compensation generally and links to web pages related to each jurisdiction is available on the Safe Work Australia website.

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