



**25th Edition**

**Comparison of  
workers' compensation  
arrangements in Australia  
and New Zealand**

**2017**

Healthier, safer and more productive workplaces through  
improvements to Australian work health and safety and  
workers' compensation arrangements



**safe work australia**

### Disclaimer

Safe Work Australia provides the information in this publication to raise awareness of work health and safety. This information is general guidance only and does not replace any statutory requirement contained in any relevant state, territory or Commonwealth legislation. It is not a substitute for independent professional advice. Users should exercise their own skill and care to evaluate the accuracy, currency, completeness and relevance for their purposes of any information contained in the publication. Users should obtain appropriate advice relevant to their particular circumstances.

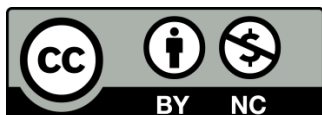
While Safe Work Australia makes every effort to ensure information is accurate and up-to-date, Safe Work Australia does not provide any warranty regarding the accuracy, currency or completeness of the information contained in this publication and will not be held liable for any loss, damage, cost or expense incurred or arising by reason of any person using or relying on the information in this publication.

This publication may incorporate views or information from third parties, which do not necessarily reflect the views of Safe Work Australia. The inclusion of such material does not indicate an endorsement of that material or a commitment to any particular course of action. The views in this publication should not be taken to represent the views of Safe Work Australia unless otherwise expressly stated.

ISBN 978-1-76051-167-8 (Print)

ISBN 978-1-76051-168-5 (PDF)

ISBN 978-1-76051-169-2 (DOCX)



### Creative Commons

With the exception of the Safe Work Australia logo, this report is licensed by Safe Work Australia under a Creative Commons 4.0 Australia Licence. To view a copy of this licence, visit

<https://creativecommons.org/licenses/by/4.0/>

In essence, you are free to copy, communicate and adapt the work, as long as you attribute the work to Safe Work Australia and abide by the other licensing terms. The report should be attributed as the Comparison of workers' compensation arrangements in Australia and New Zealand 2017.

Enquiries regarding the licence and any use of the report are welcome at:

Copyright Officer  
Safe Work Australia  
GPO Box 641 Canberra ACT 2601

Email: [info@swa.gov.au](mailto:info@swa.gov.au)

### Important Notice

Safe Work Australia provides the information given in this document to improve public access to information about work health and safety information generally. The vision of Safe Work Australia is Australian workplaces free from injury and disease. Its mission is to lead and coordinate national efforts to prevent workplace death, injury and disease in Australia.

## Foreword

The 25<sup>th</sup> edition of the Comparison of Workers' Compensation Arrangements in Australia and New Zealand (the report) provides information on the operation of workers' compensation schemes in each of the jurisdictions in Australia and New Zealand. The report provides background information and discusses the way each scheme deals with key issues including coverage, benefits, return to work provisions, self-insurance, common law, dispute resolution and cross-border arrangements.

The majority of tables in this report provide a snapshot of workers' compensation arrangements as at 30 September 2016. Information taken from the 18<sup>th</sup> edition of the Comparative Performance Monitoring report covers the 2014–15 financial year, and some jurisdictions have reported recent developments to the end of December 2016. As each jurisdiction may vary its arrangements from time to time and there may be some exceptions to the arrangements described in this edition, readers wanting more up-to-date information should check with the relevant authority.

On behalf of the Heads of Workers' Compensation Authorities, the Victorian WorkCover Authority produced this publication from 1993 to 2005. The Australian Safety and Compensation Council took over responsibility for the report in 2006 and produced it in 2006 and 2007. Safe Work Australia has been producing the report since 2008. The work of the Victorian WorkCover Authority and the Australian Safety and Compensation Council is acknowledged.

Safe Work Australia thanks representatives from each jurisdiction for the valuable assistance they have provided in producing this 25<sup>th</sup> edition of the Comparison of Workers' Compensation Arrangements in Australia and New Zealand.


## Contents

Foreword .....	3
<b>Chapter 1: Recent developments in workers' compensation schemes in Australia and New Zealand</b> .....	<b>8</b>
New South Wales (NSW) .....	9
Victoria .....	10
Queensland .....	11
Western Australia (WA) .....	11
South Australia (SA) .....	12
Tasmania .....	12
Northern Territory (NT) .....	12
Australian Capital Territory (ACT) .....	13
Comcare .....	14
New Zealand .....	14
<b>Chapter 2: Schemes at a glance</b> .....	<b>15</b>
Schemes .....	16
Table 2.1: Jurisdictional contacts .....	17
Table 2.2: Agencies responsible for overseeing workers' compensation in each jurisdiction .....	19
Table 2.3: Key features of schemes .....	21
Coverage of workers .....	22
Table 2.4a: Summary of coverage (see Table 3.1a for more information) .....	23
Table 2.4b: Guidelines and information for determining coverage of workers .....	26
Table 2.4c: Coverage of journeys and breaks .....	27
Table 2.4d: Definition of injury and employment contribution .....	28
Table 2.4e: Coverage of retirement provisions .....	30
Table 2.5: Summary of entitlements as at 30 September 2016 .....	31
Table 2.6: Prescribed time periods for injury notification .....	35
Table 2.7: Prescribed time periods for claim submission .....	36
Table 2.8: Prescribed time periods for payments .....	39
Table 2.9: Dispute resolution process .....	41
Table 2.10: Definition of remuneration for the purpose of premium calculation .....	44
Table 2.11: Employer excess .....	45
Table 2.12: Uninsured employer provisions .....	46
Table 2.13: Leave while on workers' compensation .....	48
Table 2.14: Superannuation and workers' compensation .....	51
<b>Chapter 3: Coverage and eligibility for benefits</b> .....	<b>52</b>
Coverage and eligibility .....	53
Table 3.1a: Definition of worker (see Table 2.4a for summary of coverage of worker) .....	54
Table 3.1b: Coverage of contractors and labour hire workers (see Table 2.4a for summary of coverage of workers) .....	56
Table 3.2: Deemed workers .....	57
Table 3.3: Workers' Compensation coverage for volunteers .....	60
Table 3.4: Treatment of sportspersons and sporting injuries .....	62


Table 3.5: Workers' compensation arrangements for government employers .....	64
Table 3.6: Workers' compensation arrangements for judges and members of parliament.....	66
Coverage of work and injury .....	67
Table 3.7: Industrial deafness thresholds .....	68
Table 3.8: Definition of work — journeys and breaks .....	69
Table 3.9: Definition of injury and relationship to employment — detailed.....	71
Permanent Impairment.....	74
Table 3.10: Statutory definitions of permanent and impairment and criteria for determining whether impairment is permanent .....	75
Table 3.11: Permanent impairment guides .....	78
Table 3.12: Discounting of prior conditions.....	82
Exclusionary provisions.....	84
Table 3.13: Exclusionary provisions (general).....	85
Table 3.14: Exclusionary provisions for psychological injuries.....	87
Cross-border provisions .....	90
Table 3.15: Cross border provisions .....	91
<b>Chapter 4: Benefits</b> .....	92
Benefits .....	93
Table 4.1: Income replacement .....	95
Table 4.2: Medical, hospital and other costs .....	103
Table 4.3: Permanent impairment payments.....	110
Table 4.4: Death entitlements.....	113
Table 4.5: Definitions of dependants/spouse for death benefits .....	115
Table 4.6: Common law provisions.....	122
Table 4.7: Suspension and cessation of benefits .....	125
Table 4.8: Incapacity benefits settlements.....	129
<b>Chapter 5: Return to work</b> .....	130
Return to work .....	131
Table 5.1: Sections of workers' compensation Acts and guidance material relating to return to work.....	132
Table 5.2a: Requirement to have a workplace rehabilitation/ return to work program or policy .	135
Table 5.2b: Return to work plans — Individual return to work plans .....	140
Table 5.2c: Suitable duties .....	145
Table 5.2d: Other requirements of employers .....	150
Table 5.3: Responsibilities of workers .....	152
Table 5.4: Injured worker placement incentives .....	157
Table 5.5: Responsibilities of authority/insurer.....	160
Functions and training of workplace rehabilitation coordinators .....	162
Table 5.6: Functions and training of workplace rehabilitation coordinators.....	163
Workplace rehabilitation providers .....	167
Table 5.7a: Responsibilities of workplace rehabilitation provider .....	168
Table 5.7b: Rehabilitation provider qualifications and fee structure .....	171
Table 5.8: Prescribed time periods to establish a return to work plan.....	172

<b>Chapter 6: Self-insurer arrangements</b>	173
Self-insurers	174
Table 6.1: Workers' compensation and self-insurance coverage	175
Table 6.2: Criteria for becoming a self-insurer	176
Table 6.3: Approval process, application and ongoing costs and duration of licence	179
Ongoing requirements	182
Table 6.4: Work health and safety requirements and auditing	183
Table 6.5: Bank guarantees/prudential margins and excess of loss requirements	185
Table 6.6: Self-insurance restraints on company structure	187
Table 6.7: Outsourcing of Case Management	188
Table 6.8: Other ongoing licence requirements	189
Table 6.9: Reporting requirements	193
Table 6.10: Requirements for surrendering a self-insurance licence and penalties for exiting the scheme	201
<b>Chapter 7: Scheme administrative and funding arrangements</b>	204
Administrative and funding arrangements	205
Table 7.1: Applicable workers' compensation legislation	206
Table 7.2: Transitional legislation provisions as at 30 September 2016	208
Table 7.3a: Minor schemes — New South Wales	210
Table 7.3b: Minor schemes — Victoria	212
Table 7.3c: Minor schemes — Western Australia	213
Table 7.3d: Minor schemes — South Australia	214
Table 7.3e: Minor schemes — Tasmania	215
Table 7.3f: Minor schemes — Commonwealth	216
Table 7.3g: Minor schemes — New Zealand	218
Scheme funding arrangements	219
Table 7.4: Schemes' funding positions as at 30 June 2016 and 30 June 2015	220
Premiums	221
Table 7.5: Standardised average premium rates 2010–11 to 2014–15 (% of payroll)	222
Table 7.6: Selected industry premium rates as at 30 September 2016 (% of payroll)	223
Premium setting: Notes relating to the industry rates comparison table	226
Calculation of industry rates	227
<b>Appendix 1</b>	229
The Evolution of workers' compensation schemes in Australia and New Zealand	229
New South Wales	230
Victoria	232
Queensland	235
Western Australia (WA)	235
South Australia (SA)	236
Tasmania	237
Northern Territory (NT)	242
Australian Capital Territory (ACT)	246

The Commonwealth .....	247
New Zealand .....	249
<b>Appendix 2</b> .....	250
Diseases .....	250
Appendix Table 1: Occupational diseases as prescribed at 30 September 2016 — Occupational diseases caused by agents arising from work activities .....	251
Appendix Table 2: Occupational diseases as prescribed at 30 September 2016 — Occupational cancer .....	262
<b>Glossary</b> .....	266
<b>Acronyms and abbreviations</b> .....	271
<b>Index</b> .....	274



# **Chapter 1: Recent developments in workers' compensation schemes in Australia and New Zealand**





There are 11 main workers' compensation systems in Australia. Each of the eight Australian states and territories have developed their own workers' compensation scheme and there are three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self-insurers under the [Safety, Rehabilitation and Compensation Act 1988](#) (SRC Act); the second is for certain seafarers under the [Seafarers Rehabilitation and Compensation Act 1992](#); and the third is for Australian Defence Force personnel with service on or after 1 July 2004 under the [Military Rehabilitation and Compensation Act 2004](#) (MRCA).

This chapter focuses on recent developments that came into effect between July 2015 and September 2016, or which will come into effect after that time. The historical section on the evolution of the workers' compensation schemes can be found in Appendix 1.

## New South Wales (NSW)

### Remake of Workers Compensation Regulation 2010

The Workers Compensation Regulation 2010 (2010 Regulation) has been remade with minor amendments, as the [Workers Compensation Regulation 2016](#) (2016 Regulation).

The 2016 Regulation commenced on 1 September 2016 and replaced the 2010 Regulation which was automatically repealed on the same day. The 2016 Regulation contains a number of minor and machinery amendments including:

- removing the option for employers to establish shared return to work programs
- a new clause that an application for an insurer or self-insurer licence is to be in the 'approved' form
- a new clause prescribing the process for notifying a medical practitioner who is required to attend the Workers Compensation Commission for cross-examination on the contents of a medical report
- updating prescribed medical tests and results relating to brucellosis, Q fever and leptospirosis (Schedule 2) to reflect the latest case definitions from the NSW Control Guidelines for Public Health Units
- aligning it with recent reforms to the workers' compensation and legal profession legislation
- updating references to other legislative instruments
- removing certain penalty notice offences (Schedule 5)
- removing unnecessary and redundant clauses, and
- improving and clarifying wording in certain clauses.

### 2015 Benefit Reform Package

In August 2015 the NSW Government passed the *Workers Compensation (Amendment) Act 2015* and reforms included changes to key terms within the legislation, such as the removal of the term 'seriously injured workers' which has been replaced with the term 'worker with highest needs.'

In October 2015, the following reforms commenced:

- weekly payments for up to 12 months after retiring age, with some workers having a retrospective entitlement, and
- increased death benefit and funeral expenses where the date of death is on or after 5 August 2015.

In November 2015, a new regulation commenced which enabled workers who made a claim for lump sum compensation before 19 June 2012 to make one further deterioration claim.

In December 2015, the following reforms commenced:

- artificial aids, home and vehicle modifications are now exempt from the compensation entitlement period for medical expenses
- workers with 'high needs' are now entitled to lifetime medical treatment and services
- extension of the entitlement period for medical treatment and services for all claims to a minimum of two years
- secondary surgery for all eligible workers
- stay of a work capacity decision under review
- minimum working hours removed for workers with 'high needs', and
- minimum 'safety net' weekly payments for injured workers with 'highest needs'.

In April 2016, two new benefits under return to work assistance were introduced, including:

- new employment assistance of up to \$1000, and
- education or training assistance of up to \$8000 for workers with greater than 20 per cent permanent impairment.

#### **2016/2017 Market Practice and Premiums Guidelines commenced**

The [2016/17 Market Practice and Premiums Guidelines](#) replaced the publication of the WorkCover Insurance Premiums Order, and provide a new mechanism for the setting and assessment of workers' compensation premiums. The Guidelines are published with four Annexures on the [SIRA website](#) and apply to policies issued or renewed from 30 June 2016.

## **Victoria**

The *Treasury and Finance Legislation Amendment Act 2016* received royal assent on 28 June 2016. This Act made amendments to the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act) and the *Accident Compensation Act 1985* (AC Act) to address an anomaly in the WIRC Act and ensure all workers who have weekly payments, at the statutory maximum level, receive the same amount where there is any negative wage growth in any given year.

The *Compensation Legislation Amendment Act 2016* received royal assent on 13 December 2016, and unless otherwise specified came into effect in December 2016. This Act made amendments to the WIRC Act, the AC Act, and the *Limitation of Actions Act 1958* (LA Act) to:

- ensure that as of 1 July 2017, the definition of retirement age in the WIRC Act is aligned with the Commonwealth Age Pension qualifying age
- ensure there is no entitlement to compensation under the WIRC Act and the AC Act if a worker has been convicted of certain serious road traffic offences under a corresponding law of another state or territory
- correct an anomaly in the LA Act to ensure common law claims under the WIRC Act have a limitation period of six years (the changes to the LA Act apply retrospectively and are taken to have come into operation on 1 July 2014)
- establish a Board to manage the Accident Compensation Conciliation Service (this amendment will come into operation on a day to be proclaimed, or, at the latest, on 11 October 2017), and
- provide that the Minister approves the Medical Panels Budget and not WorkSafe, as is currently the case.

An independent review of WorkSafe's Premium Order governing the calculation of employer premiums was completed in May 2016.

## Queensland

The *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* was passed by the Queensland Parliament on 31 August 2016. The Act implemented the National Injury Insurance Scheme for workplace accidents connected with Queensland to provide eligible seriously injured workers with a statutory entitlement to lifetime treatment, care and support payments from 1 July 2016. The workers' compensation scheme's insurers will engage the National Injury Insurance Agency, Queensland (established for motor vehicle accidents) to provide lifetime treatment, care and support services for these workers. If an eligible seriously injured worker can establish that their injury was caused by negligence, they can elect to seek common law damages for the cost of treatment, care and support rather than life time treatment care and support payments. This follows the arrangement in place for motor vehicle accidents in Queensland.

The Act also provides self-insurers with greater flexibility and choice with regard to financial securities by allowing general insurers to issue financial guarantees. In addition, the requirement that the minimum value of the financial security be at least \$5 million was removed, so that the financial guarantee is now 150 per cent of estimated claims liability.

The Act also reverses the Supreme Court judgment in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269, that required WorkCover Queensland to indemnify a third party against an employer's policy regardless of how the third party's liability was assumed. This decision validated and encouraged principal contractors and host employers use of "hold harmless" clauses in contracts. Under these clauses the employer agrees to indemnify the principal contractor or host employer for any work related injury costs for the employer's workers, as a result of the principal contractor or host employer's negligence. Following the *Byrne* judgment, if a hold harmless clause was in place then the employer was liable to pay the full amount of the damages and WorkCover had to indemnify the employer for the amount. This was irrespective of whether the principal contractor or host employer had a contract of insurance with WorkCover Queensland.

The Act reverses the *Byrne* judgment by allowing WorkCover Queensland to join a third party as a contributor to a common law damages claim against an employer and prohibiting the contractual transfer of liability for workers' compensation injury costs from principal contractors or host employers to employers with a workers' compensation insurance policy.

The Act also makes changes to automatic indexation methods for weekly compensation and other entitlements to ensure that a reduction in average weekly earnings does not flow on to injured worker entitlements. The Act also clarifies the timeframes the Workers' Compensation Regulator has to commence a complaint for fraud-related offences.

## Western Australia (WA)

A review of the *Workers' Compensation and Injury Management Act 1981* was tabled in Parliament on 26 June 2014. The final report contains 171 recommendations for inclusion in the new statute. The WA Government subsequently approved drafting of a new workers' compensation statute. Drafting commenced in 2015/16 but is currently pending the outcome of the 2017 WA State election.

In the meantime, a number of regulatory changes have progressed including:

- clarification of industrial awards, and
- streamlined process regarding declarations from overseas workers.

## South Australia (SA)

The Return To Work scheme under the *Return to Work Act 2014* commenced on 1 July 2015 replacing the former *Workers Rehabilitation and Compensation Act 1986* (SA). There were no legislative changes to the Act in 2016.

In 2016, ReturntoWork SA has continued to embed system reforms consistent with the new scheme's focus on service standards and return to work outcomes, recognising the health benefits of work.

These system reforms include:

- deployment of mobile case managers in both metropolitan and regional South Australia
- the establishment of a simplified telephone reporting system for work injuries and claims processing, and
- the implementation of a streamlined premium system for registered employers.

The *Return to Work Act* includes a provision requiring a review of the legislation after the expiry of three years from its commencement (section 203).

## Tasmania

The Workers Rehabilitation and Compensation Amendment Bill 2016 is currently before Parliament. It seeks to change some of the provisions within the *Workers Rehabilitation and Compensation Act 1988*. The proposed amendments focus on opportunities to reduce unnecessary administrative burden on workers' compensation scheme participants by moving away from unnecessary administrative processes to instead focus on achieving positive outcomes for all workers, employers and insurers.

Two significant changes proposed in the Bill are:

### **Structure of the WorkCover Tasmania Board**

The membership and voting structure of the WorkCover Tasmania Board will be redesigned to ensure all members are equipped with the necessary skills and experience to advise and make decisions. The new structure will bring the Tasmanian Board into closer alignment with equivalent bodies in other Australian jurisdictions, and position the Board to further advance the aims of the workers' compensation scheme.

### **Removal of age restrictions for older workers**

The Bill includes amendments specifically designed to future-proof the Act from related changes to Commonwealth legislation by removing all existing age restrictions from the Act. Access to weekly benefits will be linked to eligibility to the Age Pension under the *Commonwealth Social Security Act 1991*. This will allow the legislation to keep pace with any changes in retirement age and ensure no worker is disadvantaged on account of their age.

Existing protections under the Act for older workers will be retained, whereby a person injured close to, or after, retirement age will be entitled to receive weekly payments for up to twelve months from the date of their injury.

## Northern Territory (NT)

Significant amendments were made to the *NT Workers Rehabilitation and Compensation Act* (now the *Return to Work Act*) in 2015. The amendments were set out in two parts commencing on 1 July 2015 and 1 October 2015.

The key changes that commenced on 1 July 2015 include:

- legislation name change to *Return to Work Act*

- presumptive legislation for firefighters and volunteers
- definition of worker
- increased period of compensation for older workers
- five year cap on benefits for less serious injuries
- increase in death and funeral benefits
- stroke and heart attack claims
- capping the calculation for normal weekly earnings, and
- clarification on when compensation payments are reduced to 75 per cent of normal weekly earnings.

The key changes that commenced on 1 October 2015 include:

- payment of reasonable expenses for family counselling
- reasonable payment for medical and rehabilitation costs during deferment
- mental stress claims
- formal notice be provided to the worker of any pending step down or cancellation
- payment for legal advice at mediation
- negotiated settlements
- settlement of disputed claims
- exclusion of journey claims
- enforcement of compulsory insurance provisions by ability to stop work
- involvement of support persons at mediation, and
- improving return to work outcomes.

## Australian Capital Territory (ACT)

The *Workers Compensation Amendment Act (No 2)* (the Act) was passed by the ACT Legislative Assembly in June 2016 with commencement on 1 July 2017. The Act introduced amendments to ensure workers who suffer from an imminently fatal asbestos-related disease receive equitable and timely access to statutory compensation.

### Taxi and Rideshare amendments

The Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1) was notified on 26 July 2016 and introduced changes to the Workers Compensation Regulation 2002 – with effect from 1 November 2016.

Under the new legislation:

- a transport booking service will be responsible for paying for workers' compensation for any drivers it asks to work for it exclusively
- a contract of bailment with a driver will create a responsibility for the operator to purchase a workers' compensation policy for the driver, and
- owner drivers who do not engage other drivers to drive their vehicle will continue to be treated as sole traders and will not require workers' compensation insurance.

# Comcare

## Self-insurance

Self-insurance in the Comcare scheme is regulated by the Safety, Rehabilitation and Compensation Commission (the Commission), an independent body appointed by the Minister for Employment. In 2016, the Commission commenced implementation of a new risk-based and more flexible model of self-insurance regulation.<sup>1</sup>

## Legislative amendments

The *Safety, Rehabilitation and Compensation Amendment (Exit Arrangements) Act 2016* came into effect on 11 February 2016. This Act amends the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to provide for financial and other arrangements for a Commonwealth authority that ceases to be a Commonwealth authority, but which continues in existence to exit the Comcare scheme. The Act also ensures appropriate ongoing rehabilitation arrangements for employees injured before the Commonwealth authority's exit from the Comcare scheme.

The *Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017* received Royal Assent on 22 June 2017. This Act aligned the *Safety, Rehabilitation and Compensation Act 1988* and the *Seafarers' Rehabilitation and Compensation Act 1992* with the age of eligibility for the Age Pension and the minimum benchmarks in the National Injury Insurance Scheme for supporting catastrophically injured employees.

# New Zealand

In September 2015, the Accident Compensation (Financial Responsibility and Transparency) Amendment Bill was passed into legislation. The Minister for the Accident Compensation Corporation (ACC) has now removed the residual portion of levies, and it will no longer be collected from 1 April 2016 for the Work and Earners' Accounts and from 1 July 2016 for the Motor Vehicle Account. The residual levy is most visible to employers and self-employed people because it is itemised in the levy invoicing they receive from ACC and is charged at a different rate according to risk relativities as at 2005. It also means that the full benefits of self-cover can be realised by accredited employers. The removal of the residual portion of the work levy does not automatically result in reduced levies for all employers or industries.

Another change made in the Accident Compensation (Financial Responsibility and Transparency) Amendment Bill is that the Minister for ACC will now set a funding policy for the Board to apply and consult on. This will increase transparency of the Government's risk preferences and expectations for funding the levied accounts of the scheme.

New Zealand recently undertook its most significant workplace health and safety reforms in 20 years resulting in the *Health and Safety at Work Act 2015* (HSWA) and the formation of WorkSafe New Zealand (WorkSafe). This new Act came into force on 4 April 2016 and immediately repealed the *Health and Safety in Employment Act 1992*. The *Health and Safety at Work Act 2015* (HSWA) is New Zealand's workplace health and safety law. It sets out the principles, duties and rights in relation to workplace health and safety. HSWA is just the beginning and signals a new way of thinking about health and safety. The Worksafe New Zealand website states that HSWA 'is not just about compliance; it's about getting people home healthy and safe. It's not just good for your business, it's the right thing to do.'

---

<sup>1</sup> [http://www.srcc.gov.au/latest\\_news/new\\_regulatory\\_model\\_to\\_licensees](http://www.srcc.gov.au/latest_news/new_regulatory_model_to_licensees)



# **Chapter 2: Schemes at a glance**





# Schemes

This chapter provides brief information on some of the important aspects of workers' compensation legislation and how they differ between jurisdictions. Later chapters deal with some of these aspects in more detail.

Below is a summary of the tables contained in this chapter and their content:

- 2.1 Jurisdictional contacts**
- 2.2 Agencies responsible for overseeing workers' compensation in each jurisdiction**
- 2.3 Key features of schemes** — Table 2.3 provides a summary of some of the key features including the number of employees covered, the number and rate of serious claims and the standardised average premium rates.
- 2.4 Summary of coverage** — Tables 2.4a to 2.4e provide a summary of coverage including who is covered (coverage of employees and coverage of contractors and labour hire workers), whether coverage is extended to injuries that occur during journeys and breaks and what is covered (definition of injury and employment contribution) and retirement provisions. More detailed information on these topics can be found in Chapter 3.
- 2.5 Summary of benefits** — Table 2.5 provides a summary of weekly payments, medical and hospital payments, lump sum payments for permanent impairment and death entitlements. More detail is provided in Chapter 4.
- 2.6 Prescribed time periods for injury notification** — early intervention is essential for successful outcomes in return to work. Table 2.6 shows the timeframes for injury notification, claims submissions etc. that are prescribed in most jurisdictions.
- 2.7 Prescribed time periods for claim submission** — Table 2.7 summarises the processes and timeframes involved in submitting a claim and highlights whether the worker, employer and/or insurer/authority has responsibility for the various aspects.
- 2.8 Prescribed time periods for payments** — Table 2.8 summarises when eligibility for payments begin, when payments start, when the employer passes on payments to injured workers, period specified for medical invoices to be sent to insurers, and when medical expenses are accepted and paid.
- 2.9 Dispute resolution process** — Table 2.9 outlines the procedures followed by each jurisdiction. The process helps injured workers and their employers resolve issues arising from workers' compensation claims at an early stage to prevent the issues going to court.
- 2.10 Remuneration for the purposes of premium calculation** — Table 2.10 summarises the basis for insurers to quantify workers' compensation premiums, which are paid by employers annually. Premiums are expressed as a percentage of an employer's total payroll.
- 2.11 Employer excess** — some schemes require employers to pay an excess before the workers' compensation insurer begins making payments. In some cases, employers may 'buy out' their excess. Table 2.11 outlines the type and amount of excess payable in each jurisdiction.
- 2.12 Uninsured employer provisions** — in all jurisdictions it is compulsory for employers to have workers' compensation insurance for their workers. However, for a variety of reasons some workers may not be covered. Table 2.12 outlines the provisions in place in each jurisdiction to ensure that workers of uninsured employers receive the same benefits as those covered.
- 2.13 Leave while on workers' compensation** — normal leave arrangements such as sick, recreation and long service leave may be affected when a worker is receiving workers' compensation payments. Also the amount of compensation may be affected by taking leave while on workers' compensation. Table 2.13 outlines provisions in workers' compensation or other legislation relating to leave accrual while on workers' compensation and the effect of taking leave on compensation paid.
- 2.14 Superannuation and workers' compensation** — Table 2.14 provides information on whether the schemes include superannuation as wages for premium calculations and as part of income replacement payments.



**Table 2.1: Jurisdictional contacts**

	Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
New South Wales	Dr Petrina Casey	Director, Insurance Policy and Design, Workers' Compensation Regulation	13 10 50 (02) 8270 2650	N/A	<a href="mailto:petrina.casey@sira.nsw.gov.au">petrina.casey@sira.nsw.gov.au</a>	Workers' Compensation Regulation State Insurance Regulatory Authority Locked Bag 2906 LISAROW NSW 2252	<a href="http://www.sira.nsw.gov.au/">www.sira.nsw.gov.au/</a>
Victoria	Keri Whitehead	Executive Officer, Policy and Strategy Services	1800 136 089 (03) 9641 1680	(03) 9641 1842	<a href="mailto:keri_whitehead@worksafe.vic.gov.au">keri_whitehead@worksafe.vic.gov.au</a>	WorkSafe Victoria GPO Box 4306 MELBOURNE VIC 3001	<a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
Queensland	Janene Hillhouse	Senior Director, Workers' Compensation Services, Office of Industrial Relations	1300 362 128 (07) 3406 9920	N/A	<a href="mailto:janene.hillhouse@justice.qld.gov.au">janene.hillhouse@justice.qld.gov.au</a>	Office of Industrial Relations GPO Box 69, BRISBANE QLD 4001	<a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
Western Australia	Kevin Gillingham	Manager, Policy and Legislative Services, Legislation and Scheme Information	(08) 9388 5555 (08) 9388 5640	(08) 9388 5550	<a href="mailto:kevin.Gillingham@workcover.wa.gov.au">kevin.Gillingham@workcover.wa.gov.au</a>	Legislation and Scheme Information WorkCover WA 2 Bedbrook Place SHENTON PARK WA 6008	<a href="http://www.workcover.wa.gov.au">www.workcover.wa.gov.au</a>
South Australia	Sally Burridge	Manager, Government Relations, Regulation, ReturnToWorkSA	131 855 (08) 8233 2267	N/A	<a href="mailto:sally.burridge@rtwsa.com">sally.burridge@rtwsa.com</a>	Government Relations ReturnToWorkSA GPO Box 2668 ADELAIDE SA 5001	<a href="http://www.rtwsa.com">www.rtwsa.com</a>
Tasmania	Brad Parker Wendy Clarkson	Director of Compensation & Support Services, WorkSafe Tasmania  Director of Policy, WorkSafe Tasmania	(03) 6166 4747 (03) 6166 4660	(03) 6233 8338	<a href="mailto:brad.parker@justice.tas.gov.au">brad.parker@justice.tas.gov.au</a> <a href="mailto:wendy.clarkson@justice.tas.gov.au">wendy.clarkson@justice.tas.gov.au</a>	WorkSafe Tasmania PO Box 56 ROSNY PARK TAS 7018	<a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
Northern Territory	Bevan Pratt	Director, Rehabilitation and Compensation	1800 250 713 (08) 8999 5018	(08) 8999 5141	<a href="mailto:bevan.pratt@nt.gov.au">bevan.pratt@nt.gov.au</a> <a href="mailto:ntworksafe@nt.gov.au">ntworksafe@nt.gov.au</a>	Rehabilitation and Compensation Unit, NT WorkSafe GPO Box 1722 DARWIN NT 0801	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>

Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
Australian Capital Territory	ACT Work Safety Commissioner (Operations) Michael Young (Policy)	ACT Work Safety Commissioner, Chief Minister, Treasury and Economic Development Directorate  Executive Director, Workplace Safety and Industrial Relations Division, Chief Minister, Treasury and Economic Development Directorate	13 22 81 (02) 6207 3000	N/A	<a href="mailto:worksafe@act.gov.au">worksafe@act.gov.au</a> <a href="mailto:michael.young@act.gov.au">michael.young@act.gov.au</a>	GPO Box 158, CANBERRA ACT 2601  <a href="http://www.worksafe.act.gov.au/">www.worksafe.act.gov.au/</a> <a href="http://www.cmd.act.gov.au">www.cmd.act.gov.au</a>
C'wealth Comcare	Seyram Tawia	Director, Scheme Policy	1300 366 979 (03) 9627 5433	N/A	<a href="mailto:seyram.tawia@comcare.gov.au">seyram.tawia@comcare.gov.au</a>	Comcare GPO Box 9905 CANBERRA ACT 2601  <a href="http://www.comcare.gov.au">www.comcare.gov.au</a>
C'wealth Seacare	Meg Kroger	Director, Secretariat and Planning	1300 366 979 (03) 9914 6306	N/A	<a href="mailto:margaret.kroger@comcare.gov.au">margaret.kroger@comcare.gov.au</a>	Comcare GPO Box 9905 CANBERRA ACT 2601  <a href="http://www.seacare.gov.au">www.seacare.gov.au</a>
C'wealth DVA	Mike Armitage	Director, Rehabilitation Policy	(07) 3223 8690	n/a	<a href="mailto:mike.armitage@dva.gov.au">mike.armitage@dva.gov.au</a>	Department of Veterans' Affairs GPO Box 9998 CANBERRA ACT 2601  <a href="http://www.dva.gov.au">www.dva.gov.au</a>
New Zealand	Mike Tully	Chief Customer Officer	+64 4 816 6932	+64 4 816 7051	<a href="mailto:mike.tully@acc.co.nz">mike.tully@acc.co.nz</a>	Accident Compensation Corporation PO Box 242 WELLINGTON New Zealand  <a href="http://www.acc.co.nz">www.acc.co.nz</a>

**Table 2.2: Agencies responsible for overseeing workers' compensation in each jurisdiction**

	Policy	Premium	Claims	Current legislation	Disputes
<b>New South Wales</b>	<a href="#">State Insurance Regulatory Authority</a> (SIRA)	Insurers subject to SIRA oversight	Nominal Insurer for most employees through 5 private sector Scheme Agents, Self-Insurance Corporation for most public sector employees through 3 private sector claims administrators, 56 self-insurers and 6 specialised insurers.	<a href="#">Workplace Injury Management and Workers Compensation Act 1998</a> <a href="#">Workers' Compensation Act 1987</a>	<a href="#">SIRA</a> <a href="#">Workers Compensation Commission</a> , <a href="#">Workers Compensation Independent Review Office</a>
<b>Victoria</b>	<a href="#">WorkSafe Victoria</a> <a href="#">Victorian WorkCover Authority</a>	<a href="#">WorkSafe Victoria</a>	5 private sector agents and 38 self-insurers	<a href="#">Workplace Injury Rehabilitation and Compensation Act 2013</a>	WorkSafe Victoria Accident Compensation Conciliation Service (ACCS), Medical Panels Magistrates' or County Court
<b>Queensland</b>	<a href="#">Office of Industrial Relations</a>	<a href="#">WorkCover Queensland</a>	WorkCover Queensland and 28 self-insurers	<a href="#">Workers' Compensation and Rehabilitation Act 2003</a>	<a href="#">Workers' Compensation Regulator</a> <a href="#">Queensland Industrial Relations Commission</a> or <a href="#">Industrial Magistrate</a> , <a href="#">Industrial Court</a>
<b>Western Australia</b>	<a href="#">WorkCover WA</a>	Insurers subject to WorkCover WA oversight	8 private sector insurers, 25 self-insurers, (exempt employers) and the Insurance Commission of Western Australia	<a href="#">Workers' Compensation and Injury Management Act 1981</a>	Conciliation and Arbitration Services
<b>South Australia</b>	<a href="#">ReturnToWorkSA</a>	<a href="#">ReturnToWorkSA</a>	2 private sector agents, 70 private self-insurers and 44 Crown (State Government) self-insurers	<a href="#">Return to Work Act 2014</a> <a href="#">Return to Work Corporation of South Australia Act 1994</a> <a href="#">South Australian Employment Tribunal Act 2014</a>	South Australian Employment Tribunal Supreme Court ReturnToWorkSA Premium Review Panel
<b>Tasmania</b>	<a href="#">Department of Justice</a> <a href="#">WorkSafe Tasmania</a>	Licensed private sector insurers subject to WorkCover Tas oversight	7 private sector insurers and 10 self-insurers	<a href="#">Workers' Rehabilitation and Compensation Act 1988</a>	Workers Rehabilitation and Compensation Tribunal, Supreme Court
<b>Northern Territory</b>	Department of Attorney General and Justice <a href="#">NT WorkSafe</a>	Private sector insurers	4 private sector insurers	<a href="#">Return to Work Act</a>	Mediation coordinated by NT WorkSafe. Work Health Court
<b>Australian Capital Territory</b>	<a href="#">Chief Minister, Treasury and Economic Development Directorate</a>	Private sector insurers	7 private sector insurers and 7 self-insurers	<a href="#">Workers' Compensation Act 1951</a>	Conciliation, arbitration, Magistrates Court, Supreme Court
<b>C'wealth Comcare</b>	Department of Employment	<a href="#">Comcare</a>	Comcare/Self-insurers and their agents. DVA for claims relating to military service rendered before 1 July 2004	<a href="#">Safety, Rehabilitation and Compensation Act 1988</a>	AAT, Federal Court
<b>C'wealth Seacare</b>	Department of Employment	Private sector insurers	Employers/ insurers	<a href="#">Seafarers Rehabilitation and Compensation Act 1992</a>	AAT, Federal Court
<b>C'wealth DVA</b>	Military Rehabilitation and Compensation Commission	N/A	<a href="#">DVA</a>	<a href="#">Military Rehabilitation and Compensation Act 2004</a>	Veterans' Review Board, AAT, Federal Court

	Policy	Premium	Claims	Current legislation	Disputes
New Zealand	<a href="#">Ministry of Business, Innovation, and Employment</a> (former) Department of Labour	<a href="#">Accident Compensation Corporation (ACC)</a>	ACC	<a href="#">Accident Compensation Act 2001</a>	ACC, mediation, FairWay limited, court system

**Table 2.3: Key features of schemes**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth	New Zealand
<b>Employees covered for workers' compensation (2014–15)</b>	3 299 290	2 672 911	2 147 528	1 261 363	729 928	218 752	129 017	128 639 Private Sector Workforce	383 118	2 069 856
<b>Number of serious claims with one week or more incapacity (2014–15)</b>	33 800	21 970	24 710	11 640	7 950	2 480	1 080	1 720	1 900	23 340
<b>Number of serious claims per 1000 employees (2014–15)</b>	10.2	8.2	11.5	9.2	10.9	11.3	8.3	13.4	4.9	11.3
<b>Compensated deaths per 100 000 employees (2014–15)</b>	1.3	1.2	1.9	2.1	0.6	2.3	0.0	0.8	1.8	3.9
<b>Scheme funding</b>	Managed	Central	Central	Private insurers	Central	Private insurers	Private insurers	Private insurers	Central	Central
<b>Standardised Average Premium rate (% of payroll)</b>	1.45 (2014–15) 1.67 (2013–14)	1.31 (2014–15) 1.31 (2013–14)	1.19 (2014–15) 1.44 (2013–14)	1.21 (2014–15) 1.25 (2013–14)	2.42 (2014–15) 2.48 (2013–14)	1.58 (2014–15) 1.60 (2013–14)	1.67 (2014–15) 1.86 (2013–14)	1.84 (2014–15) 1.97 (2013–14)	1.22 (2014–15) 1.15 (2013–14)	0.60 (2014–15) 0.71 (2013–14)
<b>Standardised Funding Ratio (%)</b>	153 (2014–15)	133 (2014–15)	193 (2014–15)	136 (2014–15)	123 (2014–15)	142 (2014–15)	109 (2014–15)	N/A	76 (2014–15)	169 (2014–15)
<b>Excess/ Unfunded (30 June 2015) Update as of 30 June 2016</b>	Not Available	\$1.492 billion excess	\$1.726 billion funded	N/A	\$370 million excess as at 30 June 2016	N/A	N/A	N/A	\$450 799 million	\$2.55 billion excess Work Account only
<b>Access to Common Law</b>	Yes	Yes — limited	Yes	Yes	Yes – limited	Yes	No	Yes	Yes — limited	No

## Coverage of workers

Determining what type of workers should be covered by workers' compensation is very important, as penalties can apply if an employer does not insure its workers.

A number of jurisdictions apply tests to determine whether or not a worker requires coverage. Table 2.4a provides a summary of coverage and Table 2.4b provides information to help to determine whether or not a worker is covered.

Employers should contact their workers' compensation authority if they are unclear whether or not a worker is covered.

**Table 2.4a: Summary of coverage (see Table 3.1a for more information)**

Coverage of employees		Coverage of independent contractors	Coverage of labour hire workers
<b>New South Wales</b>	<p>'worker means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:</p> <ul style="list-style-type: none"> <li>• a member of the NSW Police Force who is a contributor to the Police Superannuation Fund under the <i>Police Regulation (Superannuation) Act 1906</i>, or</li> <li>• a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business, or</li> <li>• an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year, or</li> <li>• except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the <i>Sporting Injuries Insurance Act 1978</i> while: <ul style="list-style-type: none"> <li>○ participating in an authorised activity (within the meaning of that Act) of that organisation, or</li> <li>○ engaged in training or preparing himself or herself with a view to so participating, or</li> <li>○ engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged, if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.'</li> </ul> </li> </ul> <p>s4, 1998 Act The legislation also identifies various factual situations when a person will be deemed to be a 'worker' (see s5 and Schedule 1, 1998 Act).</p>	Not unless contractor is a deemed worker pursuant to schedule 1, 1998 Act.	Yes, labour hire firm held to be employer. Schedule 1, clause 2A, 1998 Act.
<b>Victoria</b>	<p>"worker" means an individual —</p> <p>a) who:</p> <ul style="list-style-type: none"> <li>(i) performs work for an employer; or</li> <li>(ii) agrees with an employer to perform work – at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or</li> </ul> <p>b) who is deemed to be a worker under this Act — s3.</p>	Not unless the contractor is a deemed worker pursuant to clause 9 of schedule 1.	Yes, labour hire firm held to be employer (definition of 'worker' in s3.
<b>Queensland</b>	A worker is a person who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding — s11 ( <i>Workers' Compensation and Rehabilitation Act 2003</i> ).	No, unless determined an employee using the ATO Decision Tool.	Yes, labour hire firm held to be employer.
<b>Western Australia</b>	<p>Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes:</p> <p>a) any person to whose service any industrial award or industrial agreement applies, and any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services — s5(1).</p>	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.	Yes, labour hire firm held to be employer.
<b>South Australia</b>	<p>A 'worker' means</p> <p>a) a person by whom work is done under a contract of service (whether or not as an</p>	<p>Yes, if covered by definitions in s4:</p> <ul style="list-style-type: none"> <li>• 'worker' which includes a person by whom work is</li> </ul>	<p>Yes. A 'worker' means</p> <p>a) a person by whom work is done under a contract of</p>

Coverage of employees		Coverage of independent contractors	Coverage of labour hire workers
	<p>employee)</p> <p>b) a person who is a worker by virtue of —Schedule 1 RTW Act 2014</p> <p>c) a self-employed worker</p> <p>d) and includes a former worker and the legal personal representative of a deceased worker —<a href="#">s4(1)</a>.</p>	<p>done under a contract of service (whether or not as an employee).</p> <ul style="list-style-type: none"> <li>'contract of service' which includes if person undertakes prescribed work or work of a prescribed class.</li> <li>See also <a href="#">Regulation 5</a> and <a href="#">s4(7)</a>.</li> </ul>	<p>service (whether or not as an employee).</p>
<b>Tasmania</b>	<p>Any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing, and</p> <p>Any person or class taken to be a worker for the purposes of the Act</p> <p>And, when used in relation to a person who has been injured and is dead, the legal personal representatives or dependants of that person or other person to whom or for whose benefit compensation is payable—s3(1).</p> <p>The Act does not apply to any person:</p> <ul style="list-style-type: none"> <li>whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or <ul style="list-style-type: none"> <li>a) who is an outworker, or</li> <li>b) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury, or</li> <li>c) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat, or</li> </ul> </li> <li>Notwithstanding section s4D, who is participating in an approved program of work for unemployment payment under the <i>Social Security Act 1991</i> (Cth) – s4(5).</li> </ul>	<p>Persons engaged under a contract for services are not covered unless the contract is for work exceeding \$100 that is not incidental to a trade or business regularly carried out by the contractor. A contractor is not covered during any period for which they have personal accident insurance — s4B.</p>	<p>Labour hire workers are generally covered with the labour hire company taken to be the employer.</p>
<b>Northern Territory</b>	<p>A worker is a person who works under a contract and, in relation to the contract, is an employee for the purpose of assessment for PAYG withholding under the <i>Taxation Administration Act 1953</i> (section3(1) of the <i>Return to Work Act</i>).</p>	<p>No, unless determined an employee using the ATO Decision Tool.</p>	<p>If the individual's contract is with the Labour Hire business they are the employer.</p>
<b>Australian Capital Territory</b>	<p>Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract unless they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a-c) OR has a personal services business determination s8(1)(ii).</p>	<p>No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.</p>	<p>Yes, where the individual is not an executive officer of the corporation and:</p> <p>the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer</p> <p>there is no contract to perform work between the individual and person for who work is to be performed, and the individual does all or part of the work.</p>
<b>C'wealth Comcare</b>	<p>Employee — a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or a Territory or under a contract of service or apprenticeship, or a person who is employed by a licensed corporation or ACT Government.</p>	<p>No, compensation only through employment of employees.</p>	<p>Possibly, according to the nature of the contract.</p>
<b>C'wealth Seacare</b>	<p>Employee – (a) a seafarer, as defined in the <i>Navigation Act 2012</i>, who is employed in any capacity on a prescribed ship, on the business of the ship; (b) a trainee; (c) a person required to attend a Seafarers Engagement Centre for the purpose of registering availability for employment or engagement on a prescribed ship — (s4 Employees).</p>	<p>No, compensation only through employment of employees. Possibly, according to definition of nature of contract.</p>	
<b>C'wealth DVA</b>	<p>Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 — MRCA s5.</p>	<p>Only if a 'declared member' — s8.</p>	<p>Only if a 'declared member' — s8.</p>



	Coverage of employees	Coverage of independent contractors	Coverage of labour hire workers
<b>New Zealand</b>	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s6.	Yes	Yes, labour hire firm held to be employer.

**Table 2.4b: Guidelines and information for determining coverage of workers**

Guides and information	
New South Wales	<a href="#">Worker or contractor?</a>
Victoria	<a href="#">Contractors and workers</a> <a href="#">Workers' rights and responsibilities</a>
Queensland	<a href="#">Worker determination tests</a>
Western Australia	<a href="#">Workers' Compensation: A Guide for Employers</a> <a href="#">A Technical Note on Contractors and Workers' Compensation</a>
South Australia	<a href="#">Who is a worker?</a>
Tasmania	<p>A person who is engaged under a contract of service would be regarded at common law as being an employee whereas a person who is engaged under a contract for service is regarded as being an independent contractor.</p> <p>Exception where contract is for work not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name, or where the contractor has taken out his or her own personal accident insurance — <a href="#">s4B</a></p> <p>A salesperson, canvasser, collector or other person paid wholly or partly by commission is covered unless the commission relates to work that is incidental to a trade or business regularly carried on by that person the salesperson, canvasser, collector or other person or by a firm of which he or she is a member — <a href="#">s4C</a>.</p>
Northern Territory	<a href="#">ATO Employee/contractor decision tool</a> : workers' compensation insurance requirements for employers.
Australian Capital Territory	<p>Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), workers under a contract, or at piecework rates for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a—c) OR has a personal services business determination s8(1)(ii).</p> <p><a href="#">ACT Wages and Earnings Guide</a></p>
C'wealth Comcare	<a href="#">Can I claim?</a>
C'wealth Seacare	<a href="#">Coverage of Seafarers Act</a>
C'wealth DVA	<a href="#">Entitlement Self Assessment</a>
New Zealand	<a href="#">Accident Compensation Act 2001—s20-38</a>

**Table 2.4c: Coverage of journeys and breaks**

	Journeys to and from work	Work-related travel	Breaks — onsite	Breaks — offsite
<b>New South Wales</b>	Yes, for certain exempt workers. For all other workers with injuries received on or after 19 June 2012, there must be a real and substantial connection between employment and the accident or incident out of which the injury arose — s10 and Schedule 6 Part 19H, Clause 18, 1987 Act.	Yes — s4, 1998 Act	Yes — s11 1987 Act	Yes — s11 1987 Act
<b>Victoria</b>	No — s46	Yes, some restrictions — s46	Yes — s46	Yes — s46
<b>Queensland</b>	Yes, some restrictions — s35	Yes — s34	Yes — s34(1)(c)	Yes — s34(1)(c)
<b>Western Australia</b>	No — s19(2)	Yes — s19(1)	Yes	No reference in the Act Coverage depends on factual circumstances or common law
<b>South Australia</b>	Yes, but limited s7(8)	Yes — s7(8)	Yes, if the break is authorised — s7(5)(b)	No
<b>Tasmania</b>	No, some exceptions — s25(6)	Yes — s25(6)	Yes — s25(6)	No, some exceptions — s25(6)
<b>Northern Territory</b>	No, some exceptions — s4 & reg5AA	Yes — s4	Yes — s4	Yes — some exceptions(MVA's) - s4
<b>Australian Capital Territory</b>	Yes — s36	Yes — s36	No reference	No reference
<b>C'wealth Comcare</b>	No, some exceptions — s6(1C)	Yes — s6(1)(d)	Yes — s6(1)(b)	Yes, since 7 December 2011 ('ordinary recess')
<b>C'wealth Seacare</b>	Yes — s9(2)(e)	Yes — s9(2)(e)	Yes — s9(2)(b)	Yes — s9(2)(b)
<b>C'wealth DVA</b>	Yes — s27; exceptions — s35	Yes — s27; exceptions — s35	Yes — s27	Yes — s27
<b>New Zealand</b>	Yes, some restrictions — s28(1)(c)	Yes — s28(1)(a)	Yes — s28(1)(b)	Yes, some restrictions

**Table 2.4d: Definition of injury and employment contribution**

Definition of injury and relationship to employment		Contribution of employment to injury
<b>New South Wales</b>	<p><b>injury:</b></p> <ul style="list-style-type: none"> <li>a) means personal injury arising out of or in the course of employment,</li> <li>b) includes a <b>disease injury</b>, which means: <ul style="list-style-type: none"> <li>(i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and</li> <li>(ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease, and</li> </ul> </li> <li>c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the <a href="#">Workers' Compensation (Dust Diseases) Act 1942</a>, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.</li> </ul> <p>s4, 1987 Act.</p>	<p>No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.</p> <p>— s9A (1), 1987 Act.</p> <p>s4, 1998 Act.</p>
<b>Victoria</b>	<p>'... arising out of or in the course of, any employment ...' — <a href="#">s39(1)</a>.</p>	<p>Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment) c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease — <a href="#">s40(2)</a> and <a href="#">s40(3)</a>.</p>
<b>Queensland</b>	<p>'... a personal injury arising out of, or in the course of, employment ...' — <a href="#">s32(1)</a>.</p>	<p>A significant contributing factor — <a href="#">s32(1)</a></p> <p>For a psychiatric or psychological disorder, the major significant contributing factor – <a href="#">s32(1)</a>.</p>
<b>Western Australia</b>	<p>'... a personal injury by accident arising out of or in the course of the employment ...' — <a href="#">s5</a>.</p>	<p>Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree — <a href="#">s5</a>.</p>
<b>South Australia</b>	<p>'... injury if (and only if) it arises from employment' — <a href="#">s7</a>.</p>	<p>The <i>Return to Work Act 2014</i> applies to an injury if (and only if) it arises from employment. s7.</p> <p>For psychological injuries to be compensable, employment must be 'the significant contributing cause.' S7(2)(b)(i).</p>
<b>Tasmania</b>	<p>'An injury, not being a disease, arising out of, or in the course of employment' — <a href="#">s25(1)(a)</a></p> <p>'an injury, which is a disease, to which his employment contributed to a substantial degree' — <a href="#">s25(1)(b)</a>.</p>	<p>To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only) — <a href="#">s3(2A)</a>.</p> <p>Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (<a href="#">s3(1)</a> — in definition of 'injury').</p>
<b>Northern Territory</b>	<p>'... a physical or mental injury ... out of or in the course of employment ...' — <a href="#">s3A</a> and <a href="#">s4</a>.</p>	<p>Material contribution, (for diseases — <a href="#">s4(6)</a> and gradual process — <a href="#">s4(5)</a>) that is employment was the real proximate or effective cause (S4(8))</p> <p>A mental injury is not an injury if due to management action taken on reasonable grounds and in a reasonable manner - s3A(2). See s3(1) for definition of 'management action'</p> <p>For heart attack or stroke injury - material contribution - s58 that is employment was the real proximate or effective cause - s4(8).</p>
<b>Australian Capital Territory</b>	<p>'a physical or mental injury (including stress) ... includes aggravation, acceleration or recurrence of a pre-existing injury ... arising out of, or in the course of, the worker's employment ...' — <a href="#">s4</a> and <a href="#">s31</a>.</p>	<p>A substantial contributing factor — <a href="#">s31(2)</a>.</p>

Definition of injury and relationship to employment		Contribution of employment to injury
<b>C'wealth Comcare</b>	For injuries: '... 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) suffered by an employee...' — <a href="#">s5A</a> For diseases: 'an ailment suffered by an employee; or an aggravation of such an ailment that was contributed to, to a significant degree, by an employee's employment...' — <a href="#">s5B</a> .	To a significant degree (for diseases) — <a href="#">s5B</a> with matter to be taken into account being set out in a non-exclusive list and with 'significant degree' being defined as 'substantially more than material'.
<b>C'wealth Seacare</b>	For injuries: 'an injury (other than a disease) suffered by an employee, being. 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) suffered by an employee...' — s3 For diseases: 'any ailment suffered by an employee, or the aggravation of any such ailment, being an ailment or an aggravation that was contributed to in a material degree by the employee's employment' — s3.	To a material degree (for diseases) — s3.
<b>C'wealth DVA</b>	Refer s27, s29(1), s29(2) and s30 of <a href="#">MRCA</a> 1. any injury or disease (or recurrence) that: <ul style="list-style-type: none"> <li>• resulted from an occurrence that happened on service</li> <li>• arose out of, or was attributable to, any service</li> <li>• due to an accident not occurring or a disease not being contracted but for service, or but for changes in the person's environment due to service</li> <li>• resulted from an accident that occurred whilst travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty; or away from a place of duty upon having ceased to perform duty, or</li> <li>• arising from treatment provided by the Commonwealth.</li> </ul> 2. any aggravation of an injury or disease, or its signs and symptoms: <ul style="list-style-type: none"> <li>• contributed to in a material degree by or was aggravated by service, and/or</li> <li>• aggravated by treatment provided by the Commonwealth.</li> </ul>	Minimum material contribution required ('arose out of, or was attributable to') — <a href="#">MRCA</a> s27b and s27c. In a material degree (for aggravations only) — <a href="#">MRCA</a> , s27d and s30.
<b>New Zealand</b>	A work-related personal injury is a personal injury that a person suffers while he or she is at any place for the purposes of his or her employment — <a href="#">s28</a> .	A work-related personal injury is a personal injury that a person suffers while he or she is at any place for the purposes of his or her employment — s28.

**Table 2.4e: Coverage of retirement provisions**

Retirement provisions	
<b>New South Wales</b>	Retiring age means the age the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the <a href="#">Commonwealth Social Security Act 1991</a> . If the injury occurs before reaching retiring age: weekly compensation is made for up to 12 months after the date on which the worker reaches retiring age. If the injury occurs on or after retiring age: weekly payments made for the first 12 months after the first occasion of incapacity for work resulting from the injury (s 52 1987 Act).
<b>Victoria</b>	Under s171, normally, the earlier of age 65 or normal retirement age for the worker's occupation except in the following circumstances: <ul style="list-style-type: none"> <li>• if injured within the period of 130 weeks before attaining retirement age or at any time after attaining that age, the worker is entitled to weekly payments for no more than the first 130 weeks of incapacity for work — s169, or</li> <li>• if worker's incapacity after reaching retirement age relates to an injury suffered within the preceding 10 years and if the incapacity is due to inpatient treatment, the worker is entitled to weekly payments for a limited period of up to 13 weeks — s170.</li> </ul>
<b>Queensland</b>	Queensland does not include retirement age provisions in its workers' compensation legislation. The Queensland workers' compensation scheme does not have an age cut-off for access or benefits. Instead benefits are only payable to injured workers (no matter what age) until the injury is stable and stationary or for a maximum of five years.
<b>Western Australia</b>	No retirement provisions in the <a href="#">Workers' Compensation and Injury Management Act 1981</a> . Age restrictions were removed on 1 October 2011.
<b>South Australia</b>	Under section 44, retiring age means the lesser of the normal retiring age for workers in that particular employment or, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the <a href="#">Social Security Act 1991</a> (Cth). If a worker is above or within 2 years of their retiring age weekly payments are payable for a maximum of two years <a href="#">s44(3)</a> . Subject to the usual compensability thresholds, workers who are seriously injured are entitled to medical expenses for life.
<b>Tasmania</b>	If injury occurs on or before the age of 64, compensation ceases at 65 years old. If injury occurs after the age of 64, compensation ceases one year after injury occurs. The Tribunal may allow payments to continue where the worker would have continued to work beyond the age of 65 — s87.
<b>Northern Territory</b>	Weekly compensation generally stops when the person reaches retirement age under Social Security legislation. The retirement age in the legislation has been linked to the retiring age in the <i>Social Security Act 1991</i> (Cth), which means it will increase in increments from 2017, reaching 67 years of age in 2023. If a worker is injured within 2 years of, or after, their retirement age, they are entitled to receive up to 104 weeks of weekly compensation — s65.
<b>Australian Capital Territory</b>	If the worker was, on the initial incapacity date for the injury, younger than 63 years old, compensation for incapacity is not payable for any period after the worker reaches 65 years of age — <a href="#">s39(3)(b)</a> ; <a href="#">s40(4)(a)</a> . If the worker was, on the initial incapacity date for the injury, at least 63 years of age, compensation for incapacity is not payable for any period more than 2 years after the initial incapacity date — <a href="#">s39(3)(c)</a> ; <a href="#">s40(4)(b)</a> .
<b>C'wealth Comcare</b>	Compensation in the form of income replacement is not generally payable to an employee who has reached 65, however if an employee who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated — <a href="#">s23</a> .
<b>C'wealth Seacare</b>	Compensation in the form of income replacement is not generally payable to an employee who has reached 65, however if an employee who has reached 64 suffers an injury, compensation is payable for up to 12 months from the date of injury — <a href="#">s38</a> .
<b>C'wealth DVA</b>	Compensation in the form of income replacement is not payable to a person who has reached 65, however if a person who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks — <a href="#">MRCA</a> s121.
<b>New Zealand</b>	Complex set of rules for employees who are injured either shortly before or after qualifying for national superannuation — <a href="#">clause 52 of schedule 1</a> .

**Table 2.5: Summary of entitlements as at 30 September 2016**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>What pre-injury weekly earning includes</b>												
<b>Overtime</b>	Yes, for the first 52 weeks of weekly payments	Yes, for first 52 weeks of weekly payments	Yes (NWE)	Yes, for the first 13 weeks. No from week 14 onward	Yes	No, with some exceptions (see note) <sup>a</sup>	Yes, if regular and established	Yes, if regular and required	Yes	Yes, if regular and required	Yes	Yes
<b>Bonuses</b>	No	No	Yes	Yes, for the first 13 weeks. No from week 14 onward	Yes	No ( <a href="#">s70(2)(ac)</a> )	No	No	No (some allowances are payable)	No (some allowances are payable)	No (some allowances are payable)	No
Entitlements expressed as a percentage of pre-injury earnings for award wage earners <sup>b</sup>												
<b>0–13 weeks (total incapacity)</b>	95% less any deductibles (subject to max cap)*	95% up to max	85% of NWE <sup>c</sup> (or 100% under industrial agreement)	100%	100%	100% ( <a href="#">s69B(a)</a> )	100%	100%	100%	100%	100%	80%
<b>14–26 weeks (total incapacity)</b>	80% less any deductibles (subject to max cap)*	80% up to max	85% of NWE <sup>c</sup> (or 100% under industrial agreement)	100%	100%	100% ( <a href="#">s69B(a)</a> )	100%	100%	100%	100%	100%	80%
<b>27–52 weeks (total incapacity)</b>	80% less any deductibles (subject to max cap)*	80% up to max	75% NWE or 70% QOTE <sup>c</sup>	100%	100%	90% (95% in some circumstances) ( <a href="#">s69B(b)</a> )	75–90%	65% or Stat Floor	27–45 wks. 100%. 46–52 wks. 75%	27–45 wks. 100%. 46–52 wks. 75%	27–45 wks. 100%. 46–52 wks. 75%	80%
<b>53–104 weeks (total incapacity)</b>	80% less any deductibles (subject to max cap and excludes overtime and shift allowance)*	80% up to max	75% NWE or 70% QOTE <sup>c</sup>	100%	80%	53–78 weeks 90% (or 95%), ( <a href="#">s69B(b)</a> ) 79–104 weeks 80% (85% in some circumstances) ( <a href="#">s69B(c)</a> )	75–90%	65% or Stat Floor	75% If an employee retires or is retired - 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received	75% If an employee retires or is retired - 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received	75%	80%
<b>104+ weeks (total)</b>	80% less any deductibles (subject to max)	80% (up to max, subject to work capacity)	If >15% degree of permanent impairment,	100%	80% for seriously injured workers (WPI of	80% (or 85%) The maximum	75–90% Compensation	65% or Stat Floor.	75% If an employee	75% If an employee	75%	80%

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>incapacity)</b>	cap, excludes overtime and shift allowance)  Payments cease at five years unless permanent impairment of >20% (subject to meeting requirements of s38 of the 1987 Act). These provisions apply after week 130.	test after 130 weeks)	75% NWE or 70% QOTE, otherwise single pension rate <sup>d</sup>		30% or more) <a href="#">s41(1)</a> . No entitlements for non-seriously injured workers <a href="#">s39(3)</a> beyond 104 weeks	payment period varies according to the assessed percentage of whole person impairment. <a href="#">s69B(c)</a>	ceases after 260 weeks unless 15% or greater WPI		retires or is retired, 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received	retires or is retired, 70% less any employer funded superannuation benefit (weekly equivalent if lump sum is involved) received		
<b>Other entitlements</b>												
<b>Permanent impairment</b>	Date of injury on or from 5th August 2015 - maximum amount payable for permanent impairment is \$577 050 (plus additional 5% for back impairment) Date of injury prior to 5th August 2015 maximum amount payable for permanent impairment is \$220 000 (plus additional 5% for back impairment)	\$589 650.00	\$314 920.00 permanent impairment plus \$356 745 gratuitous care	\$221 891.00 + up to \$166 418 in special circumstances.	Lump sum of up to \$361 476 – economic loss <a href="#">s55(8)</a> Lump sum of up to \$487 476 – non economic loss <a href="#">s58(4)</a> .	\$343 009.95	\$314 808.00	\$211 952.00	\$183 034.84 (Economic) \$68 638.10 (non-economic loss)	\$183 034.84 (Economic) \$68 638.10 (non-economic loss)	Up to \$448 971.73 (or up to \$335.73 pw) + \$86 429.75 for each dependent child if on 80 or more impairment points + \$2 549.31 financial and legal advice if on 50 or more impairment points	Up to \$133 802.28 lump sum payment
<b>Limits—medical and hospital</b>	Medical 1) if over 20% permanent impairment - No compensation period limit 2) if 11-20% permanent impairment, 5	52 weeks from cessation of weekly payments <sup>d</sup>	Medical — no limit. Hospital — 4 days (>4 days if reasonable)	\$66 567 + \$50 000 in special circumstances	No financial limit, but entitlements for non-seriously injured workers cease 1 year after end of weekly payments or 1 year after claim	No limit, but entitlements cease either after 1 year of weekly benefits cessation or 1 year after claim was made. unless the Tribunal makes	No limit	No limit	No limit	No limit	No limit	No limit



	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
	years after weekly payments cease to be payable or from the date of claim if no weekly payments are payable 3) if <11% permanent impairment, 2 years after weekly payments cease to be payable or from the date of claim if no weekly payments are payable (see further s 59A 1987 Act) Some medical treatment and services are exempt. See s59A, 1987 Act.				was made <a href="#">s.33(20)</a> . For seriously injured workers, lifetime care and support <a href="#">s.33(21)</a>	a relevant determination <a href="#">s75</a>						
<b>Death entitlements (all jurisdictions pay funeral expenses to differing amounts)</b>	\$760 000 + \$136.10 pw for each dependent child Funeral expenses: maximum \$15000	\$589 650 (shared) + pre-injury earnings-related pensions to a maximum of \$2 150 pw for dependant partner/s and children	\$589 875 + \$15 770 to dependant spouse + \$31 520 for each dependant family member under 16 or student + \$116.60 pw per child to spouse while children are under 6 yrs. + \$145.70 pw per dependent child/family member while children/family members under 16 yrs. or a student	\$304 185 + \$58.10 pw for each dependent child + max of \$66 567 for medical expenses	\$487 476 + Up to: 50% worker's NWE for spouse 25% worker's NWE for orphaned child 12.5% worker's NWE for non-orphaned child Funeral benefit: up to \$10 288	\$343 009.95 + 100% weekly payment - 0–26 weeks, 90% weekly payment - 27–78 weeks, 80% weekly payment - 79–104 weeks + \$123.98 pw for each dependent child <a href="#">s67A</a>	\$550 914 + \$151.85pw for each dependent child to max of 10 children	\$211 952 (lump sum) cpi indexed + \$70.65 (cpi indexed) pw for each dependent child Funeral expense \$5 652.06 (cpi indexed)	Comcare — \$528 433.70 lump sum + \$11 654.06 funeral + \$145.32 pw for each dependent child	\$528 433.70 lump sum + \$6 337.74 funeral + \$145.32 for each dependent child	Up to \$783 193.07 (or \$445.65pw) + up to \$144 049.60 for 'service death' + \$2 549.31 financial and legal advice + (\$86 429.75+ \$143.75pw) for each dependent child + up to \$86 429.75 for 'other dependant'	Up to \$133 802.28 lump sum + Survivors grant of \$6 455.40 + Funeral grant of \$6 021.11. Child care payments of \$137.27 p/w for one child, \$82.35 p/w each for two children, or \$192.18 pw in total for three or more children

Entitlements benefits in New South Wales, Western Australia, Victoria, Tasmania, Queensland, Northern Territory, Australian Capital Territory and New Zealand do not include superannuation contributions. Compensation in the form of superannuation contribution is payable in Victoria after 52 weeks of weekly payments.

- a. No, unless overtime was a requirement of the worker's contract of employment, the overtime was worked in accordance with a regular and established pattern and in accordance with a roster, the pattern was substantially uniform as to the number of overtime hours worked and the worker would have continued to work overtime in accordance with the established pattern if the worker had not been incapacitated s70(2)(ab)).
- b. Payment thresholds and specific benefit arrangements may also apply. The relevant jurisdiction should be contacted directly if further information is required.
- c. NWE — normal weekly earnings (except South Australia where NWE denotes notional weekly earnings), QOTE — the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year, or, if that amount is less than QOTE for the previous financial year—the amount that is QOTE for the previous financial year.
- d. Lump sums maximum and Death entitlements are updated on annual basis and may since have been changed.
- e. Lump sum shared under statutory formulae between spouse and children. Pension payable to partner for 3 years and to children until age of 16 (or 21 in full-time study).

\* NSW Exemptions:

- police officers, paramedics and fire fighters
- workers injured while working in or around a coal mine
- bush fire fighter and emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers), and
- people with a dust disease claim under the *Workers' Compensation (Dust Diseases) Act 1942*.

Claims by these exempt workers continue to be managed and administered as though the June 2012 changes never occurred.

**Table 2.6: Prescribed time periods for injury notification**

	Injured worker notifies employer / insurer of injury	Employer notifies insurer / authority of injury to worker	Insurer notifies authority of injury to worker	Authority notifies insurer of injury to worker
<b>New South Wales</b>	'...as soon as possible after the injury happens.' — Act, s44(1). 1998 Act.	'...within 48 hours after becoming aware that a worker has received a workplace injury...' — Act, s44(2). 1998 Act.	No time specified — s44(3). 1998 Act.	As soon as practicable — s44 (3A). 1998 Act.
<b>Victoria</b>	30 days after becoming aware of injury — s18(1) Beyond 30 days after becoming aware of injury in certain conditions — s18(6)	N/A — only obligation to forward claim	N/A	N/A
<b>Queensland</b>	—	8 business days — s133(3)	N/A	N/A
<b>Western Australia</b>	As soon as practicable — s178(1)(a) Claim within 12 months of injury — s178(1)(b)	5 days after claim is made — s57A(2A)	—	—
<b>South Australia</b>	Within 24 hours or as soon as practicable — <a href="#">s16(2)</a>	5 business days — <a href="#">s16(6)</a>	N/A	N/A
<b>Tasmania</b>	As soon as practicable — <a href="#">s32(1)(a)</a>	3 working days after becoming aware that worker has suffered a workplace injury — <a href="#">s143A</a>	Insurer must forward a copy of a claim for compensation to the Board within 5 working days after receiving it. <a href="#">s36(2)</a>	—
<b>Northern Territory</b>	As soon as practicable — s80(1)	Forward the claim form to the insurer within 3 working days of receiving claim from the worker — s84	An insurer who is given notice of a claim under section 81 or receives a claim forwarded under subsection (1) shall, within 10 working days after the notice is given or the claim received, forward a copy to the Authority.	N/A
<b>Australian Capital Territory</b>	As soon as possible — s93(1)	48 hrs of becoming aware — s93(2)	N/A	N/A
<b>C'wealth Comcare</b>	As soon as practicable — s53(1)(a)	—	—	—
<b>C'wealth Seacare</b>	As soon as practicable — s62(1)(a)	—	—	—
<b>C'wealth DVA</b>	N/A	N/A	N/A	N/A
<b>New Zealand</b>	In the case of a claim for cover, within 12 months after the date on which he/she suffers the personal injury; or in the case of a claim for an entitlement, within 12 months after the date on which the need for the entitlement arose. s53(3)	N/A	N/A	N/A

Note: Throughout this report cells containing only '—'denotes that no information has been supplied.

**Table 2.7: Prescribed time periods for claim submission**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Timeframe for claim lodgement</b>	Within 6 months — s261 (1) 1998 Act; or If injury resulting in death or serious and permanent disablement within 3 years — s261(4), 1998 Act; or longer period with approval of SIRA s261(5), 1998 Act	As soon as practicable with injury employer for weekly payments, 2 years for death claims, 6 months after relevant service for claim for medical and like service — s20(8)	6 months — s131(1) (if beyond 20 days, extent of the insurer's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged) — s131(2) Beyond 6 months — s131(5)	12 months -- s178(1)(b) Beyond 12 months - s178(1)(d)	Within 6 months of the day on which the entitlement to make the claim arises — s30(1)(b) A claim can be made later if the determination has not been substantially prejudiced or if the time frame was missed due to ignorance, mistake, absence from the State or other reasonable cause—s.30(3)	6 months — s32(1)(b) Beyond 6 months — s38(1)	6 months — s182(1). Beyond 6 months — s182(3)	3 years — s120(1)(b), or Beyond 3 years — s120(2)	No specified time — S54(1)	No time specified — s63	No specified time - s319	Within 12 months — s53
<b>How a claim must be lodged</b>	<p>A workplace injury must be notified to the employer as soon as possible. — s44 and s254 1998 Act</p> <p>The employer must notify the insurer within 48 hours of becoming aware that a worker has received a workplace injury—s44 1998 Act</p> <p>A worker, employer or their representative can make initial notification of the injury to the insurer, either electronically, in writing or by</p>	<p>In an approved form given or served on the employer — s20</p> <p>It may be lodged with the Authority in certain circumstances — s29</p>	With the insurer in the approved form (whether by paper form, online, telephone or submitted by doctor)	Worker must lodge claim form and first certificate of capacity with employer	<p>For workers of an employer who is not a self-insured employer, the claim form must be given by the worker, or their representative to:</p> <p>their employer direct (if the worker is in employment at the commencement of incapacity), or the Corporation, or the employer's claims agent in one of the following manners: in person, via</p>	<p>Claim form plus medical certificate to be given to employer or person designated by employer s34 May be given to employer personally or by post s35</p>	<p>On approved form with First Statement of Fitness for Work (medical certificate) - s82</p> <p>Giving or serving personally on employer. Posting to employer - s83</p>		<p>For premium payer (APS and ACT Government) claims, Part I of the claim form is completed by the employee and then provided to the employer for completion of Part II</p> <p>The employer has 5 days to complete Part II and submit the form to Comcare. For Licensee claims (Self-insurers), the same process applies, except that the</p>	s63(2) - A written claim on a form approved by the Seacare Authority, given to the employer	s319(2) -A claim must: (a) be in writing; and (b) be given to the Commission; and (c) satisfy the requirements (if any): (i) prescribed by the regulations; or (ii) determined in writing by the Commission; as to the form and content of claims, or claims of that kind	<p>Claim form or in a manner specified by the Corporation.</p> <p>The Corporation may impose reasonable requirements such as requiring the person to lodge a written claim</p>

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
	phone				post, via facsimile, via telephone or via email <a href="#">30(1)(a)</a>				completed claim form is forwarded to the section that manages claims in that organisation or to the designated external claims agency (if the employer utilises one)			
<b>Employer acknowledges receipt of claim</b>	—	As soon as reasonably practicable — s21	—	—	—	—	—	—	—	—	N/A	N/A
<b>Employer passes on claim form to insurer/ authority</b>	Within seven days of receiving claim or other documentation in respect of a claim — s264(1), 1998 Act	Within 10 days after the employer receives the claim — s73(1)	—	Five working days — s57A(2A)	five business days — <a href="#">s30(5)</a>	Employer must notify insurer of claim within 3 working days of receiving claim — <a href="#">s36(1AA)</a> Employer must immediately complete employer's report section of claim and forward it to insurer within 5 working days of receiving claim — <a href="#">s36(1)</a>	Three working days — s84(1)	Seven days — s126(1)	—	—	N/A	N/A
<b>Employer/work er supplies further information to insurer on request</b>	Seven days — 1998 Act, s264(2). 1998 Act	No time limit except decision must be made on claim for weekly payments or deemed accepted	10 business days of receiving notice — s167(2)	—	N/A	—	—	Seven days — s126(2)	28 days — s58(2)	No time specified — s67	N/A	No time limit on the claimant but the Insurer must make request for additional information within 21 days after claim is lodged - s56(2)
<b>Insurer passes on claim form to authority</b>	—	N/A. Authorised agent of authority has claims management function	—	Within 21 days after payments commence — s57C(2)	N/A	Five working days — <a href="#">s36(2)</a>	10 working days — s84(2)	N/A	N/A	—	N/A	N/A

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Availability of provisional liability</b>	Yes Commence weekly payments on a provisional basis within seven days of receiving initial notification, unless the insurer is able to rely on one of the seven prescribed reasonable excuses and this is communicated to the worker within 7 days (s267, 1998 Act) Provisional medical expenses up to \$7 500 (s280, 1998 Act). However reasonable excuse cannot be applied to medical expenses	Provisional payments can be made where it appears that a person may be entitled to compensation in respect of the death of a worker – s243	No	No	No However, obliged to offer interim benefits to a worker if the claim has not been determined within 10 days of receipt <a href="#">s32</a>	Yes, employer obliged to commence weekly payments — <a href="#">s81</a> . Payments are not an admission of liability — <a href="#">s81AA</a>	Liability is deemed accepted if decision not made within 10 working days of receiving claim (s85). Liability continues until 14 days after the employer notifies the claimant of the decision		N/A	N/A	N/A	N/A
<b>Timeframes for claim decision</b>	Provisional liability within seven days after notification of injury for up to 12 weeks of weekly payments and/or medical costs up to \$7 500 — s274 and s280, 1998 Act Decision on claim liability within 21 days of the claim being made — s274(1) and s279(1), 1998 Act	28 days for weekly payments if received by insurer within 10 days or 39 days in other circumstances — s75	No statute for deemed acceptance or rejection, however claims must be determined within 20 business days — s134(2) where practical	Insurers have up to 14 days – s57A(3)	10 Business days — <a href="#">s31(4)</a> (wherever practicable)	If the liability has not been disputed via a referral to the Tribunal within 84 days, the liability is taken to have been accepted. — <a href="#">s81A(1)</a> , <a href="#">s81AB</a>	10 working days after receipt by employer if no decision has been made — s85(1) and s87	28 days — s128(1)	No legislated timeframes for claim decisions Determining authorities are required to make determinations accurately and quickly – s69(a) and 108E(a)	Claims are deemed to be rejected if not determined within the following statutory time frames:  60 days for death claims (s72), 12 days for incapacity, loss of property and medical expenses (s73), 30 days for permanent impairment (s73A)	N/A	The Corporation must make a claim cover decision within 21 days or seek an extension. If an extension is sought the Corporation must make a decision within 4 months from the date the claim is lodged. For complicated claims the Corporation has up to 9 months to make a decision — s56 and s57

**Table 2.8: Prescribed time periods for payments**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Eligibility from</b>	Weekly payments payable from the first date of either total or partial incapacity for work resulting from the injury — s33, <i>Workers Compensation Act 1987</i>	Date of incapacity for work for weekly payments — s160	Assessment by medical practitioner, nurse practitioner or dentist — s141(1)	From date of incapacity — s21 (weekly benefits). From date of injury — s18 (medical expenses)	From date of incapacity — <a href="#">s39(1)</a>	Date of injury (for medical etc expenses). Date of incapacity for weekly payments (or 14 days before claim was given to the employer, whichever is the later) — <a href="#">s81(3)(a)</a>	Date of Incapacity —s64	Date of injury — s38(1)(b)	For injuries — date of injury — for diseases the date employee first sought medical treatment, date of death or date of first incapacity or impairment — s7(4)	Date of injury —s31. s31(3) — Date seafarer left onshore or returned to home port. For diseases the date employee first sought medical treatment, date of death or date of first incapacity or impairment — s10(4)	Date of incapacity — Chapter 4, Parts 3 and 4	Date of incapacity — Schedule 1, Part 2, cl 32
<b>Payments begin</b>	Within seven days of notification if provisional liability — s267(1), 1998 Act  Promptly when liability accepted by insurer — s74A(1) 1998 Act	Max seven days after end of week in which payments are due — s179(1)	Day of assessment — s141(1)  Day after assessment day — s141(2)	Not later than 14 days — s57A(7)	Within 14 days of claim — <a href="#">s64(9)</a>	On first pay day following receipt of claim. If the first pay day is within 14 days of receipt of claim and it is not reasonably practicable to make payment on that day, payment must begin not less than 14 days from receipt of claim — <a href="#">s81(1)</a>	Within three working days from accepting liability — S85(2)	From notification of injury — s38(1)(a)	No time specified	Within 30 days of date of determination of amount for injuries resulting in death or permanent impairment— s130.  All others – no time specified	No time specified	Employer must pay first week of compensation for loss of earnings —s98  The Corporation to pay weekly compensation for loss of earning to claimant to who was an earner on and from the day after the first week of incapacity — Schedule 1, Part 2, s32
<b>Employer passes on payments to injured worker</b>	As soon as practicable — s69(1)(c), 1998 Act	Max seven days after end of week in which payments are due — s179(1)	Excess to be paid within 10 business days after receiving notice from WorkCover — s66(5)	As above. Subsequent payments on usual pay days	As above	—	Three working days from accepting liability — s85(2) From then on – within seven days after the	Immediately — s126(3)	No time specified	No time specified	No time specified	Payments made directly to Injured worker/ claimant

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
							end of the week in which payments are due —s88					
<b>Medical invoices sent to insurer</b>	No time specified	Within six months after the date of the service — s20(8)(c)	Two months — s213(2)	No time specified	No time specified	Within seven days of employer receiving account — <a href="#">s76A(2)</a>	No time specified	Not specified	No time specified	No time specified	No time specified	No time specified
<b>Medical expenses accepted</b>	Within 21 days of claim being made — s279(1) and s280 1998 Act	Claim for compensation to be accepted or rejected within 28 days — s75(2)	—	No time specified	No time specified	—	No time specified	Not specified	No time specified	No time specified	No time specified	No time specified
<b>Medical expenses paid</b>	No time specified	No time specified	No time specified — s210	No time specified	No time specified	28 days — <a href="#">s77AA(1)</a> and <a href="#">s77AB(2)</a>	as soon as practicable s.85(3)	30 days of insurer receiving notice — s90(1)	No time specified	No time specified	No time specified	No time specified



**Table 2.9: Dispute resolution process**

Dispute resolution provisions	
<b>New South Wales</b>	<p><b>Liability:</b> If liability for a claim or a request for compensation is disputed, the worker will receive a copy of all information relevant to the decision. This means that all information is exchanged and considered before an application for dispute resolution is lodged with the Workers Compensation Commission (the Commission). A worker can ask the insurer to review the decision. A worker may also seek assistance from SIRA's Customer Service Centre, which provides access to information and assistance for workers and employers regarding claims and disputes.</p> <p>If the dispute is about the degree of permanent impairment, a Commission-appointed Approved Medical Specialist (AMS) will review all medical evidence, assess the worker and issue a medical assessment certificate that is conclusively presumed to be correct on the degree of permanent impairment. An AMS may also be appointed to assess medical disputes.</p> <p>The Commission is an independent Statutory Tribunal, which deals with disputed workers' compensation claims (except for coal miners and Bush Fire and Emergency Rescue Service Volunteers). Any party to a workers' compensation dispute can lodge an application to the Commission, except for disputes about permanent impairment, which can only be lodged by a worker.</p> <p>Appeal provisions exist in relation to decisions of Commission arbitrators and AMS under limited grounds. Appeals against the decision of an arbitrator are determined by a Presidential member of the Commission. Appeals against the assessment of AMS are determined by an Appeal Panel comprising two AMS and one arbitrator.</p> <p><b>Coal miners:</b> The District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act).</p> <p><b>Dust Diseases:</b> Workers who disagree with a decision made by the Dust Diseases Authority or its Medical Assessment Panel can lodge an appeal in the District Court of NSW in accordance with s81 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i>.</p> <p>Bush Fire and Emergency Rescue Services Volunteers</p> <p>The District Court has exclusive jurisdiction to examine, hear and determine all Bush Fire and Emergency Rescue Services Volunteers.</p> <p><b>Work capacity decisions:</b> A work capacity decision can only be reviewed if the worker makes an application for the decision to be reviewed. There are three types of administrative review:</p> <ol style="list-style-type: none"> <li>1. an internal review, where the insurer undertakes the review and informs the worker of the review decision</li> <li>2. a merit review, where SIRA undertakes the review and informs the worker and insurer of its findings and recommendations</li> <li>3. a procedural review, where the Workers Compensation Independent Review Officer (WIRO) undertakes the review and informs the worker, insurer and SIRA of its findings.</li> </ol>
<b>Victoria</b>	<p>Court proceedings must not be commenced (except in the case of a fatality or lump sum claims under the old Table of Maims) unless the dispute has been referred for conciliation and the conciliation officer certifies that the worker has taken all reasonable steps to settle the dispute — s273</p> <p><b>Conciliation:</b> The worker or person making the claim may refer the dispute for conciliation to attempt to resolve the dispute — s282</p> <p>If the dispute is resolved by agreement, a conciliation officer will issue a certificate outlining the agreement. Failing agreement, a conciliation officer may give directions, make recommendations or decline to give directions or recommendations or refer a medical question to the Medical Panel — ss284, 294 and 29</p> <p>A direction of a conciliation officer is binding on the parties unless subsequently revoked by that conciliation officer or any other Conciliation Officer or a Court — s299</p> <p>Where a claimant has taken all reasonable steps to attempt settlement of the dispute but agreement cannot be reached, a conciliation officer will issue a certificate permitting the claimant to commence court proceedings — s273</p> <p>Unless a Court orders otherwise, a dispute can be conciliated notwithstanding that court proceedings have been commenced — s294(2)</p> <p>The County Court has exclusive jurisdiction under the Act subject to the <i>County Court Act 1958</i> — s264. The Magistrates' Court has the same jurisdiction as the County Court and additionally deals with disputes regarding access to claims documents, claims for reimbursement of expenses incurred by non-family members of a deceased worker and civil proceedings relating to discriminatory conduct against a worker — ss266 and 578</p> <p><b>Medical Panels:</b> 'medical questions' as defined in s3 may be referred to Medical Panels. Disputed impairment benefits assessments under s203 and any medical question arising in a conciliation dispute relating to a worker's entitlement to weekly payments for reduced work capacity after 130 weeks under s165 must be referred to Medical Panels. Medical Panels must form binding opinions on medical questions referred — s313.</p>
<b>Queensland</b>	<p><b>Internal Review by Insurer:</b> The insurer must undertake an internal review of proposed decision to reject the application for compensation or to terminate compensation. The review is to be undertaken by a person in a more senior position than the person who proposes to make the decision — s538. Reviewable decisions are outlined in s540.</p> <p><b>Review by Regulator:</b> The Workers' Compensation Regulator is to hear from both parties and review all relevant information and documentation. Once the Regulator has reviewed the decision, it can confirm or vary the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with directions the Regulator considers appropriate — s545</p> <p><b>Appeal to Industrial Magistrate (premium matters) or Industrial Relations Commission (claim matters):</b> Formal hearing of both sides, where the appeal body can confirm, vary, set aside and substitute another decision, or set aside the decision and return the matter to the decision maker with directions considered appropriate — s558</p> <p><b>Appeal to Industrial Court:</b> Court rehears evidence and proceedings and additional evidence if ordered by the Court. The Court's decision is final — s561 and s562</p> <p><b>Medical Panel:</b> Referral to Medical Assessment Tribunal (MAT) by an insurer to decide a worker's capacity for work or permanent impairment — s500. No appeal against a decision by MAT unless the worker submits fresh medical evidence to the insurer within 12 months of the MAT decision and the insurer refers it to a review panel — s512.</p>
<b>Western Australia</b>	<p><b>Conciliation:</b> An application for conciliation can only be made after a claim for workers' compensation has been made on an employer. Before making a conciliation application the applicant must have made reasonable</p>

## Dispute resolution provisions

	<p>attempts to resolve the dispute by negotiation with the other party.</p> <p>After an application has been accepted, the Conciliation Service may contact the parties to clarify and discuss the matters. Many disputes are resolved quickly and informally at this stage. If needed, a conciliation meeting is usually scheduled within 21 days from acceptance of the application, at the WorkCover WA offices.</p> <p>When the conciliation process is concluded, the result is recorded in a Certificate of Outcome, which is provided to the parties in dispute by the Conciliation Service. It outlines:</p> <ul style="list-style-type: none"> <li>the matters in dispute at the outset of the process</li> <li>those matters that were resolved and the basis on which they were resolved</li> <li>those matters remaining in dispute, and</li> <li>details of any payment directions issued.</li> </ul> <p>In the event that a party does not comply with the monetary terms of the agreement, the Certificate of Outcome may be enforced through court proceedings.</p> <p><b>Arbitration:</b> Before an arbitration application can be made, the dispute must have been conciliated by the Conciliation Service or a certificate issued by the Director of Conciliation advising the matter is not suitable for conciliation.</p> <p>An Arbitrator makes his or her determination based on evidence. Witnesses may be sworn in and cross examined to give verbal evidence. Parties may be required to attend a directions hearing to clarify matters and address preliminary matters and this will be followed by a recorded arbitration hearing where the Arbitrator considers all available evidence and hears from each party before making a formal determination.</p> <p>A determination by an Arbitrator is legally binding but questions of law may be appealed to the District Court of Western Australia, providing certain thresholds are met.</p> <p><b>Medical Assessment Panels:</b> Where the dispute is of a medical nature, the Conciliation officer or Arbitrator may refer the matter to a medical assessment panel, made up of medical practitioners. For example, questions may be referred to a panel if there is a conflict of opinion between the worker's and employer's medical practitioners, about the nature or extent of an injury or a worker's capacity for work. The panel may require the worker to attend a medical examination. The determination of the panel is final and binding on all parties and on any court or tribunal.</p> <p><b>Legal representation and other assistance:</b> Parties in a dispute may have legal representation, but this is not compulsory. If a worker is not represented, a Conciliation officer or an Arbitrator can refuse permission for an employer or insurer to be represented by a legal practitioner or registered agent.</p> <p>Registered agents regulated by WorkCover WA can represent parties at proceedings. In certain circumstances the Conciliation officer or Arbitrator may appoint a guardian, allow an interpreter to assist in proceedings or allow a family member or friend to support the injured worker during the dispute resolution process.</p> <p>Under the <i>Workers' Compensation and Injury Management Act 1981</i>, maximum costs are set for legal, registered agent and related services. The costs scale is structured to promote the early settlement of disputes by agreement.</p> <p>Further information:</p> <p><a href="#">'What happens if there is a dispute?'</a></p> <p><a href="#">A guide to the Workers' Compensation Conciliation Service</a></p> <p><a href="#">Conciliation Rules and Forms</a></p> <p><a href="#">A guide to the Workers' Compensation Arbitration Service</a></p> <p><a href="#">Arbitration Rules and Forms.</a></p>
South Australia	<p><b>Reconsideration:</b> Disputed claim determinations on a claim must be reviewed and reconsidered by a person who did not make the disputed decision. The reconsideration of the disputed decision must be completed within 10 days after receiving notice of the dispute — <a href="#">s102</a></p> <p><b>The South Australian Employment Tribunal</b> has jurisdiction to deal with a reviewable decision — <a href="#">s98</a></p> <ul style="list-style-type: none"> <li>A person with a direct interest in a reviewable decision may commence proceedings for a review of the reviewable decision by the Tribunal — <a href="#">s99(1)</a></li> <li>An application may be made to the Tribunal within one month after the applicant receives notice of the reviewable decision unless the Tribunal allows an extension of time. <a href="#">s100(1)</a></li> <li>Initial reconsideration by compensating authority — <a href="#">s102</a></li> <li>If no resolution at reconsideration, the dispute will be dealt with under <a href="#">Part 3</a> of the <i>South Australian Employment Tribunal Act 2014</i>, <a href="#">s103</a></li> <li>Conciliation Conference <a href="#">s104</a> Return to Work Act and — <a href="#">s43</a> <i>South Australian Employment Tribunal Act 2014</i></li> <li>Hearing for determination — <a href="#">s44</a> <i>South Australian Employment Tribunal Act 2014</i></li> <li>Pre hearing conference — <a href="#">s45</a> <i>South Australian Employment Tribunal Act 2014</i></li> <li>Settlement conference or mediation <a href="#">ss46</a> and <a href="#">47</a> <i>South Australian Employment Tribunal Act 2014</i></li> <li>Medical question to Independent Medical Adviser — <a href="#">s121</a> <i>Return to Work Act 2014</i></li> <li>Full Bench appeal only on question of law — <a href="#">s67</a></li> <li>Appeal to the Full Court of Supreme Court (with permission) — <a href="#">s68</a>.</li> </ul>
Tasmania	<p><b>Conciliation:</b> 2 steps:</p> <ul style="list-style-type: none"> <li>Preliminary stage is to identify issues being disputed and to try and resolve the dispute amicably — s42D</li> <li>The next stage is a conciliation conference which provides an opportunity for open and 'without prejudice' discussions based on all available information to facilitate a resolution — ss42E to 42N</li> </ul> <p><b>Arbitration:</b> Formal hearing normally held in private, where both parties give evidence. Orders made by the Tribunal are final and binding — s44 to s49</p>

Dispute resolution provisions	
	<p>Appeal to Supreme Court: Can only appeal on points of law — <a href="#">s63</a></p> <p><b>Medical Panel:</b> The Tribunal may refer a medical question to a medical panel when there is conflicting medical opinion, and one of the parties wishes to continue with proceedings. The determination of the medical panel is binding on the Tribunal — <a href="#">s49</a>.</p>
<b>Northern Territory</b>	<p><b>Mediation:</b> To try and resolve disputes by having discussions with each party and through conference with parties. The mediator may make recommendation to parties in relation to resolution of dispute — ss103B to 103E</p> <p><b>Work Health Court:</b> Hear and determine claims for compensation and all matters and questions incidental to or arising out of such claims — ss93 to 110B</p> <p><b>Supreme Court:</b> Points of law only can be referred to the Supreme Court — ss115 and 116</p> <p>NB: Claimant is not entitled to commence court proceedings unless an attempt at resolution had been made through mediation — s103J(1)</p> <p>Medical Panels – only for disputes over level of permanent impairment – s72. Not subject to review – s72(4).</p>
<b>Australian Capital Territory</b>	<p><b>Conciliation:</b> Parties must make a genuine effort to reach an agreement. Conciliation must occur before arbitration unless there is an issue with the insurer rejecting a claim for compensation.</p> <p>The conciliation officer may decide claim for compensation is not suitable for conciliation or the issue is unresolved and may make a recommendation. If parties agree, the record of agreement must be in writing — Part 6, Regulations</p> <p><b>Arbitration:</b> If conciliation is unsuccessful or compensation claim has been rejected by the insurer, the matter must be decided by the Committee unless the Committee refers the matter to the Magistrates Court — Part 7, Regulations</p> <p><b>Magistrates Court:</b> Appeals or referrals by the Committee — Part 7, Regulations</p> <p><b>Medical Referees:</b> Medical referees may be requested throughout the resolution process to prepare a report to help parties reach an agreement — Part 7, Regulations.</p>
<b>C'wealth Comcare</b>	<p>Following an internal reconsideration process — s62, by an independent review officer (or by a delegate not involved in the initial decision), if either party (employee or employer) to a reconsidered decision is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute). The AAT processes include compulsory conciliation. The AAT has the discretion to make or decline to make a decision in the terms agreed to by the parties. The AAT must be satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal. If conciliation is unsuccessful, the AAT can also make determinative decisions — s64.</p> <p><b>Appeals:</b> A party may apply from the AAT to the Federal Court on questions of law.</p>
<b>C'wealth Seacare</b>	<p>Following a reconsideration process which must involve the assistance of an industry panel or Comcare officer, if the employee is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute). The AAT processes include compulsory conciliation. The AAT has the discretion to make or decline to make a decision in the terms agreed to by the parties. The AAT must be satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal. If conciliation is unsuccessful, the AAT can also make determinative decisions — s88</p> <p><b>Appeals:</b> A party may apply from the AAT to the Federal Court on questions of law.</p>
<b>C'wealth DVA</b>	<p>For primary decisions made before 1 January 2017, following an internal reconsideration process — s350, or review by the Veterans' Review Board — s353, if either party (claimant, Chief of the Defence Force or MRCC) to a 'reviewable determination' is not satisfied with that decision an application to the AAT may be made. For primary decisions made on or after 1 January 2017, a review by the VRB is conducted (no internal reconsideration) then if either the veteran or the MRCC is not satisfied with the outcome, an application to the AAT may be made.</p>
<b>New Zealand</b>	<p>An employer may apply to the Corporation for a review of its decision that a claimant's injury is a work-related personal injury suffered during employment with that employer.</p> <p>A claimant may apply to the Corporation for a review of:</p> <ul style="list-style-type: none"> <li>• any of its decisions on the claim</li> <li>• any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay, or</li> <li>• any of its decisions under the Code on a complaint.</li> </ul> <p>Levy payers can also ask for a review of any levy paid or payable. Reviews are conducted by an independent reviewer. A review decision can be appealed to the District Court.</p> <p>Appeals on questions of law can be taken to the High Court and the Court of Appeal.</p>

**Table 2.10: Definition of remuneration for the purpose of premium calculation**

Definition of remuneration	
<b>New South Wales</b>	Total gross earnings (before tax), bonuses, commissions, payments to working directors, fringe benefits, superannuation, trust distributions where in lieu of wages and some other payments as outlined in the <a href="#">Wages Definition Manual</a> .
<b>Victoria</b>	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist is in <a href="#">A guide for employers — Your WorkCover Insurance. Determining your remuneration</a> provides an overview of what is considered to be remuneration for the purposes of calculating an employer's premium. Remuneration is also defined in Part 2 of Schedule 1 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> .
<b>Queensland</b>	Total gross wages, salaries, superannuation contributions and other payments as outlined in the <a href="#">Wages Definition Manual</a> .
<b>Western Australia</b>	All gross wages, salaries, commissions, bonuses, overtime, allowances and the like, directors fees, superannuation contributions (except those made by force of law) and all other benefits paid (whether at piece work rates or otherwise and whether paid in cash or in kind) to, or in relation to, a worker before the deduction of income tax. 'Wages' do not include termination payments, retirement pay, retrenchment pay in lieu of notice, pensions, 'golden handshakes', or weekly payments of workers' compensation. <a href="#">Workers' Compensation: A Guide for Employers</a> .
<b>South Australia</b>	Remuneration is defined as payments made to or for the benefit of a worker include and includes more than 60 allowances or benefits, such as superannuation contributions, fees or bonuses, footwear, uniform, clothing and/or dry cleaning allowances and living away from home allowances. The ReturnToWorkSA <a href="#">Remuneration Guide</a> outlines what is included as remuneration.
<b>Tasmania</b>	Wages are used for defining premiums. Wages include the monetary value of all payments made to a worker, whether in cash or in kind, in return for the worker's labour. Wages are defined in the Guideline on the Definition of Wages, and s96A of the Act. <a href="#">Guideline on the Definition of Wages (GB118)</a> .
<b>Northern Territory</b>	Condition 9 of schedule of the Return To Work Regulations provides that premiums shall be regulated by the amount of wages, salaries and all other forms of remuneration paid or allowed to workers. Further, guidance material suggests 'wages', 'salaries' and 'remuneration' includes: wages, salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments for public and annual holidays (including loadings), payments for sick leave, payments for long service leave (including a lump sum payment instead of long service leave). This includes but is not limited to: <ul style="list-style-type: none"> <li>the market value of meals, accommodation and electricity provided by the employer for the worker</li> <li>the total value of any salary sacrificed amounts, for example motor vehicles (including fringe benefits applicable to these salary sacrifices), and</li> <li>superannuation contributions that would be payable to a worker as wages or salary if the worker so elected (e.g. salary sacrificed superannuation).</li> </ul>
<b>Australian Capital Territory</b>	Wages including salary, overtime, shift and other allowances, over award payments, bonuses, commissions and any other payments/sums that the employer has been accustomed to pay to the worker — as defined in the <a href="#">ACT Wages and Earnings Guide</a> .
<b>C'wealth Comcare</b>	Gross wages/salaries including overtime that is regular and required (also including condition of service payments normally covered by sick leave, holidays, long service leave) and generally any taxable allowances. Excludes employer superannuation contributions, one off payments and bonuses — generally, non-taxable allowances.
<b>C'wealth Seacare</b>	N/A.
<b>C'wealth DVA</b>	N/A.
<b>New Zealand</b>	'Earnings' as an employee means all gross source deduction payments (i.e. taxable wages) but does not include social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension. Earnings as a self-employed person are defined as their annual assessable income, after expenses are deducted, that results from personal exertions. This definition includes Private Domestic Workers. Earnings as a shareholder-employee are any earnings as an employee, and/or any further salary representing payment for services provided as an employee or director of the company.

**Table 2.11: Employer excess**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Excess</b>	Yes — s160 (1987 Act).	Yes — s72	Yes — s65	No	Yes — <a href="#">s34</a> (transportation) and <a href="#">s64</a> (income support)	Yes — <a href="#">s97(1A)</a>	Yes — s56	Employers are liable for weekly compensation payments from date of injury until the insurer is notified of the injury — s95 WC Act 1951	No	Not prescribed under legislation but may be negotiated between employer and insurer	N/A	Yes — s98
<b>Period of incapacity</b>	One week's weekly compensation up to a maximum indexed amount	First 10 days	The lesser of: 100% of Qld full-time adult's ordinary time earnings (QOTE), or the injured worker's weekly compensation rate. QOTE is \$1 456.90 (as at 1 July 2016)	—	First two weeks of the period of incapacity per worker per calendar year	First weekly payment. May be extended up to first 4 weekly payments	Any part day lost on day of injury	As above	Any part day lost on day of injury	—	N/A	First week
<b>Cost of benefits</b>	—	First \$682 of medical costs	\$1 456.90 (max)	—	Differs depending upon cost of 2 weeks income support for worker	First \$200 of other benefits.	—	As above	N/A.	—	N/A	N/A
<b>Buyout option</b>	Excess is waived if the claim is reported to a Scheme Agent within 5 calendar days of the employer becoming aware of the injury	Yes — 10% of premium	No	—	See s64(14)	Yes — subject to the approval of the WorkCover Tasmania Board — <a href="#">s97(1C)</a>	—	As above	N/A	—	N/A	N/A

**Table 2.12: Uninsured employer provisions**

Uninsured Employers	
<b>New South Wales</b>	A claim may be made against the Nominal Insurer by any person in respect of an injury if the employer is uninsured or unable to be identified by the worker — s140, <i>Workers Compensation Act 1987</i> . The employer is required to repay the amount spent on the claim — s145, 1987 Act, plus penalties incurred for not maintaining a workers' compensation insurance policy – s155, 1987 Act.
<b>Victoria</b>	Where an employer is required to register for WorkCover Insurance and pay premium but has not done so, WorkSafe Victoria is liable to pay compensation and damages to injured workers in accordance with the Act and to indemnify the employer in respect of their liabilities under the Act — ss70 and 71 WorkSafe Victoria may recover an amount, not exceeding the amount of compensation and damages which has been paid, as well as additional penalties from an employer which is required to register for WorkCover Insurance and pay premium but has not done so — ss34 and 488.
<b>Queensland</b>	WorkCover may recover from the employer the amount of the payment made to an injured worker together with a penalty equal to 50% of the payment, as well as the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium — s57.
<b>Western Australia</b>	Where an employer is not insured against their liability to pay compensation or damages to an injured worker, WorkCover WA will pay an amount to satisfy the award or any award for costs made from the General Account (uninsured fund) — s174 Where an employer is uninsured, that employer will be directly liable for the following costs: <ul style="list-style-type: none"> <li>• statutory benefits</li> <li>• legal costs involved in court action</li> <li>• liability for damages</li> <li>• fines of up to \$5000 per worker</li> <li>• an amount equal to any avoided premiums going back five years, and</li> <li>• separate and further offences for every week remaining uninsured after the date of conviction — ss170 and 174AA.</li> </ul>
<b>South Australia</b>	An injured worker can make a claim regardless of the status of the employer. The employer is required to register and pay a premium. If an employer fails to make a payment of compensation that it is liable to make under the Act (e.g., first two weeks income maintenance), ReturnToWorkSA shall make that payment and will take all reasonable steps to recover the debt — <a href="#">s64(20)</a> .
<b>Tasmania</b>	The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where: <ul style="list-style-type: none"> <li>• the employer is not insured</li> <li>• the employer has left the State and its whereabouts are unknown</li> <li>• the employer or licensed insurer has become insolvent, or</li> <li>• for any other reasons, there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act — <a href="#">ss121</a> and <a href="#">126</a></li> </ul> The Workers Rehabilitation and Compensation Tribunal can order the Nominal Insurer to meet the employer's liability for the claim — <a href="#">s127</a> . The Nominal Insurer will then attempt to recover the amount paid in relation to the claim from the employer or insurers involved — <a href="#">s130</a> . An uninsured employer may be prosecuted and, if convicted, may be ordered to pay avoided premiums in addition to any fine the court may impose — <a href="#">s97(10)</a> .
<b>Northern Territory</b>	The Nominal Insurer Fund is established by the Minister and administered by the Nominal Insurer — s162. Where an employer is uninsured, the employer must forward the claim to the Nominal Insurer – s84. The Nominal insurers will manage and pay the claim — s85(10). The Nominal Insurer is entitled to recover compensation amounts paid, from the employer – s172(2). The employer shall also pay an amount equal to the highest premium payment for the period there was no cover, to the Nominal Insurer — s172(3).
<b>Australian Capital Territory</b>	The Default Insurance Fund (DI Fund) provides a safety net to meet the costs of workers' compensation claims where an employer did not have an insurance policy or an approved insurer is wound up or cannot provide the indemnity required to be provided under a policy — s166A <ul style="list-style-type: none"> <li>• If an employer fails to maintain a compulsory insurance policy, the Director-General may recover up to double the avoided premium for a period of up to five years, as a debt owing by the employer to the DI fund. However, the employer is not liable under s(1) for a failure to maintain a compulsory insurance policy in relation to a worker if:</li> <li>• the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State), and</li> <li>• the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers' compensation under the law of the State — s149.</li> </ul>
<b>C'wealth Comcare</b>	Not necessary within the 'premium' (Commonwealth and ACT Public Sector) component of the scheme as all employees are 'Government' employees or members of the ADF. The Commonwealth could be considered to be the nominal insurer through the Department of Finance and Administration for injuries incurred before 1 July 1989. Liabilities of the Commonwealth (but not self-insured licensees) incurred before this date are not funded through the Comcare premium scheme. In the self-insured (licensee) component of the scheme, prudential arrangements including the requirement for a guarantee held by the SRC

Uninsured Employers	
	Commission ensure licensee liabilities are covered in the event of bankruptcy.
<b>C'wealth Seacare</b>	A policy of insurance or indemnity is compulsory for all employers - s93. A statutory fund stands in the place of an employer's if there is a default event in relation to the employer – s4(3) and ss96-102.
<b>C'wealth DVA</b>	N/A.
<b>New Zealand</b>	An employer must pay, in accordance with the Act and regulations made under the Act, levies to fund the Work Account. The Scheme covers all workers regardless of whether their employer has breached the Act by failing to pay levies.

**Table 2.13: Leave while on workers' compensation**

Leave accrual while on workers' compensation	
<b>New South Wales</b>	Payment of weekly workers compensation benefits if a worker is on paid leave is permitted - 'Compensation is payable under this Division to a worker in respect of any period of incapacity for work even though the worker has received or is entitled to receive in respect of the period any payment, allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment' — s49, 1987 Act.
<b>Victoria</b>	Leave provisions are not covered under workers' compensation legislation. WorkSafe Victoria does not advise employers whether a worker is entitled to the payment or accrual of leave and refers employers and workers to the appropriate employment agreement and/or the <i>Fair Work Act 2009</i> (Cth). Where weekly payments are paid or payable, regard shall not be had to any sum paid or payable in lieu of accrued annual leave or long service leave — s174(d).
<b>Queensland</b>	A worker is entitled to take or accrue annual leave, sick leave and long service leave under an Industrial Act or industrial instrument while they are entitled to and receiving workers' compensation payments — s119A.
<b>Western Australia</b>	Compensation is payable to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of any such period any payment, allowance, or benefit for annual leave, or long service leave — s80(1). Any sick leave payments made in lieu of workers' compensation payments must be repaid to the employer and the sick leave entitlement reinstated for the relevant period — s80(2). The Act does not specify whether leave can be accrued whilst receiving weekly payments of compensation.
<b>South Australia</b>	A worker receiving weekly payments for their compensable injury may continue to accrue annual leave entitlements depending on the terms of the relevant award, industrial agreement etc. If a worker is entitled to accrue annual leave but has received weekly payments for total incapacity for a period of 52 weeks or more (continuous or separate periods) the worker's entitlement to annual leave is considered to be satisfied in respect of a year of employment that coincides with, or ends during that period. If the worker is not entitled to continue to accrue annual leave, the worker may be entitled, by way of compensation, to the monetary value of the annual leave that would have accrued if the worker had not been absent from employment — <a href="#">s50</a> .
<b>Tasmania</b>	<p>When compensation is payable and the worker would be entitled to be absent from his/her employment on annual recreational leave or long service leave:</p> <ul style="list-style-type: none"> <li>the worker must be given a similar period of leave on pay in lieu of that annual recreational leave or long service leave within 3 months from the date of their return to work or at the termination of their right to compensation if they do not then return to work, or</li> <li>if the worker so desires, he/she may by arrangement with the employer, take the leave during the period of incapacity for which compensation is payable. The worker is then not entitled to receive weekly payments during that period of annual recreational leave or long service leave.</li> </ul> <p>An employer must not attempt to cause or require a worker to take annual recreational leave or long service leave during a period of incapacity for which compensation is payable — <a href="#">s84</a>. A worker is entitled to be recredited with annual recreational leave or long service leave taken whilst his/her entitlement to workers' compensation is pending — <a href="#">s84B</a>. Workers are entitled to accrue various leave entitlements whilst in receipt of weekly payments under the <i>Workers Rehabilitation and Compensation Act 1988</i>.</p>
<b>Northern Territory</b>	The <i>Return to Work Act</i> is silent on the taking or accruing of leave and therefore s130 of the <i>Fair Work Act 2009</i> (Cth) applies. Under this section an employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) under this Part during a period (a compensation period) when the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation payable under a law (a compensation law) of the Commonwealth, a State or a Territory that is about workers' compensation. Section 130 of the <i>Fair Work Act 2009</i> (Cth) does not prevent an employee from taking unpaid parental leave during a compensation period.
<b>Australian Capital Territory</b>	<p><i>Workers Compensation Act</i> (s46) does not affect an entitlement to annual or long service leave accrual that arises apart from the Act.</p> <p>An employee's entitlement to accrue long service leave/annual leave would be covered under their award or agreement or in some cases under the <i>Fair Work Act 2009</i> (Cth), specifically under the National Employment Standards. These are administered by the Fair Work Ombudsman and therefore enquiries of this nature would be usually directed to them. In the case of a construction worker or cleaner, they may be directed to the ACT Long Service Leave Authority. If an employee was covered by the <i>Long Service Leave Act 1976</i>, the Act stipulates that while off work on workers' compensation people do not accrue long service leave, however the employee's continuity would not be broken.</p>
<b>C'wealth Comcare</b>	<p>An injured employee cannot take leave other than maternity leave while they are on compensation leave — s116</p> <ul style="list-style-type: none"> <li>Annual leave and sick leave continue to accrue during the first 45 weeks of incapacity. After 45 weeks of incapacity, the rate of accrual is proportionate to actual hours worked — s116</li> <li>Long service leave continues to accrue throughout, regardless of the duration of compensation leave — s116.</li> </ul>



<b>C'wealth Seacare</b>	An injured employee cannot take leave other than maternity leave while they are on compensation leave — s137 Long service leave entitlements continue to accrue in accordance with the applicable industrial instrument or National Employment Standard — s137.
<b>C'wealth DVA</b>	If incapacity payments would have continued were it not for the pregnancy/maternity leave then they should still continue during the period that is generally considered to be the period of 'confinement' i.e. six weeks either side of the expected/actual birth date. Compensation is not payable for annual leave not accrued while the person is incapacitated.
<b>New Zealand</b>	Leave provisions are not covered under accident compensation legislation. Annual leave continues to accrue if an employee is receiving accident compensation — <i>Holidays Act 2003</i> (administered by Ministry of Business, Innovation and Employment).
<b>Effect of taking leave while on compensation</b>	
<b>New South Wales</b>	Section 49 of the 1987 Act does not expressly permit the taking of leave. Rather, it permits the payment of weekly workers' compensation benefits if a worker is on paid leave.
<b>Victoria</b>	If the current weekly earnings of a worker are reduced because the worker is on paid annual leave or long service leave, WorkSafe Victoria or self-insurer must not, by reason only of that reduction, alter the amount of compensation in the form of weekly payments — s185(4).
<b>Queensland</b>	If a worker requests to take annual or long service leave and the employer approves this request, WorkCover continues to pay weekly benefits for the duration of the leave.
<b>Western Australia</b>	Leave payments do not affect a worker's compensation entitlements in any way. Any leave entitlements taken by the worker will be credited back if the worker's claim is accepted — s80 (1–3).
<b>South Australia</b>	If the worker applies for, and takes, annual leave their weekly payments may be suspended while the worker is on leave – <a href="#">s50(7)</a> .
<b>Tasmania</b>	<a href="#">Section 84</a> was inserted by 16 of 1995 and subsequently amended by 8 of 2007 to include long service leave. The worker can arrange with his or her employer to take annual leave or long service leave during a period that he/she would be entitled to workers' compensation, but would not be entitled to receive weekly payments during that leave. An employer must not attempt to cause or require a worker to take annual leave or long service leave during a period of incapacity for which compensation is payable. <a href="#">Section 84B</a> was inserted by 81 of 2004 and amended by 8 of 2007 to include long service leave. Where a worker takes annual leave or long service leave whilst his/her entitlement to workers' compensation is pending or in dispute and the employer is subsequently found to be liable to pay weekly payments for that period, the worker's annual leave or long service leave is to be recredited.
<b>Northern Territory</b>	The <i>Return to Work Act</i> is silent on the taking or accruing of leave and therefore s130 of the <i>Fair Work Act 2009</i> (Cth) applies. Under this section an employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) under this Part during a period (a compensation period) when the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation payable under a law (a compensation law) of the Commonwealth, a State or a Territory that is about workers' compensation. s130 of the Fair Work Act does not prevent an employee from taking unpaid parental leave during a compensation period.
<b>C'wealth Comcare</b>	s116 of the SRC Act 1988: (1) In spite of the provisions of any other Act, or an award, an employee is not entitled to be granted any kind of leave of absence with pay (other than maternity leave with pay) during, or in respect of, an period when the employee is or was on post-determination compensation leave but: <ul style="list-style-type: none"> <li>sick leave and recreation leave entitlements continue to accrue in relation to the employee during each of the first 45 weeks during which he or she is on post-determination compensation leave, and</li> <li>long service leave entitlements continue to accrue in relation to the employee during the whole of the period of the post-determination compensation leave; as if the employee were not absent from work.</li> </ul>
<b>C'wealth DVA</b>	Nil.
<b>Seacare</b>	Section 137 of the <i>Seafarers Act 1992</i> : Despite any other Act, or any award, an employee is not entitled to be granted any kind of leave with pay (other than maternity leave with pay) during, or in respect of, any period when the employee is or was on compensation leave, but long service leave entitlements continue to accrue in relation to the employee in accordance with the applicable industrial instrument or National Employment Standards.

### Effect of taking leave while on compensation

#### New Zealand

- 1) A client [employee] has a period of annual leave in the 52 weeks before the commencement of his incapacity. What is the effect of that annual leave on the calculation of his weekly benefit?

Answer: 'Earnings as an employee' means all payments received by the client in the 52 weeks before the commencement of the incapacity that are subject to tax deductions.

- 2) A client in receipt of weekly compensation has made a partial return to work and is receiving partial weekly compensation. What is the effect on his weekly compensation if he takes a period of annual leave from his employment and receives holiday pay?


Answer: In this scenario ACC would be required to abate the full amount of the holiday pay that he received, reducing the rate of weekly compensation that he received. ACC is also required to abate the full amount of any payment that the client receives for any statutory holiday.

- 3) A client in receipt of full unabated weekly compensation receives holiday pay on termination of employment.


Answer: In such a situation, the holiday pay would be abated. The period over which it is abated depends on whether the holiday pay is for a specific period. If it is for a specific period (i.e. four weeks and three days), it is abated over that period.

**Table 2.14: Superannuation and workers' compensation**

	Included in wages for premium calculations	Included with income replacement payments
<b>New South Wales</b>	Yes	No
<b>Victoria</b>	Yes	No, however, workers are entitled to compensation in the form of superannuation contributions if weekly payments have been paid or payable for an aggregate period of 52 weeks and not ceased to be paid or payable and worker has not reached 65 years — s168.
<b>Queensland</b>	Yes	No
<b>Western Australia</b>	Yes (Worker Contributions) No (Contributions required by force of law)	No
<b>South Australia</b>	Yes	No, however, any amount otherwise payable to the worker that has been the subject of a voluntary salary sacrifice arrangement by the worker for superannuation purposes is included in the average weekly earnings calculation <a href="#">s5(13)(a)</a> .
<b>Tasmania</b>	Yes — salary sacrifice only — <a href="#">s96A</a>	No — <a href="#">s69(5)</a>
<b>Northern Territory</b>	Yes — salary sacrifice only	No — Employer contributions Yes — employee contributions
<b>Australian Capital Territory</b>	No — Employer contributions required by force of law Yes — if the employer's contributions are debited to the worker's salary package	No — employer contributions required by force of law aren't considered to be part of a worker's earnings
<b>C'wealth Comcare</b>	Yes — employee contribution amount No — employer contribution	No — employer contribution amount Yes — employee contribution amount while still employed
<b>C'wealth Seacare</b>	N/A	No — employer contribution amount Yes — employee contribution amount while still employed
<b>C'wealth DVA</b>	N/A	No
<b>New Zealand</b>	No	No



# **Chapter 3: Coverage and eligibility for benefits**



## Coverage and eligibility

This chapter provides information about worker's compensation coverage and eligibility for benefits in each jurisdiction. Workers' compensation coverage differs between each jurisdiction. Determining whether a person is covered by workers' compensation depends on the definitions of:

- workers/employees
- deemed workers/employees
- injury, and
- workplace.

### Coverage of employees

To be eligible for compensation a person injured in the workplace must fall within the definition of worker/employee in their jurisdiction. Determining what types of workers are covered is very important, as penalties can apply if an employer does not insure its workers. A number of jurisdictions apply tests to determine if a worker requires coverage.

### Definitions of deemed workers

A deemed worker for workers' compensation purposes is a person who performs work for another in circumstances that fall outside of the general statutory definition of worker in a jurisdiction, but who is deemed by legislation to be a worker in order to receive a workers' compensation benefit.

Over time there has been a decline of employment under traditional arrangements. As new working arrangements have emerged, jurisdictions have modified the definition of 'worker' to ensure that workers under these arrangements are properly covered by workers' compensation. Table 3.2 provides a list of deemed workers in each jurisdiction.

### Compensation coverage for volunteers

Table 3.3 provides a summary of workers' compensation arrangements in each jurisdiction for volunteers such as firefighters, emergency service volunteers and persons performing community services or unpaid duties.

### Treatment of sportspersons

All jurisdictions that cover sporting activities in their workers' compensation legislation refer to the professional side of the sport only. Comcare, Seacare and DVA have no direct reference to sport-related injuries. As New Zealand's scheme has much broader coverage, there is no distinction made between sport-related and any other injury - all receive the same cover.

In New South Wales, coverage for workers' compensation depends on whether the person is within the definition of a 'worker', it being noted that persons who might otherwise be workers are excluded where they are covered by the *Sporting Injuries Insurance Act 1978*. A comparison of jurisdictions can be found in Table 3.4.

### Workers' compensation arrangements for government employers

Table 3.5 summarises the legislation, self-insurance, claims managers and premiums covering workers' compensation for government employers in each of the jurisdictions.

### Workers' compensation arrangements for judges and members of parliament

Table 3.6 provides a summary of workers' compensation arrangements for judges and members of parliament in each jurisdiction.

**Table 3.1a: Definition of worker (see Table 2.4a for summary of coverage of worker)**

Definition of 'worker'	
<b>New South Wales</b>	A person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). Certain exclusions apply — s4 and s4(1), 1998 Act. In addition, s5 of the 1998 Act provides that Schedule 1 of the 1998 Act deems outworkers, labour hire workers, some contractors and certain other classes of persons to be workers.
<b>Victoria</b>	<p>'worker means an individual —</p> <ul style="list-style-type: none"> <li>• who: <ul style="list-style-type: none"> <li>(i) performs work for an employer, or</li> <li>(ii) agrees with an employer to perform work — at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise, or</li> </ul> </li> <li>• who is deemed to be a worker under this Act;' — s3.</li> </ul>
<b>Queensland</b>	A worker is an individual who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the <i>Taxation Administration Act 1953</i> (Cth), schedule 1, part 2-5. (s11, <i>Workers' Compensation and Rehabilitation Act 2003</i> ).
<b>Western Australia</b>	<p>Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes:</p> <ol style="list-style-type: none"> <li>any person to whose service any industrial award or industrial agreement applies, and</li> <li>any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services — s5(1).</li> </ol> <p>WorkCover WA guidance:  <a href="#">Workers' Compensation and Injury Management: A Guide for Employers.</a>  <a href="#">A Technical Note on Contractors and Workers' Compensation.</a></p>
<b>South Australia</b>	<p>A worker is:</p> <ol style="list-style-type: none"> <li>a person by whom work is done under a contract of service (whether or not as an employee)</li> <li>a person who is a worker by virtue of Schedule 1</li> <li>a self-employed worker</li> </ol> <p>and includes a former worker and the legal personal representative of a deceased worker — s4.</p> <p>Also see definition of 'contract of service' and <a href="#">Regulation 5</a> — 'Contract of service and other terms' and <a href="#">Regulation 69</a> — 'Volunteers' (prescribed under Schedule 1)</p> <p>Note: regulations may exclude specified classes of workers.</p>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing, and</li> <li>• Any person or class taken to be a worker for the purposes of the Act and when used in relation to a person who has been injured and is dead, includes the legal personal representatives or dependants of that person or other person to whom or for whose benefit compensation is payable — s3(1)</li> </ul> <p>The Act does not apply to any person:</p> <ol style="list-style-type: none"> <li>whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or</li> <li>who is an outworker, or</li> <li>who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury, or</li> <li>who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat, or</li> <li>notwithstanding section s4D, who is participating in an approved program of work for unemployment payment under the <i>Social Security Act 1991</i> (Cth) — s4(5) and no such person shall be deemed to be a worker within the meaning of this Act — <a href="#">s4(5)</a>.</li> </ol>
<b>Northern Territory</b>	A worker is a person who works under a contract and, in relation to the contract, is an employee for the purpose of assessment for PAYG withholding under the <i>Taxation Administration Act 1953</i> (section3(1) of the <i>Return to Work Act</i> ).
<b>Australian Capital</b>	The Act devotes an entire chapter (Chapter 3) to defining and identifying a worker in general and certain categories of workers. The Minister may additionally make a declaration to deem persons in certain occupations to

Definition of 'worker'	
<b>Territory</b>	<p>be workers:</p> <ul style="list-style-type: none"> <li>• An individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written — s8(1)(a), or</li> <li>• workers for labour only or substantially labour only s8(1)(b), or</li> <li>• works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a - c), or</li> <li>• has a personal services business determination s8(1)(ii).</li> </ul>
<b>C'wealth Comcare</b>	<p>'Employee' — a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or of a territory or under a contract of service or apprenticeship. Can also be covered if subject of a ministerial declaration.</p> <p>Also a person who is employed by a licensed corporation if a person performs work for that corporation under a law or a contract and the person would, if the corporation were not licensed, be entitled to workers' compensation in connection of that work — s4 and s5.</p>
<b>C'wealth Seacare</b>	<p>Employee – (a) a seafarer, as defined in the <i>Navigation Act 2012</i>, who is employed in any capacity on a prescribed ship, on the business of the ship; (b) a trainee; (c) a person required to attend a Seafarers Engagement Centre for the purpose of registering availability for employment or engagement on a prescribed ship —s4.</p>
<b>C'wealth DVA</b>	<p>Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 — MRCA s5.</p>
<b>New Zealand</b>	<p>An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s(6) (also includes employees on unpaid parental leave, self-employed persons and employees who have purchased weekly compensation and employees who ceased work in the 28 days prior to incapacity, and who had an agreement to start work within three months of the date of incapacity or within 12 months for seasonal workers).</p>

**Table 3.1b: Coverage of contractors and labour hire workers (see Table 2.4a for summary of coverage of workers)**

Are individual contractors covered under legislation?		Are labour hire workers covered under legislation?
<b>New South Wales</b>	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act	Yes, labour hire firm held to be employer — Clause 2A. Schedule 1, 1998 Act
<b>Victoria</b>	Not unless the contractor is a deemed worker pursuant to clause 9 of schedule 1	Yes, labour hire firm held to be employer (definition of 'worker' in s3)
<b>Queensland</b>	No. The following guidance for determining whether a person is a worker is provided: <a href="#">Worker guidelines</a> and <a href="#">Worker determination</a>	Yes, labour hire firm held to be employer
<b>Western Australia</b>	No, unless employed under contract for service and remunerated in substance for personal manual labour or service	Yes, labour hire firm held to be employer
<b>South Australia</b>	Yes, if undertaking prescribed work or work of a prescribed class — <a href="#">s4(1)</a> - contract of service and <a href="#">Regulation 5</a> - contract of service and other terms	Yes, labour hire firm held to be employer <a href="#">s4(4)</a> . See <a href="#">Employment Services (Labour Hire) Guidelines</a> (available on ReturnToWorkSA website for more information)
<b>Tasmania</b>	No, if engaged under contract for services Exceptions: <ul style="list-style-type: none"> <li>• where contract is for work exceeding \$100 in value which is not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name — <a href="#">s4B</a></li> <li>• taxi and luxury hire car drivers — <a href="#">s4DA</a> &amp; <a href="#">s4DB</a></li> <li>• salesperson paid by commission — <a href="#">s4C</a></li> <li>• jockeys — <a href="#">s4DC</a>.</li> </ul> Some forms of contract may misrepresent the true nature of the contract. The final arbiter is the Workers Rehabilitation and Compensation Tribunal.	Yes, labour hire firm held to be employer
<b>Northern Territory</b>	No, unless contractor is a person who works under a contract and, in relation to the contract, is an employee for the purpose of assessment for PAYG withholding under the <i>Taxation Administration Act 1953</i> (section3(1) of the <i>Return to Work Act</i> ).	Yes, if the individual's contract or agreement is with the Labour Hire firm the firm is the employer
<b>Australian Capital Territory</b>	No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.	Yes, where the individual is not an executive officer of the corporation and: <ul style="list-style-type: none"> <li>• the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer</li> <li>• there is no contract to perform work between the individual and person for who work is to be performed, or</li> <li>• the individual does all or part of the work.</li> </ul>
<b>C'wealth Comcare</b>	No, compensation only through employment of employees	Possibly, depending on the nature of the contract
<b>C'wealth Seacare</b>	No, compensation only through employment of employees	Possibly, according to definition of nature of contract
<b>C'wealth DVA</b>	Only if a 'member' under MRCA ss 7A or 8	Only if a 'member' under MRCA ss 7A or 8
<b>New Zealand</b>	Yes	Yes, labour hire firm held to be employer



**Table 3.2: Deemed workers**

Definition of deemed worker	
<b>New South Wales</b>	<p>Schedule 1 of the 1998 Act lists the twenty-one specific circumstances in which persons are deemed to be workers:</p> <ol style="list-style-type: none"> <li>1. workers lent or on hire</li> <li>1A. outworkers</li> <li>2. other contractors</li> <li>2A. contractors under labour hire services arrangements</li> <li>3. rural work</li> <li>4. timbergetters</li> <li>5. salespersons, canvassers, collectors and others</li> <li>6. tributers</li> <li>7. mine employees</li> <li>8. mines rescue personnel</li> <li>9. jockeys and harness racing drivers</li> <li>10. drivers of hire-vehicles or hire-vessels — contract of bailment</li> <li>11. caddies and others employed through club</li> <li>12. shearers' cooks and others</li> <li>13. fire fighters in fire districts</li> <li>14. workers at place of pick-up</li> <li>15. boxers, wrestlers, referees and entertainers</li> <li>16. voluntary ambulance workers</li> <li>17. ministers of religion</li> <li>18. ministers of religion covered by policies, and</li> <li>19. participants in training programs.</li> </ol>
<b>Victoria</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>• students under work experience and practical placement arrangements, apprentices, persons participating in declared training programs — Clauses 1 to 3 Schedule 1</li> <li>• secretaries of cooperatives — Clause 4 Schedule 1</li> <li>• door to door sellers — Clause 5 Schedule 1</li> <li>• timber contractors — Clause 6 Schedule 1</li> <li>• drivers of passenger vehicles — Clause 7 Schedule 1</li> <li>• owner drivers carrying goods for reward — Clause 8 Schedule 1</li> <li>• contractors — Clause 9 Schedule 1</li> <li>• share farmers — Clause 12 Schedule 1</li> <li>• declared workers of religious bodies and organizations — Clause 13 Schedule 1</li> <li>• crown employees, Ministers, government members, judicial officers, bail justices, public corporation members, retired police reserve members — Clause 14 Schedule 1</li> <li>• municipal councillors — Clause 15 Schedule 1</li> <li>• persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers) — Clause 16 Schedule 1</li> <li>• jockeys and track riders, riders and drivers in mixed sports gatherings — Clauses 17 and 18 Schedule 1</li> <li>• outworkers — Clause 19 Schedule 1.</li> </ul>
<b>Queensland</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>• sharefarmers — Schedule 2 (1.1)</li> <li>• salespersons — Schedule 2 (1.2)</li> <li>• contractors and workers of contractors — Schedule 2 (1.3).</li> <li>• workers lent or on hire (including labour hire firms and holding companies) — Schedule 2 (1.4 - 1.6).</li> </ul>

Definition of deemed worker	
Western Australia	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>workers lent or let on hire — s5(1)</li> <li>contract in substance for personal manual labour or service — s5(1)</li> <li>workers under an industrial award or agreement — s5(1)</li> <li>deceased worker — s5(1)</li> <li>police officer — s5(1) (Who suffers an injury and dies as a result of that injury)</li> <li>clergy — ss8, 9 and 10</li> <li>tributers — s7</li> <li>jockey — s11A</li> <li>crown workers — s14(2)</li> <li>certain persons deemed workers — s175AA, and</li> <li>working directors — s10A.</li> </ul> <p>WorkCover WA guidance: <a href="#">Workers Compensation: A Guide for Employers</a>.</p>
South Australia	<p>The definition of 'contract of service' in <a href="#">s4(1)</a> of the <i>Return to Work Act 2014</i> includes: 'a contract, arrangement or understanding under which one person (the worker) works for another in prescribed work or work of a prescribed class'.</p> <p>Current classes of work prescribed under <a href="#">regulation 5</a> of the Return to Work Regulations 2015, include:</p> <ul style="list-style-type: none"> <li>building work (other than wall or floor tilers)</li> <li>cleaning work</li> <li>council workers driving a motor vehicle used for the transporting goods or materials</li> <li>driving a taxi cab or similar motor vehicle</li> <li>driving or riding for fee or reward a vehicle, other than a commercial vehicle, for the purpose of transporting by road goods or materials (including money) where the driver or rider does not simultaneously own or operate more than 1 vehicle for work purposes</li> <li>work as an entertainer</li> <li>thoroughbred riding work where the work is performed by a licensed jockey</li> <li>work as an outworker, and</li> <li>work as a licensed jockey.</li> </ul> <p>Under <a href="#">s175(2)</a> of the <i>Return to Work Act 2014</i>, the Corporation may also extend the application of the Act to self-employed persons.</p>
Tasmania	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>contractors where the work exceeds \$100 and is not incidental to a trade or business regularly carried on by the contractor, where the contractor does not have personal accident insurance — <a href="#">s4B</a></li> <li>services of workers lent or on hire — <a href="#">s4A</a></li> <li>police volunteers ( i.e., volunteers performing police operations) — <a href="#">s6A</a></li> <li>volunteers performing fire-fighting operations and fire prevention operations — <a href="#">s5</a></li> <li>volunteers providing ambulance services — <a href="#">s6</a></li> <li>port and harbour persons engaged at places of pickup — <a href="#">s25(4)</a></li> <li>salespersons, canvassers and collectors — <a href="#">s4C</a></li> <li>luxury hire car drivers and taxi drivers — <a href="#">s4DA</a> and <a href="#">s4DB</a></li> <li>jockeys — <a href="#">s4DC</a></li> <li>specified clergymen — <a href="#">s3(4)</a></li> <li>participants in training programs — <a href="#">s4D</a></li> <li>persons in relationship prescribed to be relationship between employer and worker — <a href="#">s4E</a>, and</li> <li>prescribed classes of volunteers — <a href="#">s6B</a>. (none are currently prescribed for the purpose of s6B).</li> </ul>
Northern Territory	<p>Circumstances under the Act and Regulations where a person may be deemed or prescribed to be a worker:</p> <ul style="list-style-type: none"> <li>workers of householders — s3(5)</li> <li>directors — s3(3)</li> <li>jockeys — reg 3A(1)(b)</li> <li>taxi drivers — reg 3A(1)(c)</li> <li>person performing work under a community court order — s3(4)</li> <li>Jurors – reg 3(A)(1)(aa)</li> <li>family members — s3(2)</li> </ul>

Definition of deemed worker	
	<ul style="list-style-type: none"> <li>• emergency service volunteers — s3(7), and</li> <li>• volunteer fire fighters — s3(8) and s3(8A)</li> <li>• St Johns ambulance volunteers – reg 3A(1)(a).</li> </ul>
<b>Australian Capital Territory</b>	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> <li>• casuals (in certain instances) — s10</li> <li>• regular contractors — s11(1)</li> <li>• subcontracting — s13</li> <li>• trainees — s14</li> <li>• outworkers — s15</li> <li>• timber contractors — s16</li> <li>• family day care carers — s16A</li> <li>• religious workers — s17</li> <li>• volunteers — s17A</li> <li>• commercial voluntary workers — s18, and</li> <li>• public interest voluntary workers — s19.</li> </ul>
<b>C'wealth Comcare</b>	<p>Under s5(2) of the SRC Act, the following persons are deemed to be employees of the Commonwealth, provided they perform certain duties:</p> <ol style="list-style-type: none"> <li>a) the Commissioner of the Australian Federal Police (AFP), Deputy Commissioner of the AFP or an AFP employee</li> <li>b) a member of the Defence Force in certain circumstances, or</li> <li>c) a person who is the holder of or is acting in: <ol style="list-style-type: none"> <li>i) an office established by a law of the Commonwealth, or</li> <li>ii) an office that is established by a law of a Territory (other than an ACT enactment or a law of the NT) and is declared by the Minister to be an office to which the SRC Act applies — s5(2).</li> </ol> </li> </ol> <p>Under s5(6), certain categories of persons are deemed to be employees of the Commonwealth and the Minister may declare persons who engage in activities or perform acts at the request of the Commonwealth or a licensee as employees. This includes those undertaking work for the Commonwealth on a voluntary basis. Such volunteers, following a declaration by the Minister, are deemed Commonwealth employees for the purposes of workers' compensation.</p> <p>Under s5(15), at the request of the Chief Minister of the ACT, the Minister may make a written declaration that persons may be taken to be employees of the ACT government when engaging in certain activities.— s5(15).</p>
<b>C'wealth Seacare</b>	The Act does not include any category of 'deemed' worker
<b>C'wealth DVA</b>	Only if a 'member' under MRCA — ss 7A or 8
<b>New Zealand</b>	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee — s6

**Table 3.3: Workers' Compensation coverage for volunteers**

Workers' Compensation coverage for volunteers	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• A person who voluntarily and without obligation engages in any ambulance work with the consent of or under the authority and supervision of or in cooperation with the Health Administration Corporation constituted by the <i>Health Administration Act 1982</i>, Schedule 1, 1998 Act.</li> <li>• A person who voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the <i>Fire Brigades Act 1989</i> or is undergoing training for the purposes of fighting bush fires in those circumstances. Schedule 1, 1998 Act.</li> <li>• A person who meets the definition of volunteer contained under the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> i.e. Rural Fire Service, State Emergency Service, Surf Life Saving, Volunteer Rescue Association and Marine Rescue Service.</li> </ul>
<b>Victoria</b>	<p>Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> if injured while carrying out specified duties. Volunteers covered include:</p> <ul style="list-style-type: none"> <li>• volunteer auxiliary workers, officers and volunteer members of the Country Fire Authority (<i>Country Fire Authority Act 1956</i>)</li> <li>• volunteers assisting police officers (<i>Police Assistance Compensation Act 1968</i>)</li> <li>• volunteer school workers or volunteer student workers (<i>Education Training and Reform Act 2006</i>)</li> <li>• jurors (Juries Act 2000)</li> <li>• volunteers in prisons and offenders working or participating in a program under a Correctional Order (<i>Sentencing Act 1991</i> or <i>Corrections Act 1986</i>), and</li> <li>• registered and casual emergency workers (<i>Victorian State Emergency Service Act 2005</i>, <i>Emergency Management Act 1986</i>).</li> </ul>
<b>Queensland</b>	<p>Workers' compensation coverage may extend to the following volunteers if WorkCover has entered into a contract of insurance with the responsible authority/person/charitable institution/not-for-profit organisation:</p> <ul style="list-style-type: none"> <li>• particular persons under <i>Disaster Management Act 2003</i></li> <li>• volunteer fire fighter or volunteer fire warden</li> <li>• honorary ambulance officers</li> <li>• rural fire brigade member</li> <li>• person in voluntary or honorary position with religious, charitable or benevolent organisation</li> <li>• person in voluntary or honorary position with non-profit organisation, and</li> <li>• persons performing community service or unpaid duties.</li> </ul>
<b>Western Australia</b>	<p>No provision under the <i>Workers' Compensation and Injury Management Act 1981</i>.</p> <p>Some volunteers are covered for personal injury under private insurance.</p>
<b>South Australia</b>	<p><a href="#">Schedule 1</a> of the <i>Return to Work 2014</i> establishes the Crown as the presumptive employer of volunteers as prescribed by the regulations.</p> <p><a href="#">Regulation 69</a> prescribes South Australian State Emergency Services, marine rescue members and volunteer fire-fighters as a class of person covered by the Act.</p>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Volunteers performing police operations — <a href="#">s6A</a></li> <li>• Volunteers performing fire-fighting operations and fire prevention operations — <a href="#">s5</a></li> <li>• Volunteers providing ambulance services — <a href="#">s6</a></li> <li>• Volunteers performing work of a prescribed class which is of benefit to the State — <a href="#">s6B</a> (none are currently prescribed for the purpose of this section).</li> </ul>
<b>Northern territory</b>	<ul style="list-style-type: none"> <li>• Emergency service volunteers</li> <li>• Volunteer fire fighters</li> <li>• St Johns Ambulance volunteers.</li> </ul>
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>• s17A - an individual who is engaged to perform work for someone else, and receives no payment for the work.</li> <li>• Commercial voluntary workers (e.g. volunteer marshals at an event run by a corporation incorporated under the <i>Corporations Act 2001</i> (Cth)).</li> <li>• Public interest voluntary workers.</li> </ul>
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>• CSIRO — volunteer fellows.</li> <li>• Volunteers who assist in the running of the:</li> </ul>

Workers' Compensation coverage for volunteers	
	<ul style="list-style-type: none"> <li>- Australian National Gallery</li> <li>- Australian War Memorial</li> <li>- Australian National Botanic Gardens</li> <li>- Australian National Maritime Museum</li> <li>- Australian Nature Conservation Agency</li> <li>- National Science and Technology Centre (Questacon)</li> <li>- National Museum of Australia, and</li> <li>- Old Parliament House.</li> </ul> <ul style="list-style-type: none"> <li>• Volunteers in connection with Australian Film, Television and Radio School</li> <li>• Volunteers in connection with lighthouse keeping on Maatsuyker Island</li> <li>• Volunteers in relation to search and rescue services and training exercises provided by Australian Maritime Safety Authority</li> <li>• Volunteers who participate in recruit training exercise for the Australian Protective Service</li> <li>• Volunteers promoting the House of Representatives and the Parliament to the community</li> <li>• Volunteers providing firefighting, search and rescue and first aid services, attending environmental incidents and taking part in training exercises for the Snowy Mountains Hydro-electric Authority</li> <li>• Volunteers assisting the Department of the Environment and Heritage (excluding the Bureau of Meteorology) and the Director of National Parks</li> <li>• Volunteers assisting the National Capital Authority in fostering an awareness of Canberra as the National Capital</li> <li>• Volunteers assisting in the administration of the CHOGM 2001, 2002</li> <li>• Volunteers assisting the Sydney Harbour Federation Trust</li> <li>• Volunteers assisting in APEC 2007</li> <li>• Others as declared from time to time by the <i>Safety Rehabilitation and Compensation Act 1988</i>.</li> </ul>
<b>C'wealth Seacare</b>	N/A
<b>C'wealth DVA</b>	Volunteers who, under the control or direction of a Commonwealth officer, render services in an institution or for a service conducted by DVA.

**Table 3.4: Treatment of sportspersons and sporting injuries**

Treatment of sportsperson and sporting injuries	
<b>New South Wales</b>	<p>A sporting participant meeting the definition of a 'worker' is covered under the 1998 Act unless he/she is a registered participant of a sporting organisation (within the meaning of the <i>Sporting Injuries Insurance Act 1978</i>) while:</p> <ul style="list-style-type: none"> <li>(i) participating in an authorised activity (within the meaning of that Act) of that organisation, or</li> <li>(ii) engaged in training or preparing himself or herself with a view to so participating, or</li> <li>(iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged, if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.</li> </ul> <p>The <i>Sporting Injuries Insurance Act 1978</i> provides coverage for serious injury and death while participating in an authorised activity to persons who are registered members of a sporting organisation that is recognised by The Sporting Injuries Compensation Authority (a division of Insurance and Care NSW).</p>
<b>Victoria</b>	<p><i>Workplace Injury Rehabilitation and Compensation Act 2013</i> — Clause 17, Schedule 1</p> <ol style="list-style-type: none"> <li>1. Except as provided in subclause (3), if a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority is liable to pay compensation for an injury received by the person if the injury is received while the person is: <ul style="list-style-type: none"> <li>a) participating as a contestant in a sporting or athletic activity;</li> <li>b) engaged in training or preparation with a view to so participating; or</li> <li>c) travelling between a place of residence and the place at which the person is so participating or so engaged.</li> </ul> </li> </ol> <p>Exception for jockeys and harness riders (see Table 3.2).</p>
<b>Queensland</b>	<p><i>Workers Compensation and Rehabilitation Act 2003</i> — Schedule 2 Part 2 — Persons who are not workers</p> <ol style="list-style-type: none"> <li>(1) A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is: <ul style="list-style-type: none"> <li>a) participating in a sporting or athletic activity as a contestant, or</li> <li>b) training or preparing for participation in a sporting or athletic activity as a contestant, or</li> <li>c) performing promotional activities offered to the person because of the person's standing as a sportsperson, or</li> <li>d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.</li> </ul> </li> </ol>
<b>Western Australia</b>	<p><i>Workers Compensation and Injury Management Act 1981</i> s11 — Exclusion of certain persons who are contestants in sporting or athletic activities</p> <p>Notwithstanding anything in s5 and subject to s11A, a person is deemed not to be a worker while they are:</p> <ul style="list-style-type: none"> <li>a) participating as a contestant in any sporting or athletic activity</li> <li>b) engaged in training or preparing himself with a view to his so participating</li> <li>c) engaged in promotional activities in accordance with the contract pursuant to which he so participates, or</li> <li>d) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged, if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.</li> </ul> <p>Except for licensed jockeys under the <i>Racing and Wagering Western Australia Act 2003</i> while engaged in racing or riding work or carrying out their usual duties as of a Jockey — s11A.</p>
<b>South Australia</b>	<p><a href="#">Section 69</a> of the Act states:</p> <ol style="list-style-type: none"> <li>1. Despite any other provision of this Act, but subject to ss(2), if: <ul style="list-style-type: none"> <li>a) a worker is employed by an employer solely: <ul style="list-style-type: none"> <li>(i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation), or</li> <li>(ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and</li> </ul> </li> <li>b) remuneration is not payable under the contract of employment except in respect of such employment, an injury arising out of or in the course of that employment is not compensable under this Act.</li> </ul> </li> <li>2. This section does not apply to: <ul style="list-style-type: none"> <li>a) a person authorised or permitted by a racing controlling authority within the meaning of the <i>Authorised Betting Operations Act 2000</i> to ride or drive in a race within the meaning of that Act, or</li> <li>b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match, or</li> <li>c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in ss(1)(a).</li> </ul> </li> <li>3. In this section, the prescribed amount means: <ul style="list-style-type: none"> <li>a) in relation to 2014 — \$65 600 (indexed), or</li> <li>b) in relation to a subsequent year — a sum (calculated to the nearest multiple of \$100) that bears to \$25 000 the same proportion as the Consumer Price Index for the September quarter of the immediately</li> </ul> </li> </ol>

Treatment of sportsperson and sporting injuries	
	<p>preceding year bears to the CPI for the September quarter, 1985.</p> <p>A professional sportsperson's prescribed income as at 1/1/2016: \$67 751 (see the '<a href="#">Schedule of Sums</a>' available at ReturnToWorkSA website).</p>
<b>Tasmania</b>	<p>A person is deemed not to be a worker within the meaning of the Act while he is, pursuant to a contract:</p> <ul style="list-style-type: none"> <li>• participating as a contestant in any sporting or athletic activity</li> <li>• engaged in training or preparing himself with a view to his so participating, or</li> <li>• travelling in connection with his so participating or being so engaged — if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things. — <a href="#">s7</a></li> <li>• jockeys — s7 does not apply to jockeys and apprentices whilst engaged in riding in Tasmania at a race meeting or official trial or whilst riding in a training session for a licensed trainer — <a href="#">s4DC</a>.</li> </ul>
<b>Northern Territory</b>	<p><i>Return to Work Act 2015</i>. A person shall be deemed not to be a worker while they are:</p> <ol style="list-style-type: none"> <li>a) participating as a contestant in a sporting or athletic activity</li> <li>b) engaged in training or preparing themselves with a view to his or her so participating, or</li> <li>c) travelling in connection with them so participating or being so engaged, unless, under the contract, they are entitled to remuneration of not less than the prescribed amount per year (annual equivalent of 65% of Average weekly earnings= \$51 156.30) or at a rate that, if the contract continued for a year, would result in his or her receiving remuneration of not less than that amount — s3(10).</li> </ol> <p>Regulation 3A Definition of 'worker' — Jockeys are defined as workers.</p>
<b>Australian Capital Territory</b>	<p><i>Workers' Compensation Act 1951</i></p> <ul style="list-style-type: none"> <li>• s84 — Compensation for sporting injuries. A person is not entitled to receive compensation for an injury sustained as a result of the person's engagement in professional sporting activity.</li> <li>• s177 Premiums — remuneration for professional sporting activity. An employer is not liable to pay any part of a premium for a compulsory insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity.</li> </ul>
<b>C'wealth Comcare</b>	<p>Nothing specific in legislation. The <i>Safety Rehabilitation and Compensation Act 1988</i> provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of the employee's employment.'</p>
<b>C'wealth Seacare</b>	<p>Nothing specific in legislation. The <i>Seafarers Rehabilitation and Compensation Act 1992</i> provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of the employee's employment'.</p>
<b>C'wealth DVA</b>	<p>Nothing specific in legislation. Each claim for an injury sustained during a sporting or leisure activity will be decided on its own merits in accordance with the principle of 'relatedness to service' and relevant case law applicable at the time the claim is considered.</p>
<b>New Zealand</b>	<p>The <i>Accident Compensation Act 2001</i> provides broad cover for personal injury and makes no distinction in coverage between sport-related injury and any other injury. However, injuries that are not work-related are not funded through levies collected from employers.</p>

**Table 3.5: Workers' compensation arrangements for government employers**

	Legislation	Self-insurance	Claims managers	Premiums
<b>New South Wales</b>	<i>Workers Compensation Act 1987</i> <i>Workplace Injury Management and Workers Compensation Act 1998</i>	Several different types of cover are available to public sector employers in NSW: <ul style="list-style-type: none"> <li>NSW Self-Insurance Corporation (SICorp) manages and administers the Treasury Managed Fund (TMF) which is a NSW Government self-insurance scheme providing workers' compensation insurance coverage for all general government sector agencies and a number of state-owned corporations that have elected to join the scheme</li> <li>a number of government agencies and state owned corporations are licensed self-insurers in NSW, and</li> <li>Specialised Insurers are licensed in similar fashion to self-insurers but organised on an industry basis. Some local councils in NSW are insured through StateCover Mutual, a specialised insurer in NSW.</li> </ul>	<ul style="list-style-type: none"> <li>All claims under the TMF are handled by claim agents, which are contracted to SICorp.</li> <li>The claims of self-insured agencies are managed by the licensed self-insurer organisations.</li> <li>Some claims of local councils in NSW managed by the licensed specialised insurer StateCover Mutual.</li> </ul>	TMF (SICorp): Deposit contributions are based on a weighting between an Agency's own claims experience and an appropriate external premium measure. StateCover Mutual determines annual contributions in accordance with its published premium rating methodology.
<b>Victoria</b>	<i>Workplace Injury Rehabilitation and Compensation Act 2013</i>	Bodies corporate and the Municipal Association of Victoria can apply to become self-insurers in Victoria — s376. Government agencies are neither and therefore cannot become self-insurers under Victorian legislation.	Each government agency chooses one of the agents appointed by WorkSafe Victoria to manage claims on their behalf. Employers, including government agencies, may change agents once per year if they believe another agent will provide better service.	Government agencies must register for WorkCover Insurance and pay premiums to the WorkCover fund. Administration of WorkCover Insurance and the calculation of premium is the same as for private sector employers.
<b>Queensland</b>	<i>Workers' Compensation and Rehabilitation Act 2003</i>	Local governments can apply for self-insurance. The majority of local governments have self-insurance arrangements.	All claims are handled by WorkCover Queensland.	All employers are required to pay a premium for a workers' compensation policy.
<b>Western Australia</b>	<i>Workers' Compensation and Injury Management Act 1981</i>	Agencies are underwritten by the Insurance Commission of WA through the 'RiskCover' fund. No government agencies are directly self-insured.	All government agency claims are handled by RiskCover.	All government agencies must have workers' compensation coverage with RiskCover. Premiums are paid direct to RiskCover.
<b>South Australia</b>	<i>Return to Work Act 2014</i>	The Crown and any agency or instrumentality of the Crown will be taken to be registered as self-insured employers under <a href="#">s130</a> of the Act and therefore meet all of the costs associated with workers' compensation claims. The Local Government Association is not considered an agency or instrument of the Crown and is registered as a private self-insured employer.	Crown agencies (and private self-insured employers) assume responsibility for the management of workers' compensation claims.	Crown agencies are required to pay a fee each year as a contribution towards the costs associated with scheme administration.
<b>Tasmania</b>	<i>Workers' Rehabilitation and Compensation Act 1988</i>	The Crown and any agency or instrumentality of the Crown is deemed to be an exempt employer under <a href="#">s97(9)</a> and <a href="#">114(5)</a> of the Act and is therefore not obliged to maintain a policy of insurance or hold a permit to self-insure. The <a href="#">Tasmanian Risk Management Fund</a> is a whole-of-government self-insurance arrangement for funding and managing the insurable liabilities of participants. The Fund is administered by the Department of Treasury and Finance.	Claims administration is undertaken by a Fund Administration Agent, Jardine Lloyd Thompson Pty Ltd, who is engaged under contract.	The Fund operates on a cost recovery basis with contributions set to ensure adequate financial provision for the cost of risk now and into the future. The level of Agencies' contributions is determined by an independent actuary to reflect their risk exposure, claims experience and nominated excess amount.



	Legislation	Self-insurance	Claims managers	Premiums
<b>Northern Territory</b>	<i>Return to Work Act</i>	The insurance provisions of the legislation do not apply to the NT Government. Local Government and some statutory agencies are insured with approved insurers.	The majority of the Northern Territory Public Servants are covered by Government's self-insurance arrangement. Claims management is contracted to the Territory Insurance Office. Some agencies are insured commercially, and the insurer manages these claims.	Unless the government agency insures with an approved insurer, no premium is paid. Claims are paid by the Agency.
<b>Australian Capital Territory</b>	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>	All ACT Government workers are covered under the Comcare scheme.	All government claims are handled by Comcare.	A premium is paid to Comcare annually.
<b>Commonwealth Comcare</b>	<i>Safety, Rehabilitation and Compensation Act 1988 (Cth)</i>	Commonwealth Authorities (defined in the Act) may be granted a licence to self-insure which may include self-management of claims. Commonwealth Government departments are not Commonwealth authorities and are not eligible to apply. Note: current licensed Commonwealth authorities are Australian Postal Corporation and Reserve Bank of Australia.	Commonwealth Government claims are managed by Comcare. Claims by the two licensed Commonwealth authorities (Australian Postal Corporation and Reserve Bank of Australia) are managed in-house by those authorities.	Commonwealth entities, other than the two licensed Commonwealth authorities, pay experienced based premiums to Comcare annually.
<b>Commonwealth Seacare</b>	<i>Seafarers' Rehabilitation and Compensation Act 1992</i>	N/A	Act does not apply to a person who is an employee within the meaning of the <i>Safety Rehabilitation and Compensation Act 1988</i> .	Act does not apply to a person who is an employee within the meaning of the <i>Safety Rehabilitation and Compensation Act 1988</i> .
<b>Commonwealth DVA</b>	N/A	N/A	N/A	N/A
<b>New Zealand</b>	<i>Accident Compensation Act 2001</i>	—	All government claims except those covered by Accredited Employers are managed by ACC. Claims by Accredited Employers are managed by those employers, either in-house or by a contracted third-party administrator.	Government employers pay levies to ACC like all other employers unless they are Accredited Employers where a discount is applicable. Refer to Chapter 6 of this document for Self-insurer arrangements.

**Table 3.6: Workers' compensation arrangements for judges and members of parliament**

	Coverage for judges	Coverage for members of parliament
<b>New South Wales</b>	Covered as state government employees	Members and electorate officers are covered by insurance arranged with the NSW Treasury Managed Fund which includes personal accident insurance and workers' compensation insurance in connection with their electorate or parliamentary duties. Members need to satisfy the Treasury Managed Fund and, if subject to dispute, the Treasurer that they were on duty at the time of the accident.
<b>Victoria</b>	Covered as state government employees	Clause 14(1), Schedule 1 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> provides that politicians are covered.
<b>Queensland</b>	Covered as state government employees	All Members have personal accident indemnity cover on a 24 hour basis. Members are indemnified in the event of injury, as defined, resulting in death.
<b>Western Australia</b>	Covered as state government employees	Not covered for workers' compensation, although insurance is taken out by the Joint House Committee, consistent with personal injury insurance.
<b>South Australia</b>	Covered as state government employees	Not covered for workers' compensation, although an administrative arrangement provides the equivalent of workers' compensation.
<b>Tasmania</b>	Covered as state government employees	Workers' compensation is not provided to Members of Parliament. Members of Parliament are eligible for personal accident cover in the event of an injury whilst in service to the Government. Cover is provided by the Tasmanian Risk Management Fund (TRMF). The TRMF provides no-fault personal accident cover for Ministers and Members of Parliament who suffer or aggravate an injury which arises out of, and in the course of, their official parliamentary duties or contract a disease for which their official parliamentary duties was the major contributor.
<b>Northern Territory</b>	Covered as government employees	Covered as government employees
<b>Australian Capital Territory</b>	Covered as government employees	Not covered under the legislation
<b>C'wealth Comcare</b>	Separate arrangements s5(8) of the <i>Safety Rehabilitation and Compensation Act 1988</i> excludes judges from coverage under that Act	Separate arrangements s5(8) of the SRC Act excludes members of Parliament and Ministers of state from coverage under that Act
<b>C'wealth Seacare</b>	N/A	N/A
<b>C'wealth DVA</b>	N/A	N/A
<b>New Zealand</b>	Covered as any other employee under the <i>Accident Compensation Act 2001</i>	Covered as any other employee under the <i>Accident Compensation Act 2001</i>

# Coverage of work and injury

An entitlement to workers' compensation is reliant on the relationship of a worker's injury to work.

## Journeys and breaks

Injuries that occur on work premises while a person is working are easily identifiable as occurring at work. However it is not always simple to determine whether or not a person was at work when injured. Table 3.8 provides information on the variations between the jurisdictions regarding whether or not they provide workers' compensation coverage for people who are injured on:

- journeys to and from work
- work-related travel
- breaks spent at the work premises, and
- breaks spent outside the work premises.

## Definition of injury

Workers' compensation schemes generally deem that a worker is entitled to workers' compensation if they have suffered an injury that arises out of, or in the course of, employment. It is therefore essential for workers to establish that they have suffered an injury as defined in the relevant legislation.

Although the everyday ordinary meaning of injury is any harm caused to a person's body as a result of any form of trauma, each jurisdiction places limits on the term injury and defines it differently. To determine whether an incident falls within the definition of injury, several factors need to be considered. Refer to Table 3.9 for more information.

## Relationship to employment and contribution of employment

Where any incident has occurred in the workplace, it needs to be determined that there is a relationship between the injury and employment before the worker can claim workers' compensation. In addition, a worker's employment has to contribute to the injury to a certain extent before a worker is entitled to compensation. Table 3.9 provides information on how each jurisdiction defines injury, its relationship to employment and the contribution of employment to the injury.

## Aggravation and acceleration

Sometimes employment is not the original cause of an injury; however, employment can aggravate or accelerate an existing injury. As at September 2015, aggravation and acceleration of existing injuries was covered in all jurisdictions.

## Diseases

Diseases are classed differently to physical injuries. Diseases include any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual onset. All jurisdictions, except Queensland, have in their legislation tables of diseases that are deemed to be caused by work. Appendix 2 Table 1 provides a jurisdictional comparison of these lists.

## Industrial deafness

Industrial deafness is generally treated separately from other types of injury or disease. All jurisdictions have an impairment threshold in place for industrial deafness, which means that an injured worker is not entitled to lump sum compensation until they reach the threshold level. Table 3.7 illustrates the industrial deafness provisions in each jurisdiction.

**Table 3.7: Industrial deafness thresholds**

<b>Industrial deafness thresholds</b>	
<b>New South Wales</b>	For claims made on or after 19 June 2012, the threshold for lump sum compensation for permanent impairment is greater than 10% permanent impairment — s66(1), 1987 Act  Different arrangements apply to exempt workers
<b>Victoria</b>	No specific level of hearing loss required to claim compensation (e.g. medical expenses)  10% hearing loss and further hearing loss required for lump sum impairment benefit — ss61, 62, 211 and 213
<b>Queensland</b>	Not for the first 5% — s125
<b>Western Australia</b>	At least 10% hearing loss for first election — s24A  Further 5% for subsequent elections — s24A
<b>South Australia</b>	No specific thresholds required for hearing loss to be compensable, however, a lump sum for non-economic loss is only payable if there is a 5% or greater whole person impairment — s.58(2)
<b>Tasmania</b>	5% binaural hearing impairment — s72A(3)
<b>Northern Territory</b>	Impairments must be 5% WPI or more — s70
<b>Australian Capital Territory</b>	6% hearing loss (boilermakers deafness or similar deafness) — s64(1)
<b>C'wealth Comcare</b>	Binaural hearing loss of less than 5% is not payable as a permanent impairment lump sum— s24(7A)
<b>C'wealth Seacare</b>	No specific level of hearing loss required to claim compensation for medical expenses  10% hearing loss required for lump sum permanent impairment and non-economic loss benefit — s39(7)
<b>C'wealth DVA</b>	At least 5 impairment points hearing loss — MRCA s69(a)
<b>New Zealand</b>	6% binaural hearing loss — s26(1A)

**Table 3.8: Definition of work — journeys and breaks**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
<b>Journeys to and from work</b>	<p>Yes) for: police officers, paramedics, firefighters, bush firefighters, volunteers, under the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> workers employed in or about a coal mine, people with a dust disease claim under the <i>Workers' Compensation (Dust Diseases) Act 1942</i>.</p> <p>For all other workers with injuries received on or after 19 June 2012 there must be a real and substantial connection between employment and the accident or incident out of which the injury arose — s10 and Schedule 6</p>	No — s46	Yes, some restrictions — s35	No — s19(2)	Limited to where there is a real and substantial connection between the employment and the accident out of which the injury arises — <a href="#">s7(8)(b)</a>	No, some exceptions — <a href="#">s25(6)</a>	No, some exceptions— s4	Yes — s36	No, some exceptions — s6(1C)	Yes — s9(2)(e)	Yes — s27; exceptions — s35	Yes, some restrictions — s28(1)(c)

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
	Part 19H, Clause 18, 1987 Act											
<b>Work-related travel</b>	Yes — s4 1998 Act	Yes, some restrictions — s46	Yes — s34	Yes — s19(1)	Yes — <a href="#">s7(8)(a)</a>	Yes — s25(6)	Yes — s4	Yes — s36	Yes — s6(1)(d)	Yes — s9(2)(e)	Yes — s27; exceptions — s35	Yes — s28(1)(a)
<b>Breaks — onsite</b>	Yes — s11, 1987 Act	Yes — s46	Yes — s34(1)(c)	Yes	Yes, if the break is authorised — <a href="#">s7(5)(b)</a>	Yes — s25(6)	Yes — s4	No reference	Yes — s6(1)(b)	Yes — s9(2)(b)	Yes — s27	Yes — s28(1)(b)
<b>Breaks — offsite</b>	Yes — s11, 1987 Act	Yes — s46	Yes — s34(1)(c)	No reference in the Act. Coverage depends on factual circumstances or common law	No	No, some exceptions — s25(6)	Yes — s4 Some exceptions – injuries from MVA	No reference	Yes — ordinary recesses	Yes — s9(2)(b)	Yes — s27	Yes, some restrictions

**Table 3.9: Definition of injury and relationship to employment — detailed**

Definition of injury and relationship to employment		Contribution of employment
<b>New South Wales</b>	<p>injury:</p> <p>(a) means personal injury arising out of or in the course of employment,</p> <p>(b) includes a disease injury, which means:</p> <ul style="list-style-type: none"> <li>(i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and</li> <li>(ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease, and</li> </ul> <p>(c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the <a href="#">Workers' Compensation (Dust Diseases) Act 1942</a>, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined.</p> <p>Section 4, 1987 Act</p>	<p>No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury — s9A (1), 1987 Act.</p> <p>Note. In the case of a disease injury, a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease. s4, 1998 Act.</p>
<b>Victoria</b>	'...an injury arising out of or in the course of any employment ...' — s39(1)	Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment), or c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease — s40(2) and s40(3).
<b>Queensland</b>	'...a personal injury arising out of, or in the course of, employment...' — s32(1)	<p>A significant contributing factor — s32(1)</p> <p>For a psychiatric or psychological disorder, the major significant contributing factor – s32(1)</p>
<b>Western Australia</b>	'...a personal injury by accident arising out of or in the course of the employment...' — s5(1)	For disease only: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree — s5(1).
<b>South Australia</b>	<p>'...injury if (and only if) it arises from employment. .' — <a href="#">s7</a></p> <p>(a) in the case of an injury other than a psychiatric injury – the injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury; and</p> <p>(b) in the case of psychiatric injury</p> <ul style="list-style-type: none"> <li>(i) the psychiatric injury arises out of or in the course of employment and the employment was the significant contributing cause of the injury; and</li> <li>(ii) the injury did not arise wholly or predominantly from any action of decision designated under subsection (4).</li> </ul>	<p>'...a significant contributing cause of the injury ...' – <a href="#">s7(2)(a)</a> for non-psychiatric injuries</p> <p>'...the significant contributing cause of the injury ...' – <a href="#">s7(2)(b)</a> for psychiatric injuries</p>
<b>Tasmania</b>	<p>Injury includes —</p> <p>(a) a disease, and</p> <p>(b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration.</p> <p>Except in some circumstances 'injury' does not include an asbestos-related disease within the meaning of the <i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> — <a href="#">s3(1)</a>.</p> <p>The liability of employers to compensate workers for injuries, relates to:</p> <ul style="list-style-type: none"> <li>– 'An injury, not being a disease, arising out of, or in the course of employment' — <a href="#">s25(1)(a)</a></li> </ul>	<p>To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only) — s3(2A)</p> <p>Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (s3(1) — in definition of 'injury').</p>

Definition of injury and relationship to employment		Contribution of employment
	– ‘an injury, which is a disease, to which his employment contributed to a substantial degree’ — <a href="#">s25(1)(b)</a> .	
<b>Northern Territory</b>	‘...a physical or mental injury...out of or in the course of employment...’ — ss3A and 4	Material contribution, (for diseases — <a href="#">s4(6)</a> and gradual process — <a href="#">s4(5)</a> ) that is employment was the real proximate or effective cause (s4(8)) A mental injury is not an injury if due to management action taken on reasonable grounds and in a reasonable manner - s3A(2). See s3(1) for definition of ‘management action’ For heart attack or stroke injury - material contribution — s58 that is employment was the real proximate or effective cause - s4(8)
<b>Australian Capital Territory</b>	‘a physical or mental injury (including stress)...includes aggravation, acceleration or recurrence of a pre-existing injury...arising out of, or in the course of, the worker’s employment...’ — ss4 and 31	A substantial contributing factor — s31(2)
<b>C’wealth Comcare</b>	For injuries: <ul style="list-style-type: none"> <li>‘...a physical or mental injury arising out of, or in the course of, the employee’s employment...’, or</li> <li>‘...an aggravation of a physical or mental injury (other than a disease) suffered by an employee ...’ — s5A</li> </ul> For diseases: ‘an ailment or aggravation of an ailment...that was contributed to, to a significant degree by an employee’s employment’ — s5B	To a significant degree (for diseases) — s5B, with matters to be taken into account being set out in a non-exclusive list and with ‘significant degree’ being defined as ‘substantially more than material’
<b>C’wealth Seacare</b>	For injuries: ‘an injury (other than a disease) suffered by an employee, being 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) suffered by an employee’ — s3 For diseases: ‘any ailment suffered by an employee, or the aggravation of any such ailment, being an ailment or an aggravation that was contributed to in a material degree by the employee’s employment’ – s3	To a material degree (for diseases) — s3
<b>C’wealth DVA</b>	Under ‘Definition of injury etc.’ — Refer s27, s29(1), s29(2) and s30 of MRCA. 1. ‘...any physical or mental injury (including the recurrence of a physical or mental injury) or (being a disease)...’ a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or b) the recurrence of such an ailment, disorder, defect or morbid condition: <ul style="list-style-type: none"> <li>resulted from an occurrence that happened whilst rendering service</li> <li>arose out of, or was attributable to, any service rendered</li> <li>due to an accident not occurring or a disease not being contracted but for rendering service while a member; or but for changes in the person’s environment consequent upon rendering defence service while a member</li> <li>resulted from an accident that occurred whilst travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey to a place for the purpose of performing duty; or away from a place of duty upon having ceased to perform duty, and/or</li> <li>arising from treatment provided by the Commonwealth.’</li> </ul> 2. (being an aggravation of an injury, or its signs and symptoms)... the aggravation of a physical or mental injury or (being an aggravation of a disease, or its signs and symptoms)...the aggravation of such an ailment, disorder, defect or morbid condition: <ul style="list-style-type: none"> <li>contributed to in a material degree by, or was aggravated by, any defence service rendered by the person while a member after he or she sustained the injury or contracted the disease, and/or</li> <li>aggravated by treatment provided by the Commonwealth.</li> </ul>	Minimum material contribution required (‘arose out of, or was attributable to’) — MRCA, ss27b and 27c In a material degree (for aggravations only) — MRCA, ss27d and 30



Definition of injury and relationship to employment		Contribution of employment
<b>New Zealand</b>	<p>A work-related personal injury is a personal injury that a person suffers:</p> <p>a) while he or she is at any place for the purposes of his or her employment — s28</p>	<p>Not required, except for work-related gradual process, disease, or infection suffered by the person — s20(2)(e)</p>

# Permanent Impairment

## Definition of permanent impairment

A prerequisite to determining the level of permanent impairment is the understanding that impairment should not be determined until the claimant has reached a point of maximum medical improvement. This is the point at which the impairment has become stable, or is not likely to improve despite medical treatment.

In addition to the principles of assessment contained in the American Medical Association (AMA) Guides, scheme legislation also provides substantial guidance on how to determine whether or not impairment is permanent. Table 3.10 lists the legislative definitions of permanent impairment and also the criteria by which an injury is judged to be permanent.

## Permanent impairment guidelines

Each of the schemes substitutes or removes sections of their respective editions of the AMA Guide. The necessity for these modifications is primarily due to differences in Australian and US clinical practice, but these are sometimes the result of differences in legislative processes. Table 3.11 illustrates the particular approach taken by the various schemes to substitute or remove assessment criteria from the AMA Guide.

## Discounting of prior impairments

Most schemes require that where a pre-existing non-compensable impairment exists, the assessing doctor must discount this pre-existing impairment before making a final assessment of impairment. However, if the deductible portion is difficult or costly to determine, schemes may designate a nominal amount for this purpose or in some instances, accept complete liability for the injury. Table 3.12 lists the discounting provisions under each scheme.

**Table 3.10: Statutory definitions of permanent and impairment and criteria for determining whether impairment is permanent**

	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
<b>New South Wales</b>	Assessments are only to be conducted when the medical assessor considers that the degree of permanent impairment of the worker is unlikely to improve further and has attained maximum medical improvement. This is considered to occur when the worker's condition is well stabilised and is unlikely to change substantially in the next year with or without medical treatment.	No statutory criteria for determining whether impairment is permanent  This is based on medical opinion in accordance with the NSW workers compensation guidelines for the evaluation of permanent impairment
<b>Victoria</b>	s55 — <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> : (a) Despite anything to the contrary in the AMA Guides, an assessment under this division of the degree of impairment resulting from an injury must be made — after the injury has stabilised, and (b) subject to s53, based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury. S54(2) — <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> : The AMA Guides apply in respect of an assessment under 3.3d of Chapter 3 of the AMA Guides as if the following were omitted — 'with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment'.	Other than as provided by AMA 4 there is no legislative guidance as to when an impairment becomes permanent
<b>Queensland</b>	<i>Workers' Compensation and Rehabilitation Act 2003</i> : s38 Meaning of permanent impairment — A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment s37 Meaning of impairment — An impairment from injury is a loss of, or loss of efficient use of, any part of a worker's body	<i>Workers' Compensation and Rehabilitation Act 2003</i> : s179 Assessment of permanent impairment <ul style="list-style-type: none"> <li>An insurer may decide, or a worker may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment.</li> <li>The insurer must have the degree of permanent impairment assessed — (a) for industrial deafness — by an audiologist; or (b) or a psychiatric or psychological injury — by a medical assessment tribunal; or (c) or another injury — by a doctor.</li> <li>The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to the insurer stating — (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and (b) any other information prescribed under a regulation.</li> <li>The degree of permanent impairment must be assessed in accordance with the <a href="#">Guidelines for Evaluation of Permanent Impairment</a> (the Queensland Guide) to decide the degree of permanent impairment for the injury, and a report complying with the Queensland Guide must be given to the insurer.</li> </ul> <i>Workers' Compensation and Rehabilitation Regulation 2014</i> : <ul style="list-style-type: none"> <li>Part 4 Division 3, Entitlement to compensation for permanent impairment</li> </ul>
<b>Western Australia</b>	No statutory definition s146A (1) notes that a worker's degree of impairment is to be evaluated, as a percentage in accordance with the <a href="#">WorkCover WA Guidelines for the Evaluation of Permanent Impairment</a>	No statutory criteria for determining whether impairment is permanent — this is based on medical opinion in accordance with WorkCover Guides for the Evaluation of Permanent Impairment  The Guides are based on AMA 5 and the New South Wales Guides for the Evaluation of Permanent Impairment
<b>South Australia</b>	The ReturnToWorkSA <a href="#">Impairment Assessment Guidelines</a> provide the following definitions: Permanent: 'The meaning given to the word 'permanent' in various decisions of the courts includes: a) for a long and indeterminate time but not necessarily forever	No statutory criteria

Definition of 'permanent' and 'impairment'		Statutory criteria for determining whether an impairment is permanent
	<p>b) more likely than not to persist in the foreseeable future.'</p> <p>Impairment: 'A loss, loss of use or derangement of any body part, organ system or organ function (AMA5).'</p>	
<b>Tasmania</b>	<p>The WorkCover <a href="#">Guidelines for the Assessment of Permanent Impairment</a> state:</p> <p>'it must be shown that the problem has been present for a period of time, is static, well stabilised, and is unlikely to change substantially regardless of treatment.'</p> <p>However where impairment assessment is a prerequisite for access to common law, and where strict time limits apply, a medical assessor may undertake an assessment where the impairment does not meet the definition of 'permanent' to verify that the level of impairment will not be less than the statutory threshold. Under amendments which commenced on 1 July 2010, the threshold for access to common law is 20% WIP— page 4.</p>	No statutory criteria
<b>Northern Territory</b>	<p>Section 70 of the <i>Return to Work Act</i> defines permanent impairment as:</p> <p>'permanent impairment means an impairment or impairments assessed in accordance with the guides approved and published by the Authority, as being an impairment or combination of impairments of not less than 5% of the whole person'.</p> <p><a href="#">Permanent Impairment</a></p>	<p>The guides approved by the Authority are the AMA 4th edition</p> <p>Other than as provided by AMA 4 there is no legislative guidance as to when an impairment becomes permanent</p>
<b>Australian Capital Territory</b>	<p>Section 51 <i>Workers Compensation Act 1951</i> is based on the concept of loss arising from a compensable injury. 'Loss' is defined to mean loss of a thing or permanent loss of use or efficient use of the thing. The definition also includes permanent musculoskeletal impairment and loss, damage, impairment, disfigurement or disease lists in Schedule 1 of the <i>Workers Compensation Act 1951</i>.</p>	Part 4.4 <i>Workers Compensation Act 1951</i>
<b>C'wealth Comcare</b>	<p><i>Safety, Rehabilitation and Compensation Act 1988</i></p> <p>s4 — Permanent means likely to continue indefinitely</p> <p>s4 — Impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function</p>	<p><i>Safety, Rehabilitation and Compensation Act 1988 — s24(2)</i></p> <p>For the purpose of determining whether an impairment is permanent, Comcare shall have regard to:</p> <ol style="list-style-type: none"> <li>the duration of the impairment</li> <li>the likelihood of improvement in the employee's condition</li> <li>whether the employee has undertaken all reasonable rehabilitative treatment for the impairment, and</li> <li>any other relevant matters.</li> </ol> <p>Assessments must be made in accordance with the Comcare Guide to the Assessment of the Degree of Permanent Impairment</p>
<b>C'wealth Seacare</b>	<p><i>Seafarers' Rehabilitation and Compensation Act 1992</i></p> <p>s3 – Permanent means likely to continue indefinitely</p> <p>s3 – Impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of the whole or part of any bodily system or function</p>	<p><i>Seafarers' Rehabilitation and Compensation Act 1992 — s39(2)</i></p> <p>For the purpose of determining whether an impairment is permanent, the employer must have regard to the following matters:</p> <ol style="list-style-type: none"> <li>the duration of the impairment</li> <li>the likelihood of improvement in the employee's condition</li> <li>whether the employee has undertaken all reasonable rehabilitative treatment for the impairment, and</li> <li>any other relevant matters.</li> </ol> <p>Assessments must be made in accordance with the Seacare Authority Guide to the Assessment of the Degree of Permanent Impairment</p>

Definition of 'permanent' and 'impairment'		Statutory criteria for determining whether an impairment is permanent
<b>C'wealth DVA</b>	<p>Permanent means likely to continue indefinitely — s68(1)(b)(ii)</p> <p>Impairment, in relation to a person, means the loss, the loss of the use, or the damage or malfunction, of any part of the person's body, of any bodily system or function, or of any part of such a system or function — s5</p>	<p>Deciding whether an impairment is likely to continue indefinitely — s73</p> <p>For the purposes of subparagraph 68(1)(b)(ii) and subparagraphs 71(1)(b)(ii) and (2)(a)(ii), in deciding whether an impairment suffered by a person is likely to continue indefinitely, the Commission must have regard to:</p> <ul style="list-style-type: none"> <li>(a) the duration of the impairment, and</li> <li>(b) the likelihood of improvement in the one or more service injuries or diseases concerned, and</li> <li>(c) whether the person has undertaken all reasonable rehabilitative treatment for the impairment, and</li> <li>(d) any other relevant matters.</li> </ul>
<b>New Zealand</b>	<p><i>Accident Compensation Act 2001</i> defines 'impairment as 'a loss, a loss of use, or derangement of any body part, organ system or organ function.'</p>	<p>Requires permanence and stability of condition being assessed by a medical practitioner after two years since the date of injury</p> <p>It requires a medical practitioner certifying that the claimant's condition has not stabilised, but it is likely that there is permanent impairment resulting from the injury</p>

**Table 3.11: Permanent impairment guides**

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
<b>New South Wales</b>	5th Edition	Modifier 1	<p>NSW Workers compensation guidelines for the evaluation of permanent impairment - fourth edition (Guidelines), modify several Chapters in AMA5.  Removed: Chapter 18 Pain.  Substituted:</p> <ul style="list-style-type: none"> <li>• Vision - AMA4</li> <li>• Psychiatric and Psychological Disorders - Chapter 11, Guidelines, and</li> <li>• Hearing - Chapter 9, Guidelines, with some reference to AMA5 (Chapter 11, pp 245–251), but uses National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.</li> </ul>	s376 1998 Act
<b>Victoria</b>	4th Edition	Designator 2	<ul style="list-style-type: none"> <li>• Statutory removal: Chapter 15 Pain.</li> <li>• Statutory Guideline Substitutions:</li> <li>• Chapter 9 s9.1a Hearing replaced with the Improved Procedures for Determination of Percentage Loss of Hearing (1988 Edition or later prescribed edition).</li> <li>• Chapter 14 Mental and Behavioural Disorders replaced with The Guide to the Evaluation of Psychiatric Impairment for Clinicians.</li> <li>• Omit from s3.3d of Chapter 3: 'with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment'.</li> <li>• Replaced with: the degree of impairment resulting from an injury must be made after the injury has stabilised and based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.</li> <li>• Specified assessments of spinal impairment are to specify the whole person values derived in accordance with s3.3 of Chapter 3 of the AMA Guides.</li> <li>• Statutory Guideline Extensions: <ul style="list-style-type: none"> <li>◦ Impairment Assessment in Workers with Occupational Asthma, and</li> <li>◦ Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases.</li> </ul> </li> </ul>	ss64 - 66 and s68 <i>Workplace Injury Rehabilitation and Compensation Act 2013</i>
<b>Queensland</b>	5th Edition	Modifier 1	<p>The <a href="#">Guidelines for Evaluation of Permanent Impairment</a> (the Queensland Guide) is Queensland's guide for assessing permanent impairment. It is predominantly based on AMA5. Note that:</p> <ul style="list-style-type: none"> <li>• Chapter 8, AMA4 applies to the assessment of permanent impairment of the visual system, subject to the modifications in the Queensland Guide.</li> <li>• evaluation of permanent impairment due to hearing loss adopts the methodology in the Queensland Guide (Chapter 9) based on AMA5 (Chapter 11, pp 245–251) and National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.</li> <li>• the AMA5 chapter on pain (Chapter 18) is excluded. Conditions associated with chronic pain are assessed on the basis of the underlying diagnosed condition. Where pain is commonly associated with a condition, an allowance is made in the degree of impairment under the Queensland Guide. Complex regional pain syndrome is assessed in accordance with Chapter 17 of the Queensland Guide.</li> </ul>	<i>Workers' Compensation and Rehabilitation Regulation 2014</i>
<b>Western Australia</b>	5th Edition	Modifier 1	<p>Removed: Chapter 18 AMA5 regarding assessment of pain is excluded.  Substituted:</p> <ul style="list-style-type: none"> <li>• Chapter 14 AMA5 — Mental and behavioural disorder replaced with chapter in WorkCover WA Guides on Psychiatric Impairment Rating Scale (PIRS)</li> </ul>	<p><i>Workers' Compensation and Injury Management Act 1981</i>  s146R WorkCover Guides</p> <p>WorkCover WA may issue directions with respect to the evaluation of degree of impairment:</p>

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
			<ul style="list-style-type: none"> <li>Chapter 18 AMA5 regarding assessment of pain is excluded</li> <li>Vision — based on AMA4, and</li> <li>Hearing loss — continues to be assessed based on s24A and s31E and Schedule 7 of the <i>Workers' Compensation and Injury Management Act 1981</i>.</li> </ul>	<ol style="list-style-type: none"> <li>The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under s100A for the purposes of this section</li> <li>The directions may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time, and</li> <li>ss41-44 of the Interpretation Act 1984 apply to the directions as if they were regulations.</li> </ol>
South Australia	5th Edition	Modifier 1	<p>Vision assessments based on AMA4.</p> <p>Evaluation of permanent impairment due to hearing loss adopts the methodology indicated in these guides (Chapter 9) with some reference to AMA5, but uses National Acoustic Laboratory (NAL) tables from the NAL report No 118, 'Improved procedure for determining percentage loss of hearing', January 1988.</p> <p>Pain (chapter 18, AMA5) and Mental and Behavioural Disorders (chapter 14, AMA5) are omitted as the Act excludes entitlement for psychiatric impairment (Refer to <a href="#">Impairment Assessment Guidelines</a>).</p>	The Impairment Assessment Guidelines are published in the South Australian Government Gazette under <a href="#">s22(4)</a> of the <i>Return to Work Act 2014</i>
Tasmania	4th Edition	Modifier 1	<p><a href="#">WorkCover Tasmania Guidelines for the Assessment of Permanent Impairment</a> modify several chapters in AMA4.</p> <p>Removed: Chapter 15 Pain.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>Chapter 7 of WorkCover Tasmania Guides (Mental and Behavioural Disorders) incorporating the Psychiatric Impairment Rating Scale (PIRS) is substituted for chapter 14 AMA4</li> <li>evaluation of hearing impairment adopts the methodology indicated in chapter 6 of WorkCover Tasmania Guides including the use of the National Acoustic Laboratory (NAL) Tables, Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988, and</li> <li>guidelines (and legislation) require the level of binaural hearing impairment to be converted to WPI.</li> </ul>	<i>Workers Rehabilitation and Compensation Act 1988</i> — <a href="#">s72(1)(a)</a>
Northern Territory	4th Edition	Designator 2	N/A	<i>Return to Work Act</i> — s70
Australian Capital Territory	5th Edition	Stand-alone (authorised by the Regs)	<p>WorkCover Guides for the Evaluation of Permanent Impairment (3rd Ed) modify several Chapters in AMA5 removed: Chapter 18 Pain. Vision. Chapter 14 Mental and Behavioural Disorders.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>AMA4 — Vision, and</li> <li>Chapter 11 — Psychiatric and Psychological Disorders.</li> <li>Evaluation of Permanent Impairment due to Hearing Loss adopts the methodology indicated in the WorkCover guides (Chapter 9) with some reference to AMA5 (Chapter 11, pp 245–251), but uses (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.</li> </ul>	Reg 5(1)(b) of the Workers' Compensation Regulation 2002 allows the Minister to approve medical guidelines
C'wealth Comcare	5th Edition	Stand-alone 3	<p>The Guide to the Assessment of the Degree of Permanent Impairment is a stand-alone document that was prepared for the Comcare scheme predominantly based on AMA5 but with modifications and some substitution.</p> <p>Substituted:</p> <ul style="list-style-type: none"> <li>Visual impairment is based on AMA4</li> <li>Psychiatric conditions assessed with reference to specific methodology</li> <li>Hearing impairment is assessed with reference to the National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988</li> </ul> <p>The Guide does provide for an assessment to be made with direct reference to AMA5 in the event that an</p>	<p><i>Safety Rehabilitation and Compensation Act 1988</i></p> <p>An 'approved guide' is defined by section 4 of the SRC Act as meaning:</p> <ol style="list-style-type: none"> <li>the document, prepared by Comcare in accordance with section 28 under the title '<i>Guide to the Assessment of the Degree of Permanent Impairment</i>', that has been approved by the Minister and is for the time being in force; and</li> <li>if an instrument varying the document has been approved by</li> </ol>

Edition of AMA	Format	Substituted/removed	Authorisation of the guide
		<p>employee's impairment cannot be assessed in accordance with the provision of Part 1 of the Guide, with exceptions. An assessment is not to be made using the American Medical Association's Guides to the Evaluation of Permanent Impairment for:</p> <ul style="list-style-type: none"> <li>• mental and behavioural impairments</li> <li>• impairments of the visual system</li> <li>• hearing impairment, or</li> <li>• chronic pain conditions except in the case of migraine or tension headaches.</li> </ul>	<p>the Minister – that document as so varied.</p> <p>Authority for the Guide rests in subsections 28(1), 28(2) and 28(3) of the SRC Act.</p>
<b>C'wealth Seacare</b>	5th Edition	<p>Stand-alone</p> <p>The Guide to the Assessment of the Degree of Permanent Impairment is a stand-alone document that was prepared for the Comcare scheme predominantly based on AMA5 but with modifications and some substitution. Substituted:</p> <ul style="list-style-type: none"> <li>• Visual impairment is based on AMA4</li> <li>• Psychiatric conditions assessed with reference to specific methodology</li> <li>• Hearing impairment is assessed with reference to the National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988</li> </ul> <p>The Guide does provide for an assessment to be made with direct reference to AMA5 in the event that an employee's impairment cannot be assessed in accordance with the provision of Part 1 of the Guide, with exceptions. An assessment is not to be made using the AMA Guides to the Evaluation of Permanent Impairment for:</p> <ul style="list-style-type: none"> <li>• mental and behavioural impairments</li> <li>• impairments of the visual system</li> <li>• hearing impairment, or</li> <li>• chronic pain conditions except in the case of migraine or tension.</li> </ul>	<p><i>Seafarers' Rehabilitation and Compensation Act (1992)</i></p> <p>An 'approved guide' is defined by section 3 of the Seafarers Act as meaning:</p> <ul style="list-style-type: none"> <li>a) the document, prepared by the Authority in accordance with section 42 under the title 'Guide to the Assessment of the Degree of Permanent Impairment', that has been approved by the Minister and is for the time being in force; and</li> <li>b) if an instrument varying the document has been approved by the Minister – that document as so varied.</li> </ul> <p>Authority for the Guide rests in subsections 42(1), 42(2) and 42(3) of the Seafarers Act</p>
<b>C'wealth DVA</b>	4th Edition	<p>Stand-alone 4</p> <p>Substituted in whole</p>	<p>Impairment points of a person means the points worked out for the person using the guide determined under s67 — (s5)</p> <p>The Commission may determine, in writing, a guide setting out:</p> <ul style="list-style-type: none"> <li>a) criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease, and</li> <li>b) methods by which the degree of that impairment can be expressed in impairment points on a scale from 0 to 100, and</li> <li>c) criteria to be used in assessing the effect of a service injury or disease on a person's lifestyle, and</li> <li>d) methods by which the effect of a service injury or disease on a person's lifestyle can be expressed as a numerical rating, and</li> <li>e) methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease can be used to determine the compensation payable to the person under this Part by reference to the maximum compensation that can be payable to a person under this Part. — s67(1).</li> </ul>
<b>New Zealand</b>	4th Edition	<p>Designator 2 Modifier 1</p> <p>AMA4 ACC User Handbook – this takes precedence over the AMA4</p>	<p>Injury Prevention, Rehabilitation, and Compensation (Lump Sum and Independence Allowance) Regulations 2002</p> <p>Assessment tool for assessing eligibility for lump sum payments and independence allowance</p> <p>Assessment of a person's whole-person impairment, for the purposes of determining the person's eligibility to receive lump sum compensation or an independence allowance, must be carried out by</p>



	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
				<p>an assessor using the assessment tool prescribed by subclause (2).</p> <p>(1) The assessment tool comprises:</p> <p>a) the AMA Guides to the Evaluation of Permanent Impairment (Fourth Edition), and b) the ACC User Handbook to AMA4.</p> <p>(2) The ACC User Handbook to AMA4 prevails if there is a conflict between it and the AMA4 Guides to the Evaluation of Permanent Impairment.</p>

1. Modifier refers to an edition of the AMA Guide that is attached with additional instructions for assessors and which acts to modify the AMA Guides or chapters. Schemes applying this modified approach publish separate guidelines to clarify the key points of divergence for doctors. The authority for these documents is contained in the legislation or its associated regulations.
2. Designator refers to an edition of the AMA Guide which is designated by legislation as the Guide to be followed. Depending on the particular scheme, the designated Guide may also be a modifier (see above).
3. Unlike other schemes, Comcare amalgamates modifications to AMA5 (as noted in this table) in a stand-alone document known as the Guide to the Assessment of the Degree of Permanent Impairment. s28 of the SRC Act is also unique in that it does not designate the use of AMA produced guidelines for assessment purposes.
4. [Guide to Determining Impairment and Compensation](#) (GDIC) does not allow recourse to the AMA Guides in the event that impairment cannot be measured under GDIC

**Table 3.12: Discounting of prior conditions**

Threshold test		Waiting period	Permits discounting?
<b>New South Wales</b>	<p>For exempt workers: Police officers, fire fighters, paramedics, volunteers under the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i>, and workers injured while working in or around a coal mine:</p> <p>&gt;0% WPI, except for: 15% WPI for psychiatric and psychological impairment, and 6% binaural hearing loss for hearing loss claims.</p> <p>Entitlement to pain and suffering payment:</p> <p>10% WPI for physical injuries, and</p> <p>15% WPI for psychiatric and psychological injuries.</p> <p>Entitlement to claim under Common Law: 15% WPI.</p> <p>All other workers for permanent impairment claims made on and from 19 June 2012.</p> <p>&gt;10% WPI, except for:</p> <p>15% WPI for psychiatric and psychological impairment.</p> <p>Entitlement to claim under Common Law: 15% WPI.</p> <p>Discounting of prior conditions is one tenth of the assessed impairment unless this is at odds with available evidence.</p>	No waiting period	Yes
<b>Victoria</b>	<p>10% WPI for physical injuries (5% for Chapter 3 musculoskeletal impairments)</p> <p>10% for hearing loss (no threshold for further hearing loss claims if 10% threshold previously breached)</p> <p>30% WPI for psychiatric impairment — not arising secondary to physical injury</p>	Minimum of 12 months or when condition has stabilised	Apportionment
<b>Queensland</b>	5% DPI for hearing loss (s125)	No waiting period	Yes
<b>Western Australia</b>	>0% WPI, except for: 10% WPI for initial noise induced hearing loss (NIHL) and 5% for subsequent NIHL	No waiting period	—
<b>South Australia</b>	<p>In relation to lump sum payments for non-economic loss, section 58(2) provides an entitlement does not arise under this section if the worker's degree of whole person impairment from physical injury is less than 5%.</p> <p>The economic loss lump sum is only available to workers whose whole person impairment is assessed between 5% and 29%. Seriously injured workers with a whole person impairment of 30% or more cannot receive an economic loss lump sum but receive income support until retirement age or until otherwise lawfully discontinued under the <i>Return to Work Act 2014</i>.</p> <p>Psychiatric disorders to be assessed separately from physical injuries.</p> <p>For assessment of psychiatric impairment AMA5 chapter 14 is excluded and replaced by Chapter 16 <a href="#">Impairment Assessment Guidelines</a></p>	A worker cannot be assessed until the injury has stabilised [s122(6)(a)]	Yes
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>% WPI for physical injuries with the exception of loss of part or all of a finger or toe — <a href="#">s71</a></li> <li>&gt;0% WPI for loss of all or part of a finger or toe — <a href="#">s71(1)(d)</a></li> </ul>	—	—

Threshold test		Waiting period	Permits discounting?
	<ul style="list-style-type: none"> <li>10% WPI for psychiatric impairment — <a href="#">s71(2)(a)</a></li> <li>5% for binaural hearing impairment caused by industrial deafness — <a href="#">s72A</a></li> </ul>		
<b>Northern Territory</b>	5% WPI. <ul style="list-style-type: none"> <li>If the impairment is 5–14% WPI, the compensation payable is calculated on a sliding scale.</li> <li>Impairments of 15– 84% WPI attract a benefit equal to the actual percentage given</li> <li>&gt;85% WPI receives maximum entitlement</li> </ul>	No waiting period	Apportionment
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>0% (no threshold).</li> <li>6% threshold for hearing loss (boilermaker's deafness)</li> </ul>	Two years from date of Injury or earlier if worker has leave from the Magistrates Court or the Injury has stabilised. Injury is taken to have stabilised if the worker has returned to pre-injury weekly hours for a period of at least three months.	Yes
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>10% WPI</li> <li>5% binaural hearing</li> <li>&gt;0% Finger/toe, taste/smell</li> <li>Must qualify for PI to qualify for non-economic loss payment</li> </ul>	No waiting period	No direct apportioning or discounting
<b>C'wealth Seacare</b>	<ul style="list-style-type: none"> <li>10% WPI</li> <li>10% hearing</li> <li>&gt;0% Finger/toe, taste/smell</li> <li>Must qualify for PI to qualify for non-economic loss payment</li> </ul>	No waiting period	No direct apportioning or discounting
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>Initial compensation — 10 impairment points (IP)</li> <li>5 IPs hearing, fingers, toes, taste, and smell</li> <li>Additional compensation — 5 IPs</li> </ul>	No waiting period	Yes — apportionment
<b>New Zealand</b>	10%	<ul style="list-style-type: none"> <li>Independence allowance: Claimant suffered personal injury on or after 1 April 1974. At least one year after the date of the injury or condition has stabilised</li> <li>Lump sums: Claimant suffered personal injury on or after 1 April 2002. At least 2 years after day of the injury or condition stabilised</li> </ul>	Yes — apportionment

# Exclusionary provisions

## Exclusionary provisions — general

Most jurisdictional workers' compensation legislation contains exclusionary provisions. These provisions set out certain circumstances in which workers' compensation will be denied. Exclusionary provisions apply to ensure that people who exhibit reckless or wilful behaviour in the workplace are excluded from receiving workers' compensation benefits. If an injury is caused by the serious and wilful misconduct of a worker, but results in death or serious and permanent impairment, workers' compensation will usually be payable. Table 3.13 shows the general exclusionary provisions in each jurisdiction.

## Exclusionary provisions for psychological injuries

Statutory threshold requirements for psychological injuries vary significantly from physical injuries. To be eligible for compensation, the claimant of a psychological injury must be able to demonstrate that the injury was not related to any reasonable action taken by their employer in relation to a dismissal, retrenchment, transfer, performance appraisal, demotion, disciplinary action or deployment.

In addition to these criteria, the claimant must also meet the designated impairment threshold for psychological injury. There are also significant differences in the way in which each jurisdiction assesses psychological impairment. Table 3.14 lists the exclusionary provisions for psychological injuries.

**Table 3.13: Exclusionary provisions (general)**

Exclusionary provisions	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>If it is proved that an injury to a worker is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that injury, unless the injury results in death or serious and permanent disablement — s14(2), 1987 Act</li> <li>No compensation is payable in respect of any injury to or death of a worker caused by an intentional self-inflicted injury — s14(3), 1987 Act</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted there is no entitlement to compensation in respect of that injury — s40(4)</li> <li>Subject to s42, s43 and s44, if it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including, but not limited to, being under the influence of intoxicating liquor, or a drug) there is no entitlement to compensation in respect of that injury, unless the injury results in death or severe injury (as defined) — s40(5) and s40(6)</li> <li>ss42 - 44 apply where a worker's incapacity for work results from or is materially contributed to by an injury caused by a transport accident involving a motor vehicle driven by the worker if the worker is convicted of drink or drug driving offences to reduce a worker's weekly payments for 130 weeks or to disentitle the worker to compensation under the Act if the offence is also a serious offence except where the injury results in death or severe injury</li> <li>If it is proved that before commencing employment an employer in writing requested that the worker disclose all pre-existing injuries and diseases, and the worker did not disclose the information, compensation is not payable for any recurrence, aggravation, acceleration, exacerbation or deterioration — s41</li> </ul>
<b>Queensland</b>	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>for an injury sustained by a worker if the injury is intentionally self-inflicted — s129</li> <li>for an injury caused by the serious and wilful misconduct of the worker, unless it results in death or injury and/or could result in a degree of permanent impairment (DPI) of 50% or more — s130(1)</li> <li>if the injury, caused by misconduct, could result in DPI of 50% or more arising from a psychiatric or psychological injury or combining a psychiatric or psychological injury and another injury — s130(2)</li> </ul> <p>If the worker knowingly supplies false or misleading information about a pre-existing condition to a prospective employer, the entitlement to compensation and damages for any event that aggravates the condition ends — s 571C</p>
<b>Western Australia</b>	<p>If it is proved that the injury of a worker is attributable to their:</p> <ol style="list-style-type: none"> <li>voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties</li> <li>failure, without reasonable excuse, proof of which is on them, to use protective equipment, clothing or accessories provided by their employer for the worker's use, or</li> <li>other serious and wilful misconduct any compensation claimed in respect of that injury shall be disallowed unless the injury has serious and permanent effects or results in death — s22</li> </ol> <p>Compensation is not payable to a person while participating as a contestant, engaged in training or preparation for participating, or engaged in promotional activities or engaged in regular journeys in any sporting activity — s11</p>
<b>South Australia</b>	<p>Under section 8(2) compensation is not payable if the injured worker is:</p> <ul style="list-style-type: none"> <li>guilty of serious and wilful misconduct or in contravention of their employer's instruction (except in the case of death or permanent total incapacity), or</li> <li>it is established on the balance of probabilities that the injury is predominantly attributable to serious and wilful misconduct or the influence of alcohol or an illegal drug (except in the case of death or serious and permanent injury)</li> </ul>
<b>Tasmania</b>	<p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>if the injury is attributable to the serious and wilful misconduct of the worker, unless it results in death or serious and permanent incapacity, or</li> <li>if the injury is an intentional self-inflicted injury, or</li> <li>for any disease where the worker has wilfully and falsely represented themselves in writing as not having suffered from the disease — s25</li> </ul>
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>Compensation not payable in respect of an injury to a worker that was deliberately self-inflicted; or (not being an injury resulting in the worker's death or permanent or long term capacity) attributable to the worker's serious or wilful misconduct — s57</li> <li>A worker is not entitled to compensation in respect of an injury sustained whilst driving a motor vehicle, after consuming alcoholic liquor which materially contributed to the accident and injury, or while under the influence of a drug. Where concentration of alcohol at the time of the accident was equal to 80 milligrams or more of alcohol per 100 milligrams of blood, the consumption of the alcoholic liquor shall be presumed to have materially contributed to the accident and injury, unless proven otherwise. This does not affect the entitlement to compensation if the injury results in death, or medical, surgical or rehabilitation treatment — s60</li> <li>Weekly compensation is not payable in respect of any period during which the worker is imprisoned (some exceptions) — s65A</li> </ul>
<b>Australian Capital</b>	<p>Compensation is not payable if the injury to, or death of, the worker is caused by:</p>

Exclusionary provisions	
<b>Territory</b>	<ul style="list-style-type: none"> <li>an intentionally self-inflicted injury — s82(2)</li> <li>the worker's serious and wilful misconduct, unless the injury results in the death or serious and permanent disablement — s82(3). (a) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if at the time of the injury the worker was under the influence of alcohol or prescription drugs, unless the alcohol or drug did not contribute to the injury or was not consumed or taken voluntarily — s82(4)(a); (b) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if the injury was otherwise attributable to the serious and wilful misconduct of the worker — s82(4)(b)</li> <li>the worker being imprisoned — s83, or</li> <li>his or her engagement in professional sporting activity — s84</li> </ul>
<b>C'wealth Comcare</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>any period during which the worker is imprisoned — s23(2)</li> <li>any injury, disease or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment — s5A(1), reasonable administrative action defined in s5A(2)</li> <li>a disease, if the employee, for the purposes connected with his/her employment or proposed employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease — s7(7)</li> <li>an injury that is intentionally self-inflicted — s14(2)</li> <li>an injury that is caused by the serious and wilful misconduct of the worker, but is not intentionally self inflicted, unless the injury results in death, or serious and permanent impairment: — s14(2) and s14(3) (note that an amendment is before Parliament to provide that no injury caused by serious and wilful misconduct of the worker will be compensable), or</li> <li>where the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury — s6(3)</li> </ul>
<b>C'wealth Seacare</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>any period during which the employee is imprisoned — s38(3)</li> <li>an injury that is intentionally self-inflicted — s26(2)</li> <li>any injury, disease or aggravation suffered as a result of reasonable disciplinary action taken against the employee, or failure to by the employee to obtain a promotion, transfer or benefit in connection with his or her employment — s3 definition of Injury</li> <li>an injury caused by the serious and wilful misconduct of the worker, unless the injury results in death, or serious and permanent impairment — s12 and s26(3)</li> <li>where an employee made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease — s10(7), or</li> <li>where the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury — s9(4)</li> </ul>
<b>C'wealth DVA</b>	<p>Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> <li>an injury or disease that results from the person's serious default or wilful act except if the injury or disease results in a serious and permanent impairment — MRCA s32</li> <li>an injury or disease that results from reasonable and appropriate counselling or failure to obtain a promotion, transfer or benefit in relation to a person's service as a member — MRCA s33</li> <li>a wilful and false representation in connection with service or proposed service that not suffering the injury or disease — MRCA s34</li> <li>an injury, disease, or death that results from a substantial delay commencing journey, routes that are not reasonably direct, and substantial interruptions to journeys — MRCA s35, or</li> <li>injury, disease, or death that results from the use of tobacco products — MRCA s36</li> </ul>
<b>New Zealand</b>	<p>Personal injury does not include:</p> <ul style="list-style-type: none"> <li>a cardio-vascular or cerebro-vascular episode unless 20(2)(i) or (j) applies</li> <li>personal injury caused wholly or substantially by the aging process, or</li> <li>personal injury to teeth or dentures caused by the natural use of those teeth or dentures s26(4)</li> </ul> <p>Compensation is not payable:</p> <ul style="list-style-type: none"> <li>where the injury or death is due to suicide or wilfully self-inflicted injury — s119</li> <li>where the claimant became entitled to it because of the death of another person and they have been convicted in New Zealand or another country of the murder of the person — s120</li> <li>where the claimant is in prison — s121, or</li> <li>where the claimant was injured committing an offence for which they are imprisoned and that offence is punishable by a maximum term of imprisonment of 2 years or more — s122</li> </ul>

**Table 3.14: Exclusionary provisions for psychological injuries**

Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
<p><b>New South Wales</b></p> <p>'No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.' — s11A(1), 1987 Act.</p> <ol style="list-style-type: none"> <li>(1) No compensation is payable under this Division in respect of permanent impairment that results from a secondary psychological injury.</li> <li>(2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury.</li> <li>(3) No compensation is payable under this Division in respect of permanent impairment that results from a primary psychological injury unless the degree of permanent impairment resulting from the primary psychological injury is at least 15%.</li> </ol> <p>Note: If more than one psychological injury arises out of the same incident, s322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment.</p> <ol style="list-style-type: none"> <li>(4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation under this Division in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply: <ol style="list-style-type: none"> <li>a) the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury (despite s65(2))</li> <li>b) the worker is entitled to receive compensation under this division for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker under this Division (and is not entitled to receive compensation under this Division for impairment resulting from the other injury), and</li> <li>c) the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission.</li> </ol> </li> </ol> <p>Note: If there is more than one physical injury those injuries will still be assessed together as one injury under s322 of the 1998 Act but separately from any psychological injury. Similarly, if there is more than one psychological injury, those psychological injuries will be assessed together as one injury, but separately from any physical injury — s65A, 1987 Act.</p>	<p>15% WPI for a primary psychological injury</p>	<p>Chapter 11 NSW Workers compensation guidelines for the evaluation of permanent impairment – fourth edition using the Psychiatric Impairment Rating Scale (PIRS)</p>
<p><b>Victoria</b></p> <p>There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominately by any one or more of the following:</p> <ol style="list-style-type: none"> <li>a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer, or</li> <li>b) a decision of the worker's employer, on reasonable grounds, to take, or not to take any management action, or</li> <li>c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action, or</li> <li>d) an application under s81B of the <i>Local Government Act 1989</i>, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of Clause 15 Schedule 1 — s40(1)</li> </ol> <p>In s40(7), management action, in relation to a worker, includes, but is not limited to, any one or more of the following:</p> <ol style="list-style-type: none"> <li>a) appraisal of the worker's performance</li> <li>b) counselling of the worker</li> <li>c) suspension or stand-down of the worker's employment</li> <li>d) disciplinary action taken in respect of the worker's employment</li> <li>e) transfer of the worker's employment</li> <li>f) demotion, redeployment or retrenchment of the worker</li> <li>g) dismissal of the worker</li> <li>h) promotion of the worker</li> <li>i) reclassification of the worker's employment position</li> </ol>	<p>30% WPI — not arising secondary to physical injury</p>	<p><a href="#">The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC).</a></p>

Exclusionary provisions for psychological injuries		Impairment threshold	Diagnostic methodology of assessment
	<ul style="list-style-type: none"> <li>j) provision of leave of absence to the worker</li> <li>k) provision to the worker of a benefit connected with the worker's employment</li> <li>l) training a worker in respect of the worker's employment</li> <li>m) investigation by the worker's employer of any alleged misconduct: <ul style="list-style-type: none"> <li>(i) of the worker; or</li> <li>(ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness; or</li> </ul> </li> <li>n) communication in connection with an action mentioned in any of the above paragraphs — s40(7).</li> </ul>		
<b>Queensland</b>	<p>For a psychiatric or psychological disorder, employment must be the major significant contributing factor – s32(1)</p> <p>An injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances:</p> <ul style="list-style-type: none"> <li>a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment</li> <li>b) the worker's expectation or perception of reasonable management action being taken against the worker, and</li> <li>c) action by the Regulator or an insurer in connection with the worker's application for compensation.</li> </ul> <p>Reasonable management actions include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker, a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment — s32(5).</p>	None	The <a href="#">Guidelines for Evaluation of Permanent Impairment</a> are used to assess the degree of permanent impairment
<b>Western Australia</b>	<p>Treatment of stress for compensation purposes.</p> <ul style="list-style-type: none"> <li>• Compensation is not payable for diseases caused by stress if the stress wholly or predominately arises from the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment, or the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to employment or a worker's expectation of a matter or decision unless it is considered to be unreasonable or harsh on the part of the employer — s5(4)</li> </ul> <p>Treatment of secondary conditions in assessment of impairment.</p> <ul style="list-style-type: none"> <li>• Secondary conditions are not included for the purposes of assessing impairment for common law, specialised retraining programs or payments of additional medical expenses.</li> </ul> <p>'Secondary condition' means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.</p>		For impairment assessment only: WorkCover WA Guidelines 4th ed. Psychiatric Impairment Rating Scale (PIRS)
<b>South Australia</b>	<p>In the case of psychiatric injury, it must arise out of or in the course of employment and the employment must be the significant contributing cause of the injury.</p> <p>The injury must not arise wholly or predominantly from any action of decision designated under section 7(4), which includes:</p> <ul style="list-style-type: none"> <li>(i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment;</li> <li>(ii) on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment;</li> <li>(iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment;</li> <li>(iv) reasonable action taken in a reasonable manner under the Act affecting the worker <a href="#">s7</a>.</li> </ul>	30% WPI to be regarded as seriously injured for the purposes of the <i>Return to Work Act 2014</i>	Chapter 14 of the Return to Work Scheme Impairment Assessment Guidelines
<b>Tasmania</b>	<p>Compensation is not payable in respect of a disease which is an illness of the mind or a disorder of the mind and which arises substantially from:</p> <ul style="list-style-type: none"> <li>(i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment</li> <li>(ii) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment</li> </ul>		



Exclusionary provisions for psychological injuries		Impairment threshold	Diagnostic methodology of assessment
	<ul style="list-style-type: none"> <li>(iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment</li> <li>(iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action, or</li> <li>(v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker — <a href="#">s25(1A)</a>.</li> </ul>		
<b>Northern Territory</b>	A mental injury is not an injury if due to management action taken on reasonable grounds and in a reasonable manner - s3A(2). See s3(1) for definition of 'management action'.	None	N/A
<b>Australian Capital Territory</b>	A Mental Injury (including stress) does not include a mental injury (including stress) that is completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker — s4(2).	0% WPI	—
<b>C'wealth Comcare</b>	Compensation is not payable in respect of an injury (being a disease) if the injury is: <ul style="list-style-type: none"> <li>a) due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment s5A(1) — a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5A(2)</li> <li>b) intentionally self-inflicted — s14(2)</li> <li>c) a disease, or an aggravation of a disease, which the employee had made a wilful and false representation that he or she did not suffer, or had not previously suffered, for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation — s7(7).</li> </ul>	10% WPI	Comcare Guide Edition 2.1, Chapter 5
<b>C'wealth Seacare</b>	Compensation is not payable in respect of an injury (being a disease) if the injury is: <ul style="list-style-type: none"> <li>a) due to reasonable disciplinary action or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment s3</li> <li>b) intentionally self-inflicted — s26(2)</li> <li>c) a disease, or an aggravation of a disease, which the employee made a wilful and false representation that he or she did not suffer, or had not previously suffered from that disease, for the purposes connected with his or her employment — s10(7).</li> </ul>	10% WPI	Seacare Authority Guide 2.1, Chapter 5
<b>C'wealth DVA</b>	Psychological injuries are not treated any differently than other injuries or diseases	Initial compensation — 10 impairment points (IP)	Additional compensation — 5 IPs <a href="#">As per Chapter 4 'Emotional and Behavioural', GARP V (M)</a>
<b>New Zealand</b>	Cover does not exist for mental injuries if the mental injury is not caused by physical injuries — s26(1)(c), the result of a sudden traumatic event — s21B, or as a consequence of certain criminal acts — s21		

## Cross-border provisions

Workers' compensation schemes vary significantly between jurisdictions, which can lead to confusion for employers and workers. All jurisdictions have acknowledged this and, where applicable, have implemented cross-border provisions that are based on the National Cross-Border Model developed by Heads of Workers' Compensation Authorities. Cross-border provisions provide coverage for workers who travel to or work temporarily in different jurisdictions, as long as workers meet a 'state of connection' test.

An injured worker's state or territory of connection is determined by the following tests:

- Test A — the territory or state in which the worker usually works in that employment, or
- Test B — if not identified through (A) — the territory or state in which the worker is usually based for the purposes of that employment, or
- Test C — if not identified through (A) or (B) — the territory or state in which the employer's principal place of business in Australia is located.

If no state of connection can be determined for a worker and a worker is not entitled to compensation for the same matter under the laws of a place outside Australia, a worker's employment is connected with the state where the injury occurred.

These tests are hierarchical, so if the first test does not provide an answer, the next test is applied until the worker's status is determined. Special arrangements apply for workers on ships and a safety net also applies. Table 3.15 shows the status of implementation of the national cross-border model in each jurisdiction.

**Table 3.15: Cross border provisions**

Cross border provisions	
<b>New South Wales</b>	National cross-border model implemented on 1 January 2006 In March 2012 NSW harmonised its cross-border guidance material with the national cross-border guidance material
<b>Victoria</b>	National cross-border model implemented from 1 September 2004 Effective from 1 July 2005, Victorian legislation imposed a Victorian premium liability on employers only in respect of workers who are connected with Victoria as defined. Victoria published the guideline " <a href="#">Premium Guideline Interstate Workers</a> " in August 2016
<b>Queensland</b>	National cross-border model implemented as at 1 July 2003
<b>Western Australia</b>	National cross-border model implemented 22 December 2004
<b>South Australia</b>	National cross-border model implemented as at 1 January 2010 (see <a href="#">s10</a> of the Act)
<b>Tasmania</b>	National cross-border model implemented from December 2004
<b>Northern Territory</b>	National cross-border model implemented from 26 April 2007 — <a href="#">Cross-Border Guide</a>
<b>Australian Capital Territory</b>	National cross-border model implemented on 3 June 2004 Legislation updated November 2014
<b>C'wealth Comcare</b>	There are no formal cooperative arrangements with other jurisdictional compensation authorities as the Commonwealth scheme does not operate on a geographical basis
<b>C'wealth Seacare</b>	State/Territory compensation schemes have no application if Seafarers Act applies
<b>C'wealth DVA</b>	N/A
<b>New Zealand</b>	The ACC Scheme covers New Zealand residents injured outside of New Zealand if they have been or remain absent for less than six months or intend to be absent for less than six months



# **Chapter 4: Benefits**



## Benefits

Once it is established that an injured worker is entitled to workers' compensation, the next step is to determine the type and amount of benefits the worker is entitled to receive. The benefits an injured worker receives should assist them financially while they are recovering from their injury, as well as helping them to return to their pre-injury employment in a timely, safe and durable manner through rehabilitation and other necessary support.

The types of benefits that an injured worker may receive include:

- income replacement payments
- costs of medical and hospital treatment
- permanent impairment entitlements
- death entitlements, and
- other benefits.

### Income replacement

Income replacement payments (generally known as weekly payments) are periodic payments that are usually calculated on the basis of the worker's pre-injury earnings. While income replacement payments aim to substitute fairly the lost earnings of an injured worker, there are limits to entitlements depending on the degree of incapacity. Income replacement payments are 'stepped down' by a percentage or to a set amount for workers who cannot earn an income because of a work related injury.

All jurisdictions index income replacement amounts notionally to keep pace with increases in average incomes, although the amounts and timing of indexation vary.

An injured worker may elect to receive a one off lump sum payment, which replaces the worker's ongoing weekly income replacement payments. This type of payment needs to be agreed by the injured worker and the insurer and can be referred to as settlement, redemption or commutation payment. There may be criteria that need to be met in order for an injured worker to receive a lump sum settlement payout. If an injured worker elects to receive a lump sum payment, the insurer's liability and weekly income replacement benefits cease, but in some jurisdictions this payment does not affect medical and like expenses.

Income replacement arrangements differ across all of the workers' compensation jurisdictions. Table 4.1 shows the income replacement arrangements in each jurisdiction.

### Medical, hospital and other costs

Payment of medical and hospital costs assists workers in their recovery from injury by providing necessary rehabilitation and medical services. Most workplace injuries will require some form of medical assistance and there are instances where the worker requires hospital admission due to the severity of the injury. Workers' compensation schemes cover medical, hospital and allied health expenses. In some cases payments are also made for other services such as home help, attendant care and vehicle or home modifications. Table 4.2 outlines medical, hospital and other costs by jurisdiction.

### Permanent impairment payments

In most cases injured workers make a full recovery from their injury, but there are instances where an injury sustained by a worker is permanent. In these situations, an injured worker may be entitled to permanent impairment benefits, which are awarded in addition to income replacement payments. Permanent impairment payments are a lump sum payment for each impairment sustained to cover non-economic loss. Table 4.3 shows permanent impairment payments in each jurisdiction.

### Death entitlements

In the event that a workplace injury results in death, all jurisdictions provide access to death entitlements. A spouse or dependant of a worker that died in a work related incident may be entitled to certain payments, which can assist the family with funeral costs and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions. Table 4.4 outlines death

entitlements in each jurisdiction and table 4.5 outlines the treatment of spouse and dependants for death entitlements.

### **Common law access**

Before the introduction of statutory workers' compensation schemes, injured workers had to sue their employers under common law to receive any benefits. If an injured worker had a cause of action, they were entitled to bring such an action and were entitled to a wide variety of damages, and there were no caps placed on the amount of damages they could receive. Each case was decided on its individual merits and there was no guarantee of success, unlike statutory entitlements that are fixed in law. However, with the introduction of statutory 'no-fault' workers' compensation schemes, and with the benefit of reducing costs for all parties involved, access to common law has been significantly restricted. Some jurisdictions have:

- abolished the right to access common law, or
- introduced threshold tests, and/or
- 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.

Despite these restrictions, some injured workers still want to pursue common law. If an injured worker elects to pursue common law, they may have to reimburse their employer or the compensation authority for any statutory benefits paid out. Table 4.6 outlines the access to common law in each jurisdiction.

### **Suspension and cessation of benefits**

Compensation and rehabilitation of injured workers impose mutual obligations on insurers, employers and employees. Payments may be suspended or ceased if certain obligations are not met by the injured worker. Table 4.7 lists the provisions in legislation that may result in compensation being ceased or suspended until certain conditions are met.

### **Settlement of future incapacity benefits**

Some jurisdictions provide for settlement of future incapacity payment entitlements to injured workers, on the basis that certain criteria are met. These payments (often referred to as redemptions or commutations) are paid out as a settlement payment by the relevant Authority, which may include provisions that the injured worker can no longer claim benefits for their injury. Table 4.8 provides information on the settlement provisions in each jurisdiction.

**Table 4.1: Income replacement**

Calculation	Settlement, redemption, commutation
<p><b>New South Wales</b></p> <p>Part 3, Div 2 (1987 Act).</p> <p>No current work capacity *</p> <p>First 13 weeks – lesser of:</p> <ul style="list-style-type: none"> <li>95 % pre-injury average weekly earnings (PIAWE) minus the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2 042.80) minus any deductible amount.</li> </ul> <p>14-130 weeks – lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus the value of any deductible amount, or</li> <li>the maximum weekly compensation (\$2 042.80) minus any deductible amount.</li> </ul> <p>Notes:</p> <ul style="list-style-type: none"> <li>Workers will be subject to work capacity assessments at any point throughout the duration of the claim to gather information about the workers ability to return to work in pre-injury employment or suitable employment.</li> <li>After one year, overtime and shift allowance are excluded from PIAWE.</li> </ul> <p>131 – 260 weeks:</p> <p>A worker has no entitlement to weekly payments after receiving weekly payments for 130 weeks unless:</p> <ul style="list-style-type: none"> <li>the insurer has made an assessment that they have no current work capacity and this is likely to continue indefinitely</li> </ul> <p>Weekly payments are the lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2016.10) minus any deductible amount.</li> </ul> <p>Workers will be subject to a work capacity assessment at least every two years.</p> <p>After 260 weeks (five years)</p> <p>Weekly payments will cease except for:</p> <ul style="list-style-type: none"> <li>workers who are determined to be workers with high needs (greater than 20% permanent impairment) and meet the requirements of s38 of the 1987 Act.</li> </ul> <p>Weekly payments are the lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2042.80) minus any deductible amount.</li> </ul> <p>Workers will be subject to a work capacity assessment at least every two years.</p> <p>Current work capacity*</p> <p>First 13 weeks – lesser of:</p> <ul style="list-style-type: none"> <li>95% PIAWE minus earnings** and the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2042.80) minus earnings and the value of any deductible amount.</li> </ul> <p>14 - 130 weeks</p> <p>Working 15 hours or more per week, the lesser of:</p> <ul style="list-style-type: none"> <li>95% PIAWE minus earnings and the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2 042.80) minus earnings and the value of any deductible amount.</li> </ul> <p>Working less than 15 hours per week, the lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus earnings and the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2042.80) minus earnings and the value of any deductible amount.</li> </ul>	<p>A liability in respect of an injury may be commuted to a lump sum with the agreement of the worker. A commutation is a lump sum paid by the insurer on behalf of the employer, the receipt of which brings to an immediate end all future entitlements to weekly benefits, hospital, medical and related treatment and rehabilitation expenses in respect of that injury. A commutation is only available if the following pre-conditions are met:</p> <ul style="list-style-type: none"> <li>the injured worker has a permanent impairment of at least 15% WPI</li> <li>compensation for that permanent impairment has been paid</li> <li>the worker is currently eligible for ongoing weekly benefits and must have received weekly benefits regularly and periodically during the previous six months</li> <li>it is more than two years since worker first claimed compensation</li> <li>injury management and return to work opportunities have been exhausted, and</li> <li>weekly benefits have not been stopped or reduced as a result of the worker not complying with their return to work obligations - s87EA, 1987 Act.</li> </ul> <p>Prior to receiving a commutation:</p> <ul style="list-style-type: none"> <li>the worker must receive and understand independent legal advice and be advised of the desirability of obtaining independent financial advice</li> <li>the insurer, and worker must agree with the commutation</li> <li>SIRA must certify the commutation meets the preconditions, and</li> <li>all agreements must be registered with the Workers' Compensation Commission [section 87F 1987 Act]</li> </ul> <p>There is no entitlement to commute weekly benefits for workers under the Workers' Compensation (Dust Diseases) Act 1942 however dependant entitlements may be redeemed.</p>

Calculation	Settlement, redemption, commutation
<p>Workers will be subject to work capacity assessments at any point throughout the duration of the claim to gather information about their ability to return to work in pre-injury employment or suitable employment.</p> <p>131 to 260 weeks</p> <p>A worker has no entitlement to weekly payments after receiving weekly payments for 130 weeks unless:</p> <ul style="list-style-type: none"> <li>the worker has completed an <a href="#">'Application for continued weekly payments after 130 weeks: Form'</a> with their insurer, and</li> <li>the worker is working 15 hours or more per week and earning at least \$176 per week and has been assessed by the insurer as indefinitely incapable of undertaking further employment to increase their earnings, and</li> <li>it is determined that the worker is a worker with high needs (more than 20% permanent impairment.)</li> </ul> <p>Weekly payments are the lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus earnings and the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2042.80) minus any earnings and the value of any deductible amount.</li> </ul> <p>Except for workers with highest needs, workers will be subject to a work capacity assessment at least every two years.</p> <p><u>After 260 weeks (five years)</u></p> <p>Weekly payments will cease, except for:</p> <ul style="list-style-type: none"> <li>workers with greater than 20% permanent impairment who meet the requirements of s38, 1987 Act.</li> </ul> <p>Weekly payments are the lesser of:</p> <ul style="list-style-type: none"> <li>80% PIAWE minus earnings or the amount and the value of any deductible amount, or</li> <li>the maximum weekly compensation amount (\$2042.800) minus any earnings and the value of any deductible amount.</li> </ul> <p>*Claims by the following exempt workers continue to be managed and administered as though the June 2012 changes never occurred and the above weekly payment regime does not apply:</p> <ul style="list-style-type: none"> <li>police officers, paramedics and firefighters</li> <li>workers injured while working in or around a coal mine</li> <li>bush fire and emergency service volunteers, and</li> <li>people with a dust disease claim under the Workers' Compensation (Dust Diseases) Act 1942.</li> </ul> <p>**Earnings means the amount to be taken into account as the worker's earnings after the injury, calculated as whichever of the following is the greater amount:</p> <ul style="list-style-type: none"> <li>the amount the worker is able to earn in suitable employment, or</li> <li>the workers current weekly earnings.</li> </ul>	
<p><b>Victoria</b></p> <p>Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement.</p> <p>Pre 12/11/97 claims: Worker is entitled to receive weekly payments — old rates apply.</p> <p>Post 05/04/10 claims:</p> <p>First 13 weeks:</p> <p>If no current work capacity: 95% of pre-injury average weekly earnings (PIAWE)* less deductible amount** or maximum (twice State average weekly earnings — \$2150), whichever is the lesser.</p> <p>If current work capacity: the difference between 95% PIAWE less deductible amount and the worker's current weekly earnings or the difference between the maximum (twice State average weekly earnings — \$2150) less the worker's current weekly earnings, whichever is the lesser — s161</p> <ul style="list-style-type: none"> <li>&gt;13 weeks:</li> <li>– If no current work capacity: 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings — \$2150), whichever is the lesser.</li> <li>– If current work capacity: the difference between 80% of PIAWE less deductible amount and 80% of the worker's current weekly earnings or the difference between the maximum (twice State average weekly</li> </ul>	<p>A settlement of weekly payments in a lump sum is allowable in some circumstances — Part 5, Division 9. The settlement is only for weekly payments and does not include reasonable medical and like expenses which continue to be paid.</p>



Calculation	Settlement, redemption, commutation
<p>earnings — \$2150) less 80% current weekly earnings, whichever is the lesser — s162</p> <ul style="list-style-type: none"> <li>• &gt;52 weeks: <ul style="list-style-type: none"> <li>– Weekly payments continue as above, except PIAWE is reduced as no further entitlement to shift allowance or overtime (earnings enhancements) — s153 and s157.</li> </ul> </li> <li>• &gt;130 weeks (Note for pre 1 Jan 2005 claim = &gt; 104 weeks): <ul style="list-style-type: none"> <li>– Weekly payments can continue to be paid until retirement age (except where worker injured within or after 130 weeks of retirement age where maximum of 130 weeks applies) as long as: <ol style="list-style-type: none"> <li>a) The worker is likely to have no current work capacity indefinitely. The weekly payment is then 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings - \$2150), whichever is the lesser — s163, or</li> <li>b) The worker has a current work capacity and has returned to work at his/her maximum capacity and is working at least 15 hours per week and earning at least \$184 per week. The weekly payment is then the difference between 80% of PIAWE less deductible amount and 80% of the worker's current weekly earnings or the difference between the maximum which is twice State average weekly earnings — \$2150) and 80% current weekly earnings, whichever is the lesser — s165, or</li> <li>c) The worker is working 15 hours per week and earning at least \$184 per week and requires surgery and is incapacitated for work — worker entitled to maximum of 13 weeks of weekly payments on same basis as s162 above if worker applies more than 13 weeks after weekly payment entitlement has ceased after 130 weeks — s164.</li> </ol> </li> </ul> </li> </ul> <p>*Pre-injury average weekly earnings is defined in s152 to s158 but generally means a worker's average ordinary earnings during the 12 months prior to injury excluding any week that the worker was not actually working and not on paid leave expressed as a lump sum and any earnings enhancements (shift allowance, overtime) in that 12 months. Earnings enhancements are included in PIAWE for the first 52 weeks of weekly payments only.</p> <p>**Deductible amount is defined in s152 but generally means the total value of any ongoing employment benefits including non-pecuniary benefits such as the value of residential accommodation, motor vehicle use, health insurance and education fees.</p>	
<p><b>Queensland</b></p> <p>For the first 26 weeks: Workers under an industrial instrument s150(1)(a) — the greater of:</p> <ol style="list-style-type: none"> <li>a) 85% of the worker's NWE, or</li> <li>b) amount payable under the worker's industrial instrument.</li> </ol> <p>Workers not under an award or agreement s151(1)(a) — the greater of:</p> <ol style="list-style-type: none"> <li>a) 85% of NWE*, or</li> <li>b) 80% of QOTE**.</li> </ol> <p>Queensland Ordinary Time Earnings (QOTE) is currently \$1 456.90.</p> <p>Workers on contract s152(1)(a) — the greater of:</p> <ol style="list-style-type: none"> <li>a) 85% NWE*, or</li> <li>b) the amount payable under the worker's contract of service.</li> </ol> <p>From the end of the first two years to the end of the first five years: where a worker demonstrates that the injury could result in a degree of permanent impairment (DPI) of more than 15% — s150(1)(c)(i), s151(1)(c)(i) and s152(1)(c)(i) — the greater of:</p> <ol style="list-style-type: none"> <li>a) 75% of the worker's NWE*, or</li> <li>b) 70% of QOTE**.</li> </ol> <p>Workers with DPI less than or equal to 15%, receive an amount equal to the single pension rate.</p> <p>Total amount payable for weekly benefits is \$314 920 (from 1 July 2016).</p> <p>*NWE can include amounts paid to the worker regularly for overtime, higher duties, penalties and allowances. It cannot include some allowances (such as those paid for travelling, meals, education, and living away from home), superannuation contributions or lump sum payments made on termination of a workers' employment for superannuation or accrued leave — s98 Workers' Compensation and</p>	<p>Liability for weekly compensation payments can be discharged by a redemption payment agreed between the insurer and worker if worker has been receiving weekly payments for at least two years and the worker's injury is not stable and stationary for the purpose of assessing permanent impairment — Chapter 3, Part 9, Division 7.</p> <p>After a redemption payment has been made the worker has no further entitlement to compensation for the injury, including weekly benefits, and medical and rehabilitation expenses.</p>

Calculation		Settlement, redemption, commutation
	<p>Rehabilitation Regulation 2014.</p> <p><b>**QOTE</b> for a financial year, means the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year (s107 Workers' Compensation and Rehabilitation Act 2003).</p>	
<b>Western Australia</b>	<p>A cap on weekly payments of \$2666.80 applies for the duration of claims. This amount is indexed annually (every 1 July).</p> <p>Workers whose earnings are prescribed by an industrial award:</p> <p>First 13 weeks of claim — Weekly payments will consist of the rate of the worker's average weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, including overtime, bonuses or allowances up to a maximum of \$2666.80. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred — Schedule 1, clause 11(3)(a).</p> <p>14th week onward — Weekly payments consist of the rate of weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked but excluding overtime, bonuses or allowances. Maximum payment is \$2666.80. Subject to the cap of \$2666.80, the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant award — Schedule 1, clause 11(3)(b).</p> <p>Workers whose earnings are not prescribed by an industrial award:</p> <p>First 13 weeks of claim — Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses and allowances) averaged over the year before the disability occurred, up to a maximum of \$2666.80 — Schedule 1, clause 11(4)(a).</p> <p>14th week onward — Weekly payments 'step down' to 85% of the worker's average weekly earnings, maximum payment is \$2666.80. Minimum rate: The minimum rate of weekly earnings payable under the Minimum Conditions of Employment Act 1993 — Schedule 1, clause 11(4)(b).</p>	<p>Lump sum redemption payment for loss of future wages, medical and like expenses, as a result of a permanent total or partial incapacity.</p> <p>Criteria: worker received weekly payments for not less than six months, worker and employer agree to redemption and the lump sum amount, the worker will automatically waive their common law rights and the Director of Conciliation Services is satisfied the worker is aware of the consequences of redeeming their claim — s67.</p> <p>Compensation for permanent impairment is also available under Schedule 2 of the Act which lists specific compensable injuries against which a percentage of the prescribed amount is listed.</p>
<b>South Australia</b>	<p>A worker's average weekly earnings rate will be calculated by reference to the worker's average earnings over the 12 months before the injury (s5).</p> <p>A cap of twice the State Average Weekly Earnings applies for the duration of the claim (\$2946.00 per week as at 18/8/2016) — <a href="#">s5(15)(c)</a></p> <p>An injured worker who is not seriously injured, is entitled to income maintenance for 2 years from the date of first entitlement to weekly payments - s4(11).</p> <p>For the first 52 weeks the worker is entitled to 100% of their average weekly earnings. This entitlement reduces to 80% for the following 52 weeks.</p> <p>A worker may be entitled to an additional 13 weeks of income support for any pre-approved surgery (ss40,41).</p> <p>If the combined amount that a worker would receive would result in the worker receiving less than the Federal minimum wage, the amount of compensation paid will be increased so that the combined amount equals the Federal minimum wage.</p> <p>Seriously injured workers are those whose work injury results in a degree of whole person impairment to be 30% or more. Seriously injured workers will be eligible to receive income support until retirement age (100% average weekly earnings for the first 52 weeks, 80% until retirement age). An adjustment to the amount may be made annually to account for movement in wages (s41).</p>	<p>A liability to make <b>weekly payments</b> may, by agreement, be redeemed by a capital payment to the worker. An agreement for the redemption of a liability of weekly payments cannot be made unless;</p> <ul style="list-style-type: none"> <li>the worker has received competent professional advice about the consequences of redemption and the about the investment or use of money to be received on redemption.</li> <li>the Corporation has consulted with the employer out of whose employment the injury arose and has considered any representations made by the employer; and</li> <li>a recognised health practitioner has certified that the extent of the worker's incapacity resulting from the work injury can be determined with a degree of confidence - s53.</li> </ul>
<b>Tasmania</b>	<p><a href="#">s69B</a></p> <p>≤ 26 weeks:</p> <p>100% of weekly payment i.e. the greater of normal weekly earnings (NWE), or ordinary-time rate-of-pay for work engaged in immediately prior to incapacity.</p> <p>NWE is the workers average weekly earnings with that employer over the previous 12 months or the period</p>	<p>s132A</p> <p>Settlements made within two years of the date of claim:</p> <p>Settlement by agreement of outstanding entitlements to compensation made within two years of the date of the claim must be approved by the Workers Rehabilitation and Compensation Tribunal.</p> <p>The Tribunal must be satisfied that:</p>

Calculation	Settlement, redemption, commutation
<p>of employment if less than 12 months. Overtime is included if it was regular and would have continued to be paid if the worker was not incapacitated.</p> <p>&gt; 26 weeks to ≤ 78 weeks:</p> <p>90% of weekly payment. The Act provides that the worker is to receive 95% of the weekly payment if the employer fails to provide suitable alternative duties.</p> <p>&gt; 78 weeks:</p> <p>80% of weekly payment. The Act provides that the worker is to receive 85% of the weekly payment if the employer fails to provide suitable alternative duties.</p> <p>Cessation of entitlement to weekly payments depends on the worker's degree of whole person impairment (WPI):</p> <ul style="list-style-type: none"> <li>• 9 years if &lt; 15% WPI</li> <li>• 12 years if ≥15% WPI but &lt; 20% WPI</li> <li>• 20 years if ≥20% WPI but &lt; 30% WPI, or</li> <li>• To date of cessation of employment under s87 (normally 65 years) if ≥ 30% WPI.</li> </ul> <p>Minimum amount payable is 70% of the basic salary (which is \$578.57 per week, as at 1 January 2016) or 100% of the weekly payment determined under <a href="#">s69</a> — whichever is the lesser amount (or pro rata equivalent) — <a href="#">s69B(3)</a>.</p>	<ul style="list-style-type: none"> <li>• all reasonable steps have been taken to enable the worker to be rehabilitated, retrained or to return to work, or</li> <li>• the worker has returned to work, or</li> <li>• there has been a reasonably arguable case determination, that the proposed agreement is in the best interests of the worker, or</li> <li>• there are special circumstances that make rehabilitation, retraining or return to work impracticable and the proposed agreement is in the best interests of the worker.</li> </ul> <p>The Tribunal must also be satisfied that the worker has received appropriate professional advice about the proposed agreement to settle and that the worker's entitlement to lump sum compensation for permanent impairment has been considered.</p> <p>Settlements made after two years of the date of claim:</p> <p>Agreements to settle made more than two years after the date of the claim do not have to be approved by the Tribunal. A party can subsequently refer the agreement to the Tribunal to be reviewed and possibly set aside. Referral must be made within three months of the date of the agreement.</p> <p>The Tribunal can set aside an agreement if it is of the opinion that:</p> <ul style="list-style-type: none"> <li>• a party entered the agreement under duress, or</li> <li>• the worker has not received appropriate advice, or</li> <li>• a party was induced to enter the agreement by a misrepresentation by another party (or their agent).</li> </ul>
<p><b>Northern Territory</b></p> <p>&lt; 26 weeks — NWE i.e. worker's pre-injury gross weekly remuneration from all employment, including overtime and shift penalties (where worked in a regular and established pattern) — s49A (for NWE) &amp; s64</p> <p>&gt; 26 weeks — Whichever is the greater of:</p> <ol style="list-style-type: none"> <li>a) 75% of NWE to a maximum of \$2 125.80 – s65(1B) or</li> <li>b) \$756.75 plus \$189.19 for a dependant spouse and \$94.59 for each dependent child; or 90% of NWE (whichever is the lesser) — s65(7)</li> </ol> <p>&lt; 104 weeks — Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, provided that suitable employment is reasonably available — s65(2)(b)(i)</p> <p>&gt; 104 weeks — Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment — s65(2)(b)(ii)</p> <p>&gt; 260 weeks – entitlement ceases unless WPI 15% or greater s65(1BA)</p> <p>Post 26 weeks weekly benefits are indexed annually on 1 January in accordance with movements in average weekly earnings as published by ABS for Northern Territory Full Time Adult Persons Ordinary Time Earnings. – s3(1) &amp; s65(3) &amp; (3A).</p>	<ul style="list-style-type: none"> <li>• Negotiated settlement between worker and employer/insurer – s78A. If settlement is before 104 weeks, there is a 6 month cooling off period – s78A(5).</li> <li>• Prior to a settlement the worker must receive legal advice, paid for by the employer and if requested, financial advice paid for by the employer.</li> </ul>
<p><b>Australian Capital Territory</b></p> <p>First 26 weeks of incapacity — Where the worker is totally incapacitated, weekly compensation is payable at the worker's average pre-incapacity earnings — s39(4)(a)</p> <p>Where the worker is partially incapacitated during the first 26 weeks, weekly compensation is payable calculated as the difference between:</p> <ul style="list-style-type: none"> <li>• the worker's average pre-incapacity weekly earnings, and</li> <li>• the average weekly amount that the worker is being paid for working or could earn in reasonably suitable employment: s39(4)(b)</li> </ul> <p>After first 26 weeks of incapacity — If the worker is totally incapacitated for any period after the 26-week period, s/he is entitled to weekly compensation equal to:</p> <ol style="list-style-type: none"> <li>a) 100% of the worker's average pre-incapacity weekly earnings — if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker, or</li> <li>b) the statutory floor — if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker, or</li> <li>c) whichever is more — if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker — s41(1)</li> </ol> <p>If the worker is partially incapacitated for period after the 26-week period, s/he is entitled to weekly</p>	<ul style="list-style-type: none"> <li>• Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides a list of injuries, including for the loss of toes, taste and smell, and sets out a % rate (from 2% to 100%) of the single loss amount payable.</li> <li>• Unlimited Common Law.</li> <li>• Benefits may be commuted.</li> </ul>

Calculation	Settlement, redemption, commutation
<p>compensation equal to:</p> <ul style="list-style-type: none"> <li>d) 100% of the worker's average pre-incapacity weekly earnings if that amount is less than the statutory floor, or</li> <li>e) the statutory floor if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor, or</li> <li>f) the statutory ceiling if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling 3, or</li> <li>g) in any other case — the relevant percentage of the worker's average pre-incapacity weekly earnings — s42(1)</li> </ul> <p>For these purposes the 'relevant percentage' is:</p> <ul style="list-style-type: none"> <li>a) 65% if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less, or</li> <li>b) 75% if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%, or</li> <li>c) 85% if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%, or</li> <li>d) 95% if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%, or</li> <li>e) 100% if the worker is working more than 85% of the worker's average pre-incapacity weekly hours — s42(2)</li> </ul> <p>Definitions:</p> <ul style="list-style-type: none"> <li>Pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury — s41(2)</li> <li>Statutory floor, means the national minimum wage set by a national minimum wage order in an annual wage review by Fair Work Australia — s36(G)(1)</li> <li>Statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid — s42(4).</li> </ul>	
<p><b>C'wealth Comcare</b></p> <p>Current Employees</p> <ul style="list-style-type: none"> <li>&lt; 45 weeks — see s19(2):</li> <li>– 100% NWE which includes overtime if regular and required and penalties, with no maximum cap applied</li> <li>45 weeks — see s19(3):</li> <li>a) If not working — 75% of NWE.</li> <li>b) If working &gt;0% to &lt;=25% of pre injury hours — 80% of NWE less Able to Earn</li> <li>c) If working &gt;25% to &lt;=50% of pre injury hours — 85% of NWE less Able to Earn</li> <li>d) If working &gt;50% to &lt;=75% of pre injury hours — 90% of NWE less Able to Earn</li> <li>e) If working &gt;75% to &lt;100% of pre injury hours — 95% of NWE less Able to Earn</li> <li>f) If working 100% of pre injury hours — 100% of NWE less Able to Earn.</li> <li>Minimum earnings — see s19(7): \$462.17 p/w</li> <li>Additional for prescribed person — see s19(8): \$114.44 p/w,</li> <li>Additional for each dependent child — see s19(9): \$57.18 p/w</li> <li>Maximum amount of compensation after 45 weeks' incapacity – see s19(5):</li> <li>– \$2 274.00 p/w from 18 August 2016 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics).</li> <li>Compensation payments for ex-employees are increased by reference to the ABS Wage Cost Index for year ending 31 December applicable from 1 July each year.</li> </ul> <p><b>Retired Employees (those not currently working and earning any income)</b></p> <p>The combined workers' compensation and employer funded superannuation benefit payable to retired</p>	<p>Redemptions of weekly benefits are only available in some circumstances and are calculated per s30(1) (or s137(1) for 'former workers') under the SRC Act. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than an indexed amount (currently \$114.44 per week, since 1 July 2016) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula.</p>

Calculation		Settlement, redemption, commutation
	<p>employees is the equivalent of 70% of their former normal weekly earnings. This is calculated by subtracting from the amount of compensation otherwise payable</p> <ul style="list-style-type: none"> <li>(i) the employer-funded part of their weekly superannuation pension (or its deemed weekly interest from the employer funded lump sum), and</li> <li>(ii) 5% of the employee's former normal weekly earnings to equate with the typical superannuation contribution most employees would have been paying had the employee not retired.</li> </ul> <p>The above mentioned 'amount of compensation otherwise payable' takes into account any actual or able to earn amount – see ss20(3), 21(3) and 21A(3).</p>	
<b>C'wealth Seacare</b>	<ul style="list-style-type: none"> <li>• &lt; 45 weeks — 100% NWE — s31(2).</li> <li>• &gt; 45 weeks — s31(5):</li> <li>a) if not working — 75% of NWE.</li> <li>b) if working &gt;0% to &lt;=25% of pre injury hours — 80% of NWE less Able to Earn, or</li> <li>c) if working &gt;25% to &lt;=50% of pre injury hours — 85% of NWE less Able to Earn</li> <li>d) if working &gt;50% to &lt;=75% of pre injury hours — 90% of NWE less Able to Earn</li> <li>e) if working &gt;75% to &lt;100% of pre injury hours — 95% of NWE less Able to Earn</li> <li>f) if working 100% of pre injury hours — 100% of NWE less Able to Earn.</li> <li>• Minimum earnings – see s31(9) \$462.17 per week</li> <li>• Additional for prescribed person – see s31(10) \$114.44 per week</li> <li>• Additional for each dependent child – see s31(11) \$57.18 per week</li> <li>• Maximum amount of compensation after 45 weeks' incapacity – see s31(7)</li> <li>• Maximum: \$2 274.00 per week from 18 August 2016 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics).</li> </ul>	<p>Redemptions of weekly benefits are only available in some circumstances. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than the statutory rate (\$114.44 per week at 1 July 2016) and the employer is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula (s44).</p>
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>• 100% normal earnings (NE) for current members — Chapter 4 Part III.</li> <li>• &lt;45 weeks — 100% NE for former members (s131), plus Australian Defence Force (ADF) allowance.</li> <li>• &gt;45 weeks — (a) if not working: 75% of NE — s131.</li> <li>• Minimum: Federal Minimum Wage — s179.</li> <li>• Compensation payments for ex-workers are increased by reference to the ADF pay scales:</li> <li>a) if working &gt;0% to &lt;=25% of pre injury hours — 80% of NE less actual earnings (AE)</li> <li>b) if working &gt;25% to &lt;=50% of pre injury hours — 85% of NE less AE</li> <li>c) if working &gt;50% to &lt;=75% of pre injury hours — 90% of NE less AE</li> <li>d) if working &gt;75% to &lt;100% of pre injury hours — 95% of NE less AE, or</li> <li>e) if working 100% of pre injury hours — 100% of NE less AE.</li> <li>• Maximum: no maximum.</li> </ul>	<p>Redemptions of weekly benefits are only available in some circumstances and are calculated per (s138).</p>
<b>New Zealand</b>	<p>Employees</p> <ul style="list-style-type: none"> <li>• For weeks two to five, 80% of short term rate, which is defined as: <ul style="list-style-type: none"> <li>– Permanent employees — earnings in the four weeks prior divided by number of weeks in which they were derived — Schedule 1, Part 1, clause 34</li> <li>– Non-permanent employees — all earnings in the four weeks prior divided by number of weeks in which they were derived — Schedule 1, Part 1, clause 36</li> </ul> </li> <li>• Week 5, 80% of the long term rate, which is defined as: <ul style="list-style-type: none"> <li>– Permanent employees — earnings from employment with that employer in the 52 weeks prior divided by weeks in which they were derived — Schedule 1, Part 1, clause 34</li> <li>– Non-permanent employees — all earnings in the 52 weeks prior divided by 52 weeks — Schedule 1, Part 1, clause 36</li> </ul> </li> </ul> <p>Shareholder-employees</p> <p>Either:</p>	<p>Injury prior to 1 April 2002, an independence allowance may be payable if impairment &gt; 10%.</p> <p>From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted.</p> <p>The independence allowance can be capitalised for periods of 5 years, weekly compensation and medical costs cannot be commuted.</p>

Calculation	Settlement, redemption, commutation
<div> <div>a) earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked</div> <div>b) earnings as an employee in the 52 weeks prior to incapacity and as a shareholder employee in the relevant year divided by weeks as an employee plus weeks worked as a shareholder-employee, or</div> <div>c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52 — Schedule 1, Part 1, clause 39</div> <div> <ul style="list-style-type: none"> <li>Maximum weekly compensation amount is NZ\$1 908.50. Will be reduced by a proportion of any earnings derived in the period of incapacity.</li> <li>Minimum for full-time earners — 80% of NZ\$610.00. (The IPRC Amendment Act 2008 removed the need for a different minimum earner rate for full-time earners under 18).</li> </ul> </div> </div>	

**Table 4.2: Medical, hospital and other costs**

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>Covers all medical and related treatment and hospital/ambulance costs reasonably necessary as a result of the injury.</li> <li>Most medical and related expenses require prior approval.</li> <li>Fees for many services are covered by fee schedules.</li> <li>s59, 60, 60Ad, 61, 62 and 63 of 1987 Act.</li> </ul>	<ul style="list-style-type: none"> <li>Covered under medical and related treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Reasonably necessary domestic assistance covered if a medical practitioner certifies it is required and the worker performed the task before the injury.</li> <li>It is available for six hours/week for cumulative 12 week period or longer if the injury has resulted in at least 15% permanent impairment.</li> <li>s60AA of 1987 Act.</li> </ul>	<ul style="list-style-type: none"> <li>Other costs covered under medical and related treatment, (e.g. domestic assistance, home and vehicle modifications etc), hospital treatment and workplace rehabilitation service as defined in s59 of the 1987 Act.</li> </ul>	<p>Medical benefit entitlement period:</p> <ul style="list-style-type: none"> <li>All workers are entitled to at least two years of medical benefits from when weekly payments cease being payable or from the date of claim if no weekly payments are made.</li> <li>Further time frames are: five years from when weekly payments cease to be payable for those with 11-20% permanent impairment or for life for those with greater than 20% permanent impairment.</li> <li>Some medical treatment and services are exempt from this compensation period limit. See s59A, 1987 Act.</li> <li>Maximum fee rates for allied health providers, medical practitioners; public, private hospitals and ambulance apply.</li> <li>s61(2) of the 1987 Act.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>All reasonable costs for road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the injury — s224(1)</li> <li>Reasonable costs is defined in s223(2)</li> <li>For more information go to the <a href="#">On-line Claims Manual</a>.</li> </ul>	<p>Attendant care is covered under the definition of 'personal and household services' in s3.</p> <p>When making an assessment of an attendant care program consideration needs to be given to the worker's:</p> <ul style="list-style-type: none"> <li>abilities</li> <li>degree of self reliance</li> <li>accommodation needs</li> <li>extent of family support, and</li> <li>family's need for respite.</li> </ul>	<ul style="list-style-type: none"> <li>Personal and household services are defined in s3 and payable under s224(1)</li> <li>In determining entitlement for personal and household services the individual circumstances of the worker need to be assessed having regard to: <ul style="list-style-type: none"> <li>the reasonableness of the cost of the service, and</li> <li>whether the service is necessary in the circumstances.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe Victoria can pay the reasonable costs of home or car modifications reasonably required as a result of a work related injury where approval is given before the costs are incurred — s231</li> <li>WorkSafe Victoria is liable to pay the reasonable costs of modifying the car, or if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car.</li> <li>WorkSafe Victoria is liable to pay the reasonable costs of modifying the home, or if the home cannot be reasonably modified, to contribute a reasonable amount towards the purchase costs of a semi-detachable portable unit or the costs of relocating the worker to another home that is suitable.</li> </ul>	<ul style="list-style-type: none"> <li>WorkSafe Victoria may issue guidelines identifying services or classes of services for which approval should be sought from WorkSafe Victoria before the services are provided — s224(2)</li> <li>Entitlement to medical and like services ceases 52 weeks after the entitlement to weekly payments cease, or if compensation is only payable for medical and like services, 52 weeks after entitlement commenced unless certain circumstances apply — s232</li> <li>If a worker's injury is severe (s223) or results in death, family members are eligible for counselling services — s224(1)(b).</li> </ul>
<b>Queensland</b>	<p>The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable having regard to the worker's injury. Under the table of costs, WorkCover may impose conditions on the provision of the medical</p>	<p>As above for Act references. Insurer decision on a case by case basis with respect to funding these services. Home Nursing services are listed under the <a href="#">Nursing services table of costs</a></p> <p><i>NIIS</i></p>	<p>Insurer decision on a case by case basis with respect to funding these services. Domestic assistance covered under the <a href="#">Support Services table of costs</a>.</p> <p>Act s224. A caring allowance may be paid if the insurer is satisfied — the</p>	<p>The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable having regard to the workers injury. Under the table of costs, WorkCover may impose conditions on the provision of the medical</p>	<p>As above for Act references. Insurer decision on a case by case basis with respect to funding these services. Home Nursing services are listed under the Nursing services table of cost published by WorkCover.</p>



Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
<p>treatment - s210.</p> <p>The insurer must pay the costs that it accepts as reasonable, having regard to the relevant table of costs, for medical treatment by a registered person (s211). <a href="#">The Table of costs</a> is published by WorkCover Queensland. The Insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker's injury - ss222-223</p> <p><i>NIIS</i></p> <p>The insurer must pay treatment, care and support payments to an eligible worker (who has sustained a serious personal injury that meets the eligibility criteria in Part 5A of the <i>Workers' Compensation and Rehabilitation Regulation 2014</i>) during their eligibility period under Chapter 4A (which can be for the workers' lifetime). Treatment, care and support payments are for the worker's necessary and reasonable treatment, care and support needs resulting from the injury. These needs are for (s.232J)</p> <ul style="list-style-type: none"> <li>• medical treatment</li> <li>• hospitalisation</li> <li>• dental treatment</li> <li>• rehabilitation</li> <li>• ambulance transportation</li> <li>• respite care</li> <li>• attendant care and support services</li> <li>• aids and appliances other than ordinary personal or household items</li> <li>• prosthesis</li> <li>• education or vocational training</li> <li>• home, transport or workplace modifications</li> </ul> <p>Under section 232O, an insurer must also provide the worker with a support plan on their treatment, care and support needs. The worker may receive treatment, care and support payments for an eligible injury via an insurer's funding agreement or response to a payment request (s232Q).</p> <p>A funding agreement is between the eligible worker and their insurer for the payment of particular expenses to be incurred for the treatment, care and support for the worker in a stated period</p>	<p>Attendant care is included in the definition of treatment, care and support needs (s.232J) and may be the subject of treatment, care and support payments from an insurer.</p> <p>Under section 117R of the <i>Workers' Compensation and Rehabilitation Regulation 2014</i>, the insurer must obtain and consider information regarding home, transport or workplace modifications from a person who is appropriately qualified to provide advice on the needs. The insurer must also refer to the appropriately qualified person when considering attendant care and support services to assist a person to participate in the community.</p> <p>Section 232K (2) (b) of the Act prescribes a registered provider must provide home modification, workplace modification or a service for the coordination of treatment, care or support.</p>	<p>worker depends on day to day care for the fundamental activities of daily living; and the care is to be provided to the worker at the worker's home on a voluntary basis by another person in relation to whom compensation is not payable.</p> <p><i>NIIS</i></p> <p>Attendant care is included in the definition of treatment, care and support needs (s.232J) and may be the subject of treatment, care and support payments from an insurer.</p> <p>As above for section 232K (2) (b) of the Act.</p>	<p>treatment (s210 of the Act).</p> <p>The insurer must pay the costs that it accepts as reasonable, having regard to the relevant table of costs, for medical treatment by a registered person (s211). The Table of costs are published by WorkCover. The Insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker's injury - ss222-223.</p> <p><i>NIIS</i></p> <p>Home and workplace modifications are included in the definition of treatment, care and support needs (s.232J) and may be the subject of treatment, care and support payments from an insurer.</p> <p>As above for section 232K (2) (b) of the Act.</p>	<p><i>NIIS</i></p> <p>An eligible worker's eligibility period for treatment, care and support payments, ends when the worker dies or the worker stops being entitled to payments under Chapter 4A. Under s.232S, the worker's entitlement to treatment, care and support payments ends if the insurer determines that their serious personal injury is not likely to continue to meet the eligibility criteria after the interim period ends.</p> <p>Under s232ZC, the worker's entitlement to treatment, care and support payments for their injury ends if they accept an award of treatment, care and support damages.</p> <p>Under s.232ZG an insurer may review and amend an approved support plan or service request to amend a worker's approved services if the worker is leaving Australia.</p> <p>Under s232ZH, the insurer may suspend the worker's entitlement to treatment, care and support payments if the insurer considers them affected by the worker's absence from Australia.</p>



	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
	(s232Q), A payment request is a written request by an eligible worker for an expense relating to their treatment, care or support to be paid or partly paid by an insurer (s232Q). An insurer is not liable to pay a payment request that exceeds an amount prescribed by regulation for the treatment, care or support (232R(4)). Part 5A Division 2 of the <i>Workers' Compensation and Rehabilitation Regulation 2014</i> specifies the assessment process for assessing a worker's needs.				
<b>Western Australia</b>	Reasonable expenses incurred — s1, clause 17. Limited to 30% of prescribed amount (\$66 567). An additional \$50 000 can be granted by an arbitrator where the worker's social and financial circumstances justify it — s1, clause 18A(1)  If a worker meets an exceptional medical circumstances test and has a WPI of not less than 15%, they may apply for additional medical and related expenses capped at \$250 000. Workers granted such an extension are excluded from seeking common law damages — s1, clause 18A.	Reasonable expenses associated with a nursing home may be paid where a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance, which cannot be administered in the worker's domestic environment — Schedule 1, clause 17(1).	N/A	Not prescribed in legislation. In special circumstances insurers may approve limited home and vehicle modifications.  Injured workers that require assistance from an approved vocational rehabilitation provider to assist them to return to work can access the entitlement for vocational rehabilitation expenses, which represents 7% of the prescribed amount (up to \$15 532).	Limits as in first column
<b>South Australia</b>	A worker is entitled to be compensated for costs of services that are <b>reasonably incurred</b> by the worker in consequence of having suffered a work injury — <a href="#">s33</a> .	A worker is entitled to the costs of attendance by a registered or enrolled nurse (or by some other person approved by RTWSA) where the injury is such that the worker requires nursing or personal attendance— <a href="#">s33(2)(f)</a> .	A worker is entitled to be compensated for costs of services that are reasonably incurred, which can include home services depending upon the circumstances of the injury s33(2)(i).	ReturnToWorkSA may as part of a recovery/return to work services provide equipment, facilities and services (including home, vehicle modification, aids and appliances) to assist workers to cope with their injuries at home or in the workplace — <a href="#">s24(1)(f)</a> and <a href="#">s33(2)(i)</a> .	There is no monetary limit defined in the legislation. However, there are limits on duration of support for medical and other expenses. If the worker is entitled to weekly payments for incapacity in respect of the injury, entitlement to compensation for medical and other expenses ceases 52 weeks after their entitlement to weekly payment ceases. If the worker is not entitled to weekly payments for incapacity, entitlement to compensation for medical and other expenses ceases 52 weeks after the claim – s33(20).  Fees are regulated by gazette for hospital, medical and allied health services — <a href="#">s33(11)</a> .  Other costs may be reimbursed if reasonably incurred — <a href="#">s33(1)</a> .
<b>Tasmania</b>	A worker is entitled to compensation for reasonable expenses necessarily incurred as a result of the injury — <a href="#">s75(1)(a)</a> .	<ul style="list-style-type: none"> <li>A worker is entitled to compensation for reasonable expenses for constant attendance services necessarily incurred as a</li> </ul>	<ul style="list-style-type: none"> <li>A worker is entitled to compensation for reasonable expenses for household services necessarily incurred as a result of</li> </ul>	<ul style="list-style-type: none"> <li>A worker is entitled to compensation for reasonable expenses for rehabilitation services necessarily incurred as a result of</li> </ul>	<ul style="list-style-type: none"> <li>There is no monetary limit. However, there are limits on duration. If the worker is entitled to weekly payments for incapacity in</li> </ul>

Medical and hospital benefits		Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		<p>result of the injury — <a href="#">s75(1)(a)</a>.</p> <ul style="list-style-type: none"> <li>Constant attendance services are provided by a person other than a member of the worker's family where the worker requires the regular or constant personal attendance of another person — <a href="#">s74</a>.</li> <li>Where there is any dispute in relation to constant attendance services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services — <a href="#">s75(3)</a>.</li> </ul>	<p>the injury — <a href="#">s75(1)(a)</a>.</p> <ul style="list-style-type: none"> <li>Household services are services provided to the worker (other than by a family member) of a domestic nature and services required for the proper running and maintenance of the worker's residential premises — <a href="#">s74</a>.</li> <li>Where there is any dispute in relation to household services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services — <a href="#">s75(3)</a>.</li> </ul>	<p>the injury — <a href="#">s75(1)(a)</a>.</p> <ul style="list-style-type: none"> <li>Rehabilitation services include any treatment, training or other assistance to facilitate or assist a worker's rehabilitation, and necessary and reasonable modifications required to be made to the worker's workplace, place of residence or motor vehicle. It also includes workplace rehabilitation services — <a href="#">s74</a>.</li> <li>Where there is a dispute in relation to rehabilitation services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services — <a href="#">s75(3)</a>.</li> </ul>	<p>respect of the injury, entitlement to compensation for medical and other expenses ceases 52 weeks after the lawful termination of weekly payments — <a href="#">s75(2)</a>.</p> <ul style="list-style-type: none"> <li>If the worker is not entitled to weekly payments for incapacity, entitlement to compensation for medical and other expenses ceases 52 weeks after the date the claim was made — <a href="#">s75(2AA)</a>.</li> <li>Compensation for medical and other expenses can be extended by Tribunal order — <a href="#">s75(2AB)</a>.</li> </ul>
<b>Northern Territory</b>	Costs reasonably incurred — s73	Costs that are reasonable and necessary — s78	Costs that are reasonable and necessary — s78	Costs that are reasonable and necessary — s78	No limit
<b>Australian Capital Territory</b>	Medical treatment reasonably received (s70 Workers' Compensation Act 1951)	Other costs reasonably required (s70(1)(c) Workers' Compensation Act 1951)	Other costs reasonably required (s70(1)(c) Workers' Compensation Act 1951)	Cost of alterations (s70(1)(b) Workers' Compensation Act 1951)	No limit except on repair or replacement of contact lenses, crutches, prosthesis, spectacles or other artificial aid or damage to clothing: Costs are as agreed with the insurer or \$701.20 indexed
<b>C'wealth Comcare</b>	Medical treatment at a cost appropriate to that treatment — s16.	<ul style="list-style-type: none"> <li>Compensation is payable for attendant care services reasonably required — s29(1). This is generally from 28 days after the date of injury. s29(4) requires consideration of: <ul style="list-style-type: none"> <li>a) nature of injury and degree that injury impairs ability to provide for personal care</li> <li>b) extent to which any medical service or nursing care received provides for essential and regular personal care</li> <li>c) extent to which reasonable to meet any wish by the employee to live outside an institution</li> <li>d) extent to which attendant care services are necessary to enable the employee to undertake or continue employment</li> <li>e) any assessment made in relation to rehabilitation of the employee, or the extent to which a relative might reasonably be expected to provide attendant care services.</li> <li>f)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Compensation is payable for household services reasonably required — s29(1). This is generally from 28 days after the date of injury</li> <li>s29(2) requires consideration of: <ul style="list-style-type: none"> <li>a) extent to which household services were provided by the employee before the injury and extent to which employee is able to provide those services after that date</li> <li>b) number of persons living with the employee as members of household, their ages and their need for household services</li> <li>c) extent to which household services were provided by the persons referred to in paragraph (b) before the injury</li> <li>d) extent to which the persons referred to in paragraph (b), or any other members of employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury, or</li> </ul> </li> </ul>	<p>Comcare is liable to pay compensation of such amount as is reasonable in respect of costs payable by the employee due to any alteration of the employee's place of residence or work, any modifications of a vehicle or article used or any aids/appliances for the use of the employee, or the repair or replacement of same — s39.</p>	<ul style="list-style-type: none"> <li>No limits on medical and hospital costs, all appropriate costs payable — s16.</li> <li>Other costs — no limits.</li> </ul>

Medical and hospital benefits		Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		<ul style="list-style-type: none"> <li>• Compensation is not payable where an employee is residing in a nursing home or other similar place — s29(3). Comcare is liable to pay the lesser of \$457.57 (statutory rate updated 1 July) or an amount per week paid or payable by the employee for those services.</li> </ul>	<p>e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).</p> <ul style="list-style-type: none"> <li>• Comcare is liable to pay not less than 50% of the amount paid or payable by the employee no more than \$457.57 (statutory rate updated 1 July).</li> </ul>		
<b>C'wealth Seacare</b>	Medical treatment at a cost appropriate to that treatment — s28.	<p>Compensation is payable for attendant care services reasonably required — s43(4). This service is generally not payable from 28 days after the date of injury. s43(5) requires consideration of:</p> <ol style="list-style-type: none"> <li>nature of the injury and the degree to which that injury impairs the worker's ability to provide for their personal care</li> <li>extent to which any medical service or nursing service received by the employee provides for his or her essential and regular personal care</li> <li>extent to which it is reasonable to meet any wish by the employee to live outside an institution</li> <li>extent to which attendant care services are necessary to enable the employee to undertake or continue employment</li> <li>any assessment made in relation to the rehabilitation of the employee, and</li> <li>extent to which a relative of the employee might reasonably be expected to provide attendant care services.</li> </ol>	<p>Compensation is payable for household services reasonably required — s43(1). This is generally from 28 days after the date of injury. s43(3) requires consideration of:</p> <ol style="list-style-type: none"> <li>extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date</li> <li>number of persons living with the employee as members of their household, their ages and need for household services</li> <li>extent to which household services were provided to the employee before the injury</li> <li>extent to which members of the household might reasonably be expected to provide household services for themselves and injured employee, and</li> <li>the need to avoid substantial disruption to the employment or other activities of persons in the household.</li> </ol>	<p>s51 Where an employee is undertaking, has undertaken or completed a rehabilitation program or is assessed as not capable of undertaking a program, the following are payable if reasonable:</p> <ul style="list-style-type: none"> <li>• costs of alteration of employee's residence or place of work</li> <li>• modifications to a vehicle used by employee, and</li> <li>• aids and appliances including repair or replacement.</li> </ul>	<ul style="list-style-type: none"> <li>• Attendant care — \$457.57 per week</li> <li>• Household help — \$457.57 per week, not less than 50% paid by employee unless the amount is greater than \$915.14 per week (1 July 2016).</li> <li>• Medical and hospital costs — no</li> <li>• limits — appropriate costs — s28</li> <li>• Other costs — no limits.</li> </ul>
<b>C'wealth DVA</b>	<ol style="list-style-type: none"> <li>All reasonable costs — s270, or</li> <li>scheduled items if condition is chronic and member has discharged from the ADF — s278.</li> </ol>	<p>Liable to pay compensation for attendant care services reasonably required.</p> <p>In the amount of:</p> <ol style="list-style-type: none"> <li>\$467.42 per week, or</li> <li>an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less — s219</li> </ol> <p>The following matters need to be considered (s218):</p> <ol style="list-style-type: none"> <li>the nature of the person's injury or disease</li> <li>the degree to which that injury or disease impairs the person's ability to provide for his or her personal</li> </ol>	<p>Liable to pay compensation for household services reasonably required.</p> <p>in the amount of:</p> <ol style="list-style-type: none"> <li>\$467.42 per week, or</li> <li>an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less — s216</li> </ol> <p>The following matters need to be considered (s215):</p> <ol style="list-style-type: none"> <li>the extent to which household services were provided by the person before the service injury or disease</li> <li>the extent to which he or she is able</li> </ol>	<ol style="list-style-type: none"> <li> <ol style="list-style-type: none"> <li>Loss of, or damage to, medical aids — s226</li> <li>alterations to a person's place of residence, education, work or service — s56.</li> </ol> </li> <li>reimbursement of amounts reasonably incurred in replacement or repair.</li> <li>Motor Vehicle Compensation Scheme — s212</li> <li>To provide for the reasonable costs of a vehicle's modification (and vehicle purchase in some circumstances).</li> <li>the amount is what the MRCC</li> </ol>	<ul style="list-style-type: none"> <li>• Attendant care — \$467.42 per week.</li> <li>• Household services — \$467.42 per week.</li> </ul>

Medical and hospital benefits		Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		<p>care</p> <p>c) the extent to which any medical service or nursing care received by the person provides for his or her essential and regular personal care,</p> <p>d) the extent to which the attendant care services are necessary to meet any reasonable wish by the person to live outside an institution</p> <p>e) the extent to which attendant care services are necessary to enable the person to undertake or continue defence service or any other work</p> <p>f) any assessment made in relation to the rehabilitation of the person</p> <p>g) the extent to which a relative of the person might reasonably be expected to provide attendant care services, or</p> <p>h) any other matter that the MRCC considers relevant.</p>	<p>to provide those services after the service injury or disease</p> <p>c) the number of other persons (household members) living with that person as members of his or her household</p> <p>d) the age of the household members and their need for household services</p> <p>e) the extent to which household services were provided by household members before the service injury or disease</p> <p>f) the extent to which household members, or any other relatives of the person, might reasonably be expected to provide household services for themselves and for the person after the service injury or disease</p> <p>g) the need to avoid substantial disruption to the work or other activities of the household members, or</p> <p>h) any other matter that the MRCC considers relevant.</p>	<p>considers reasonable.</p>	
<b>New Zealand</b>	<p>Regulated or contract rates for treatment and reasonable costs associated with social and vocational rehabilitation. Prior approval is required and all costs approved by contract or regulations: — Schedule 1, Part 1, s1.</p>	<p>In deciding whether to provide or contribute to the cost of attendant care, the Corporation must have regard to:</p> <p>a) any rehabilitation outcome that would be achieved by providing it</p> <p>b) the nature and extent of the claimant's personal injury and the degree to which that injury impairs his or her ability to provide for his or her personal care</p> <p>c) the extent to which attendant care is necessary to enable the claimant to undertake or continue employment (including agreed vocational training) or to attend a place of education, having regard to any entitlement the claimant has to education support</p> <p>d) the extent to which household family members or other family members might reasonably be expected to provide attendant care for the claimant after the claimant's personal injury</p> <p>e) the extent to which attendant care is required to give household family members a break, from time to time, from providing attendant care</p>	<p>Reimbursement':</p> <p>Schedule 1, Part 1 17 Home help</p> <p>(1) In deciding whether to provide or contribute to the cost of home help, the Corporation must have regard to:</p> <p>a) any rehabilitation outcome that would be achieved by providing it, and</p> <p>b) the extent to which a claimant undertook domestic activities before the claimant's personal injury and the extent to which he or she is able to undertake domestic activities after his or her injury, and</p> <p>c) the number of household family members and their need for home help, and</p> <p>d) the extent to which domestic activities were done by other household family members before the claimant's personal injury, and</p> <p>e) the extent to which other household family members or other family members might reasonably be expected to do domestic activities for themselves and for the claimant after the claimant's personal injury, and</p>	<p>Social rehabilitation' includes:</p> <ul style="list-style-type: none"> <li>• aids and appliances</li> <li>• child care</li> <li>• educational support</li> <li>• home modifications</li> <li>• training for independence, and</li> <li>• transport for independence (including vehicle purchasing and modifications).</li> </ul> <p>All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome.</p>	<p>Noted in first column</p>

Medical and hospital benefits		Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		<p>f) for the claimant, and the need to avoid substantial disruption to the employment or other activities of household family members — Schedule 1, cl(14).</p>	<p>f) the need to avoid substantial disruption to the employment or other activities of the household family members, and</p> <p>g) the impact of the claimant's personal injury on the contribution of other family members to domestic activities.</p> <ul style="list-style-type: none"> <li>Calculation: All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome.</li> <li>Limits: <ul style="list-style-type: none"> <li>– The Corporation [is not required] to pay for home help to the extent that home help continues to be provided after a claimant's personal injury by a person: <ul style="list-style-type: none"> <li>a) who lives in the claimant's home or lived in the claimant's home immediately before the claimant suffered his or her personal injury, and</li> <li>b) who provided home help before the claimant suffered his or her personal injury.</li> </ul> </li> </ul> </li> </ul>		

**Table 4.3: Permanent impairment payments**

Benefit type		Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
New South Wales	<ul style="list-style-type: none"><li>For claims made (except claims made by exempt workers), on and after 19 June 2012:<ul style="list-style-type: none"><li>Permanent impairment compensation (s66, 1987 Act)</li></ul></li><li>Exempt workers, including police officers, paramedics and fire fighters, workers injured while working in or about a coal mine and bush fire fighter and emergency service volunteers:<ul style="list-style-type: none"><li>Permanent impairment compensation (s66, 1987 Act); and</li><li>Pain and suffering (s67, 1987 Act).</li></ul></li></ul>	<ul style="list-style-type: none"><li>Date of injury on or from 5th August 2015 - maximum amount payable for permanent impairment is \$584 580 (plus additional 5% for back impairment).</li><li>Date of injury prior to 5th August 2015 and exempt workers - maximum amount payable for permanent impairment is \$220 000 (plus additional 5% for back impairment).</li><li>Pain and suffering compensation (max of \$50 000) payable to exempt workers.</li></ul>	<ul style="list-style-type: none"><li>CPI all groups (Sydney). Adjusted 1 July. Only applies to permanent impairment claims for date of injury on or from 5th August 2015. Also excludes exempt workers.</li><li>No indexing applies to all other permanent impairment claims.</li></ul>	Thresholds for claims for: <ul style="list-style-type: none"><li>&gt;10% permanent impairment for lump sum compensation for physical injury except for exempt workers where the threshold is &gt;0%</li><li>15% or greater for primary psychological injury (for all claims)</li><li>Work Injury Damages 15% whole person impairment (WPI)</li><li>Commutation 15% WPI</li><li>&gt;10% and &gt;20% compensation periods for medical benefits, and</li><li>&gt;20% access to weekly payments past 130 weeks.</li><li>&gt; 30% minimum weekly payment amount.</li></ul>	Weekly benefits and medical costs are still payable
Victoria	Combined 1	\$589 650— s217	CPI (Melbourne). Adjusted 1 July	See section on common law at Table 4.6	Weekly payments and medical and like expenses are still payable: s160 and s224
Queensland	<ul style="list-style-type: none"><li>Standard</li><li>Additional 30% or greater DPI (s192(2))</li><li>Gratuitous care (s193(6))</li><li>Additional particular workers (s193A(2))</li><li>Latent onset (s128B).</li></ul>	<ul style="list-style-type: none"><li>\$314 920 (standard)</li><li>\$314 920 (additional — s192(2))</li><li>\$356 745 (Gratuitous care)</li><li>\$36 190 (additional – s193A(2))</li><li>\$661 355 (Latent onset)</li><li>(as at 1 July 2016).</li></ul>	Queensland Ordinary Time Earnings. Adjusted 1 July.	If 30% or more DPI: up to \$314 920 additional lump sum compensation, payable according to a graduated scale prescribed by regulation (s192).  If a worker sustains an injury that results in a DPI of 15% or more and a moderate to total level of dependency on day to day care for the fundamental activities of daily living, the worker is entitled to additional lump sum compensation of up to \$356 745, payable according to a graduated scale prescribed by regulation, but only if:  a) day to day care for the fundamental activities of daily living is to be provided at the worker's home on a voluntary basis by another person  b) the worker resides at home on a permanent basis  c) the level of care required was not provided to the worker before the worker sustained the impairment, and  d) the worker physically demonstrates the level of dependency (s193)  If a worker sustained an injury on or after 15 October 2013 and before 31 January	All other payments cease

Benefit type			Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
					2015, and if:  a) the worker's injury: (i) results in a DPI of 5% or less; and (ii) is not a terminal condition; and b) the worker has not accepted or rejected an offer of lump sum compensation from an insurer under section 189; and  subject to the conditions prescribed by regulation (s193A), the worker is entitled to additional lump sum compensation up to \$36 190.	
Western Australia	Lump sum for single or multiple impairments	\$221 891 for Schedule 2 impairments	<ul style="list-style-type: none"><li>Indexation occurs annually using the Australian Bureau of Statistics (ABS) Wage Price Index ordinary time hourly rates of pay (excluding bonuses) for Western Australia, varied between the second last December quarter before the financial year commenced, and the last December quarter before the financial year commenced.</li><li>Changes in indexed rates are effective from 1 July each year.</li></ul>	<ol style="list-style-type: none"><li>Common law: not less than 15% WPI (limited damages) and not less than 25% WPI (unlimited damages)</li><li>Specialised retraining programs: Not less than 10% WPI but less than 15% WPI (also need to satisfy criteria determined by WorkCover)</li><li>Payment of additional expenses: (Schedule 1, Clause 18A of up to \$250 000). Not less than 15% WPI (Arbitrator is also to have regard to the social and financial circumstances and the reasonable financial needs of the injured worker).</li></ol>	Weekly payments cease once a memorandum of agreement is registered pursuant to s76 of the Act. Publications / Guidance : <a href="#">Workers' Compensation and Injury Management: A Guide for Workers.</a> <a href="#">Medical Expenses / Exceptional Circumstances Medical Payments.</a> <a href="#">Prescribed Amount.</a> <a href="#">Settlements.</a>	
South Australia	There are two lump sum payments available: <ul style="list-style-type: none"><li>Non-economic loss (threshold is minimum 5% WPI)</li><li>Economic loss (only applies where minimum of 5% and maximum of 29% WPI, as workers with WPI &gt;30% are entitled to income support until retirement age).</li></ul> See ss 55-58	\$487 476 (non-economic loss) \$361 476 (economic loss) See <a href="#">Schedule of Sums</a>	Adjusted on 1 January each year by multiplying the amount by a proportion obtained by dividing the Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter, (with the amount so adjusted being rounded up to the nearest dollar) – s28	30% WPI required for access to common law damages (s72)	Payment of non-economic loss lump sum does not impact on any other entitlements	
Tasmania	Combined 1	\$343 009.95	<ul style="list-style-type: none"><li>415 x basic salary.</li><li>The basic salary is adjusted on 1 January each year taking into account the variation in the average weekly ordinary full-time earnings of adults in Tasmania from May of the preceding year and May in the year before that — s3(1)</li></ul>	Threshold requirement of not less than 20% WPI for access to common law damages (s138AB)	Entitlement to weekly benefits and medical costs is not affected except where payment of impairment benefit is a component of a claim settlement (s71)	

Benefit type		Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
<b>Northern Territory</b>	Combined 1	\$314 808.00	208 X full-time adult person's weekly ordinary time earnings for Northern Territory last published by the Australian Statistician before 1 January of each year. Adjusted on 1 January	N/A	Payment of Permanent Impairment (PI) does not impact on any other entitlements
<b>Australian Capital Territory</b>	Single or multiple impairments	\$141 301 (Sep 16) \$211 952 (Sep 16) (multiple)	CPI (Canberra). Adjusted quarterly in line with CPI indexed variations	—	Payment of PI does not impact on any other entitlements
<b>C'wealth Comcare</b>	Economic Non-Economic	\$183 034.84 (Economic). \$68 638.10 (Non economic)	CPI. Adjusted 1 July 2016	N/A	Payment of PI does not impact on any other entitlements under the SRC Act
<b>C'wealth Seacare</b>	Economic Non-Economic	\$183 034.84 (Economic) — s39(9) \$68 638.10 (Non-economic) — s41(2)(1 July 2016)	CPI. Adjusted 1 July 2016	N/A	Payment of PI does not impact on any other entitlements under the Seafarers Act
<b>C'wealth DVA</b>	Combined	\$335.73 per week or equivalent age based lump sum up to maximum \$448971.73 — MRCA ss74 & 78.	CPI. Adjusted 1 July — MRCA s404.	<ul style="list-style-type: none"> <li>\$86429.75 plus education scheme benefits equivalent to Youth Allowance paid for each dependent eligible young person, if the person suffers impairment of 80 or more points - MRCA ss80 &amp; 258</li> <li>MRCA Supplement of maximum \$3.10 per week paid if the person suffers impairment of 80 or more points - MRCA s223. Energy Supplement may also be payable.</li> <li>Free medical treatment for all conditions (compensable or otherwise) if the person suffers impairment of 60 or more points from compensable conditions — MRCA s281</li> <li>Maximum \$2549.31 for financial and legal advice compensation if the person suffers impairment of 50 or more points — MRCA s82</li> </ul>	Payment of PI can impact on the payment of Special Rate Disability Pension — MRCA s204
<b>New Zealand</b>	Non-Economic	Maximum \$133 802.28 Lump Sum payment	Adjusted 1 July	N/A	<ul style="list-style-type: none"> <li>Injury prior to 1 April 2002, an independence allowance may be payable if impairment &gt; 10% WPI</li> <li>From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted</li> <li>The independence allowance can be capitalised for periods of 5 years</li> </ul>



**Table 4.4: Death entitlements**

	Lump sum	Periodic payments	Other payments
<b>New South Wales</b>	\$760 000 — s25, 1987 Act	\$136.10 a week to each dependent child — s25(1)(b), 1987 Act	Funeral expenses \$15 000 maximum — s26, 1987 Act. Cost of transporting the body — s28 1987 Act [Does not apply to volunteers under the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987]
<b>Victoria</b>	\$589 650 — ss236-237	Dependant partner — determined by average pre-injury earnings (PIAWE) subject to statutory maximum — s241: <ul style="list-style-type: none"> <li>First 13 weeks: <ul style="list-style-type: none"> <li>95% of earnings</li> <li>\$2 150 max</li> </ul> </li> <li>14 weeks — 3 years: <ul style="list-style-type: none"> <li>50% of earnings</li> <li>\$2 150 max</li> <li>\$1 430 max. for partner with more than 5 children.</li> <li>A range of payments for dependent children depending on the particular circumstances of the child</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Reasonable funeral expenses, not exceeding \$15 010 — s224</li> <li>Counselling for family members, max. total \$6 240 — s224</li> </ul>
<b>Queensland</b>	<ul style="list-style-type: none"> <li>\$589 875</li> <li>\$15 770 for a totally dependent spouse — s200(2)(aa), and</li> <li>\$31 520 for each dependant family member other than the spouse, under 16 or a student — s200(2)(b)</li> </ul>	Weekly payment of 8% of QOTE (\$116.60) for the spouse if there is a dependant family member under 6 — s200(2)(ab), and weekly payment of 10% of QOTE (\$145.70) for each dependant under 16 or a student s200(2)(c)	Reasonable funeral expenses — s199, Chapter 3 Part 11
<b>Western Australia</b>	\$304 185 (subject to Labour Price Index (LPI)) notional residual entitlement of the deceased worker — Schedule 1(1)	A child's allowance of \$58.10 per week (subject to LPI) for each dependant child up to age 16 or 21 if a student, whichever an arbitrator determines as likely to be in the best interests of that dependant.	Reasonable funeral expenses: not exceeding \$9 714 subject to CPI — Schedule 1(17)
<b>South Australia</b>	\$487 476	<ul style="list-style-type: none"> <li>Dependant domestic partner: weekly payments equal to 50% (less if partially dependant spouse) of the amount of the NWE of the deceased worker — <a href="#">s59(1)(a)</a></li> <li>Dependant orphaned child: weekly payments equal to 25% (less if partially dependant child) of the amount of the NWE of the deceased worker — <a href="#">s59(1)(b)</a></li> <li>Dependant non-orphaned child: weekly payments equal to 12.5% (less if partially dependant child) of the amount of the NWE of the deceased worker — <a href="#">s59(1)(c)</a></li> <li>Dependant relative: may be eligible for weekly payments if ReturnToWorkSA determines they are eligible in their particular circumstances — <a href="#">s59(1)(d)</a>.</li> </ul>	Funeral expenses capped at a prescribed amount: : \$10 413 – s62
<b>Tasmania</b>	Maximum payment: \$343 009.95 — <a href="#">s67</a>	<p>A dependant spouse or caring partner is entitled to weekly payments for a period of two years from the date of death calculated at the same rate as the deceased would have received if he/she became totally incapacitated:</p> <ul style="list-style-type: none"> <li>first 26 weeks following the date of death: 100% of weekly payments</li> <li>&gt;26 weeks, up to 78 weeks: 90% of weekly payments, and</li> <li>&gt;78 weeks, up to 2 years from the date of death: 80% of weekly payments.</li> </ul> <p>A dependant child is entitled to weekly payments paid at 15% of the</p>	<ul style="list-style-type: none"> <li>Reasonable expenses of the worker's burial or cremation not exceeding \$9 500 — <a href="#">s75(1)(b)(i)</a> and <a href="#">Regulation 21</a></li> <li>Reasonable costs of counselling services provided to members of the family by counselling professionals, up to \$4 000 — <a href="#">s75(1)(b)(ii)</a> and <a href="#">Regulation 21</a></li> </ul>

Lump sum		Periodic payments	Other payments
		basic salary (\$123.98), commencing on the expiration of 13 weeks after the date of death — <a href="#">s67A</a>	
<b>Northern Territory</b>	Entitled to 364 times the average weekly earnings \$550 914 in prescribed proportions (share with children), or such proportions as the Court determines — s62(1)	<ul style="list-style-type: none"> <li>10% of average weekly earnings (\$151.35 for each child under 16 (or 21 if student), for up to 10 children — s63</li> <li>Limited to 100% of average weekly earnings (\$1 408.60)</li> </ul>	<ul style="list-style-type: none"> <li>Max: 20% of the annual equivalent of average weekly earning (\$15 740.40) for funeral costs — s62(1)(a)</li> <li>Reasonable cost of counselling services &amp; financial advice for dependants — s62(1)(c).</li> </ul>
<b>Australian Capital Territory</b>	\$210 359 (September 2015) CPI indexed (to be divided between the dependants — s77(2))	\$70.65 per child, CPI indexed — s77(2)	\$5 552.06 CPI indexed for funeral expenses — s77(2)
<b>C'wealth Comcare</b>	\$528 433.70 — s17(3) and s17(4)	\$145.32 p/w to each child under 16 (or 25 if full-time student) — s17(5)	Reasonable funeral expenses, not exceeding \$11 654.06 — s18(4)
<b>C'wealth Seacare</b>	\$528 433.70 — s29(3) and s29(4)	\$145.32 per week to each child under 16 (or 25 if full-time student) — s29(5)	Reasonable funeral expenses, not exceeding \$6 337.74 — s30(2)
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>\$445.65 per week for partner, or equivalent age based lump sum up to a maximum of \$753193.07 — MRCA ss2, 3, 4(4) &amp; (5)</li> <li>\$144049.60 (age-based maximum additional amount for partner where a service death as defined).</li> <li>\$86429.75 (maximum amount for each 'other dependant') to a maximum of \$273694.24 for all 'other dependants' — MRCA s263</li> <li>\$86429.75 for each dependent child — MRCA s252</li> </ul>	<ul style="list-style-type: none"> <li>\$143.75 a week to each dependent child under 16 (or to age 25 if full-time student) — MRCA s254</li> <li>\$3.10 MRCA Supplement per week to the partner and each child - MRCA s247. Energy Supplement may also be payable</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable funeral expenses, not exceeding \$11654.06 - MRCA s267</li> <li>Medical treatment for partner and each dependent child - MRCA ss284 &amp; 302.</li> <li>\$2549.31 financial and legal advice for partner - MRCA s240</li> <li>Children's education expenses equivalent to Youth Allowance payable in some circumstances - MRCA s258.</li> <li>Bereavement payments for a limited time where deceased was in receipt of periodical compensation payments - MRCA ss243 &amp; 256</li> </ul>
<b>New Zealand</b>	Spouse: NZ\$6 455.40 Other dependant (certain criteria): NZ\$3227.72	Spouse: 60% of the long-term rate of weekly compensation that the earner would have received Each child and other dependant: 20% of the weekly compensation If total entitlement exceeds 100%, individual entitlements are reduced on a pro rata basis	Funeral grant: NZ\$6 021.11 Child care payments: NZ\$137.27 per week for a single child, NZ\$82.35 each if there are two children, and a total of NZ\$192.18 for 3 or more children

**Table 4.5: Definitions of dependants/spouse for death benefits**

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
<b>New South Wales</b>	s25 1987 Act — dependants: If there are no dependants the lump sum death benefit is paid to the worker's legal personal representative.	1998 Act, s4: 'dependants' of a worker means such of the members of the worker's family as were wholly or in part dependant for support on the worker at the time of the worker's death, or would but for the incapacity due to the injury have been so dependant, and includes: a) a person so dependant to whom the worker stands in the place of a parent or a person so dependant who stands in the place of a parent to the worker, and b) a divorced spouse of the worker so dependant, and c) a person so dependant who: (i) in relation to an injury received before the commencement of Schedule 7 to the <i>Workers' Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998</i> — although not legally married to the worker, lived with the worker as the worker's husband or wife on a permanent and genuine domestic basis, or (ii) in relation to an injury received after that commencement — is the de facto partner of the worker. Note: 'De facto partner' is defined in s21C of the <i>Interpretation Act 1987</i> (NSW). 1987 Act, s25(5): ' in this section: • 'child of the worker' means a child or stepchild of the worker and includes a person to whom the worker stood in the place of a parent. • 'dependant child of the worker' means a child of the worker who was wholly or partly dependant for support on the worker. • 'student' means a person receiving full-time education at a school, college or university. • Workers' Compensation (Dust Diseases) Act 1942, s8(2B)(a) — persons dependant for support upon a worker '...immediately before the worker's death, being the following and no other person or persons: • a prescribed relative of the worker, or • a surviving spouse and a child or children of the worker'.	Broad definition of 'dependant' — encompasses same sex relationships.	
<b>Victoria</b>		s3 — 'dependant' means a person who: a) at the time of the death of a worker was wholly, mainly or partly dependant on the earnings of the worker, or b) would but for the incapacity of a worker due to the injury have been wholly, mainly or partly dependant on the earnings of the worker	<ul style="list-style-type: none"> <li>• Yes</li> <li>• s234: Revised compensation for death of worker</li> <li>• Includes definitions: 'partially dependant partner' means a partner who is to any extent dependant on the worker's earnings, 'dependant partner' means a partner wholly or</li> </ul>	s3 — 'member of a family' means the partner, father, mother, grandfather, grandmother, stepfather, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister and any person who stands in the place of a parent in relation to another person or that other person

Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
	<ul style="list-style-type: none"> <li>s3 — 'spouse' of a person means a person to whom that person is married.</li> <li>s3: 'partner' of a worker means: <ul style="list-style-type: none"> <li>in relation to a worker who died before the commencement of s4 Statute Law Amendment (Relationships) Act 2001 —</li> <li>(i) the worker's spouse at the time of the worker's death; or</li> <li>(ii) a person of the opposite sex who, though not married to the worker, lived with the worker at the time of the worker's death on a permanent and bona fide domestic basis;</li> </ul> </li> <li>b) in relation to a worker who dies on or after that commencement — the workers' spouse or domestic partner at the time of the worker's death.</li> <li>s3 — 'domestic partner' of a person means: <ul style="list-style-type: none"> <li>a) a person who is in a registered domestic relationship, or</li> <li>b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).</li> </ul> </li> </ul>	mainly dependant on the worker's earnings.	
<b>Queensland</b>	<p>Chapter 3 part 11: dependant.</p> <ul style="list-style-type: none"> <li>s27 — Meaning of dependant — A dependant, of a deceased worker, is a member of the deceased worker's family who was completely or partly dependant on the worker's earnings at the time of the worker's death or, but for the worker's death, would have been so dependant.</li> <li>s29 — Who is the spouse of a deceased worker: <ul style="list-style-type: none"> <li>(a) The spouse, of a deceased worker, includes the worker's de facto partner only if the worker and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of s32DA Acts Interpretation Act 1954: <ul style="list-style-type: none"> <li>generally —</li> <li>(i) for a continuous period of at least 2 years ending on the worker's death; or</li> <li>(ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long term, committed relationship, or</li> </ul> </li> <li>b) if the deceased left a dependant who is a child of the relationship — immediately before the worker's death.</li> </ul> </li> </ul>	Under the Acts Interpretation Act 1954, 'spouse' includes a de facto partner or civil partner. For either de facto partner or civil partner, the gender of the person is not relevant.	<p>s28 — Meaning of member of the family — A person is a member of the family of a deceased worker, if the person is —</p> <ul style="list-style-type: none"> <li>a) the worker's: <ul style="list-style-type: none"> <li>(i) spouse, or</li> <li>(ii) parent, grandparent and stepparent, or</li> <li>(iii) child, grandchild and stepchild, or</li> <li>(iv) brother, sister, half-brother and half-sister, or</li> </ul> </li> <li>b) if the worker stands in the place of a parent to another person — the other person, or</li> <li>c) if another person stands in the place of a parent to the deceased worker — the other person.</li> </ul>
<b>Western Australia</b>	<p>S5 — 'dependants' means such members of the worker's family as were wholly or in part dependent</p> <ul style="list-style-type: none"> <li>s5 — 'member of a family' means spouse, de facto partner, parent, grandparent, step-parent;</li> </ul>	No specific reference is provided with regard to same sex relationships. However, same sex de facto	—

Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
	<p>upon the earnings of the worker at the time of his death, or would, but for the injury, have been so dependant.</p>	<p>any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grandson, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes the workers' parents, and his brothers and sisters, whether legitimate or ex-nuptial, who have at least one parent in common with the worker.</p> <ul style="list-style-type: none"> <li>• s5 — 'de facto partner'</li> <li>• a person who, immediately before the death of the worker, was living in a de facto relationship with the worker and had been living on that basis with that worker for at least the previous 2 years; and</li> <li>b) any former de facto partner of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former de facto partner with respect to financial matters.</li> <li>• s5 — 'spouse' includes any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters.</li> </ul>	<p>relationships have been recognised in WA law since 2002. The Interpretation Act 1984 s13A(3)(a) — states, with regard to references to de facto relationships and de facto partners, that 'It does not matter whether the persons are different sexes or the same sex.'</p>
South Australia	<p><a href="#">s59</a> — Dependent spouse, domestic partner, dependent child, dependent relative.</p>	<p>Section 4 includes definitions of spouse and child for the purposes of applicability of death benefits. A spouse includes legally married couples and domestic partner of a worker if he or she lives with the worker in a close personal relationship and the person:</p> <ul style="list-style-type: none"> <li>• has been so living with the worker continuously for the preceding period of 3 years, or</li> <li>• has during the preceding period of 4 years so lived with the worker for periods aggregating not less than 3 years, or</li> <li>• has been living with the worker for a substantial part of a period referred to in subparagraph (i) or (ii) and the Corporation considers that it is fair and reasonable that the person be regarded as the domestic partner of the worker for the purposes of this Act, or</li> </ul> <p>'Child', in relation to a deceased worker, includes a person in relation to whom the worker stood, at the date of death, in loco parentis And under s61(1)a in relation to lump sums, child means a person who:</p> <ul style="list-style-type: none"> <li>• is under the age of 18; or</li> <li>• is a full-time student at an educational institution approved by the Corporation for the purposes of this paragraph and is under the age of 26 years; or</li> </ul>	<p>Not explicitly referenced, however is included within the broader definition of a domestic partner – <a href="#">s4</a></p> <p><a href="#">s4</a> — Dependant, in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death:</p> <ol style="list-style-type: none"> <li>was wholly or partially dependant for the ordinary necessities of life on earnings of the worker, or</li> <li>would, but for the worker's injury, have been so dependent, and includes a posthumous child of the worker, and dependent has a corresponding meaning</li> </ol>

Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information	
	<ul style="list-style-type: none"><li>is, by reason of physical or mental injury, incapable of earning a living</li></ul>			
Tasmania	<ul style="list-style-type: none"><li>Wholly or partially dependant spouse/caring partner</li><li>Where there is no dependant spouse or caring partner, a wholly or partially dependant child/children. —s67</li></ul>	<ul style="list-style-type: none"><li>'caring partner', in relation to a person, means: a) the person who is in a caring relationship with that person which is the subject of a deed of relationship registered under Part 2 of the Relationships Act 2003, or b) the person who was, at the time of the death of the first-mentioned person, in a caring relationship with that person which was the subject of a deed of relationship registered under Part 2 of the Relationships Act 2003.</li><li>'spouse' includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the Relationships Act 2003. — s3</li><li>'dependant caring partner' means a caring partner who is a dependant.</li><li>'dependant spouse' means a spouse who is a dependant.</li><li>'child' means a person who: (a) is under the age of 16 years, or (b) is 16 years or more, but less than 21 years and is a full time student.</li><li>'dependant child' means a child who is a dependant. — s65.</li></ul>	Yes, included in s67 as a result of the definitions of spouse and caring partner	<ul style="list-style-type: none"><li>'dependants' means such members of the family of the worker in relation to whom the term is used as: a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death, or b) would have been so dependent but for the incapacity due to the injury.</li><li>'member of the family', in relation to a worker, means: a) the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, granddaughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker, or b) a person to whom the worker stood in loco parentis.— s3</li></ul>
Northern Territory	Dependant	Dependant, in relation to a worker, means: a) a spouse or other member of the worker's family b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker c) a grandchild of the worker.  who was wholly or in part dependant on his or her earnings at the date of his or her death or who would but for the worker's incapacity due to the injury resulting in his or her death, have been so dependant	No	'Prescribed child' means a child of the deceased worker, or child in relation to whom the deceased worker stood in loco parentis, and who:  a) has not attained the age of 16 years; or b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped, other than such a child who is the spouse of another person.  c) 'Family', in relation to an Aboriginal or Torres Strait Islander, includes all persons who are members of the person's family according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which the person identifies
Australian Capital Territory	s77(2) — Dependants	Dictionary: dependant of a dead worker, means an individual:  a) who was totally or partly dependant on the worker's earnings on the day of the worker's death or who would, apart from the worker's incapacity because of the injury, have been so dependant, and  b) who was: (i) a member of the worker's family, or (ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for	Yes, the definition does not limit the meaning of dependant to a heterosexual relationship	Dictionary: member of the family, in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother, half-sister, half-brother, domestic partner, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer.  Note: For the meaning of domestic partner, see s169 of the Legislation Act 2001. If a worker has died, the definition of domestic partner elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died.

Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
	the worker.		Dictionary: domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the worker died. Note: This definition qualifies the meaning of domestic partner given by s169 of the Legislation Act 2001.
<b>C'wealth Comcare</b>	s17 — Dependants <ul style="list-style-type: none"> <li>s4 — dependant, in relation to a deceased employee, means: <ul style="list-style-type: none"> <li>the spouse, parent, step parent, father in law, mother in law, grandparent, child, stepchild, grandchild, sibling or half sibling of the employee, or a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee, being a person who was wholly or partly dependant on the employee at the date of the employee's death.</li> </ul> </li> <li>s4 — Spouse includes: <ul style="list-style-type: none"> <li>a) in relation to an employee or a deceased employee — a person who is, or immediately before the employee's death was, a de facto partner of the employee, and</li> <li>b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands — a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.</li> </ul> </li> </ul>	Yes <a href="#">The Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008</a> commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependant children from a wide range of Commonwealth laws including the <i>Safety, Rehabilitation and Compensation Act 1988</i>	
<b>C'wealth Seacare</b>	s29 — Dependants <ul style="list-style-type: none"> <li>s15(2) — For the purposes of this Act, a person who, immediately before the date of an employee's death, lived with the employee and was: <ul style="list-style-type: none"> <li>a) the employee's spouse, or</li> <li>b) a prescribed child of the employee,</li> </ul> is taken to be a person who was wholly dependent on the employee at that date.</li> <li>s3 — Spouse includes: <ul style="list-style-type: none"> <li>a) in relation to an employee or a deceased employee — a person who is, or immediately before the employee's death was, a de facto partner of the employee, and</li> <li>b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands — a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.</li> </ul> </li> </ul>	Yes The <a href="#">Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law reform) Act 2008</a> commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependant children from a wide range of Commonwealth laws including the <i>Seafarers Rehabilitation and Compensation Act 1992</i> .	

Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
<b>C'wealth DVA</b>	<p>ss233, 251 and 262 — wholly dependent partner, dependant eligible young person, other dependant</p> <ul style="list-style-type: none"> <li>• s15 — dependant means — persons in the following list who are partly or wholly economically dependant on the member (deemed for partners and eligible young persons if living with member — s17): <ul style="list-style-type: none"> <li>– member's partner</li> <li>– member's father, mother, step-father or step-mother</li> <li>– the father, mother, step-father or step-mother of the member's partner</li> <li>– the member's grandfather or grandmother</li> <li>– the member's son, daughter, step-son or step-daughter</li> <li>– the son, daughter, step-son, step-daughter of the member's partner</li> <li>– the member's grandson or grand-daughter</li> <li>– the member's brother, sister, half-brother, or half-sister</li> <li>– a person in respect of whom the member stands in the position of a parent, or</li> <li>– a person who stands in the position of a parent to the member.</li> </ul> </li> <li>• s5 — partner of a member means a person in respect of whom at least one of the following applies: <ul style="list-style-type: none"> <li>a) if the member is a member of the Aboriginal race of Australia or a descendant of Indigenous inhabitants of the Torres Strait Islands the person is recognised as the member's husband or wife by the custom prevailing in the tribe or group to which the member belongs.</li> <li>b) the person is legally married to the member. A relationship between the person and the member (whether the person and the member are the same sex or different sexes) is registered under a law of a state or territory prescribed for the purposes of s22B of the Acts Interpretation Act 1901 as a kind of relationship prescribed for the purposes of that section.</li> <li>c) the person (whether of the same sex or a different sex to the member): <ul style="list-style-type: none"> <li>(i) is, in the Commission's opinion (see ss5(2)), in a de facto relationship with the member, and</li> <li>(ii) is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member (see ss5(3)).</li> </ul> </li> </ul> </li> </ul>	<p>Yes, see definition of partner — MRCA s5</p>	
<b>New Zealand</b>	<p>s69(e) — Spouse or partner, children and other dependants</p>	<ul style="list-style-type: none"> <li>• s18 — Spouse (in relation to deceased claimant) means a person (person A) to whom the claimant is legally married. However, person A is not the spouse of a claimant if: <ul style="list-style-type: none"> <li>a) person A and the claimant are living apart, and</li> <li>b) the claimant is not contributing</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No specific reference, however de facto partner is not defined, and civil unions in New Zealand are recognised in New Zealand for same sex couples.</li> <li>• Same sex marriages are now recognised in New Zealand.</li> </ul>



Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		<p>financially to person A's welfare.</p> <ul style="list-style-type: none"> <li>• s18(a) — Partner means a person (person A) with whom the claimant is in a civil union or a de facto relationship. However, person A is not the partner of a claimant if: <ul style="list-style-type: none"> <li>a) person A and the claimant are living apart, and</li> <li>b) the claimant is not contributing financially to person A's welfare.</li> </ul> </li> </ul>	

**Table 4.6: Common law provisions**

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• Yes (modified)</li> <li>• Known as Work Injury Damages (WID)</li> <li>• Dust disease sufferers can pursue common law damages against an employer, occupier and/or supplier in accordance with the <i>Dust Diseases Tribunal Act 1987</i> and also continue to receive their statutory benefits under the Workers' Compensation (Dust Diseases) Act 1942</li> <li>• No damages for pure mental harm are available to relatives of an injured or deceased worker unless the relative is also a worker under the Act</li> </ul>	<ul style="list-style-type: none"> <li>• Damages are paid as one lump sum to cover past and future economic loss of earnings only.</li> <li>• The amount of weekly benefits already paid must be repaid out of the money awarded</li> <li>• Damages can be reduced if the worker's own negligence contributed to the injury — Part 5, Division 3, 1987 Act</li> </ul>	<p>To be eligible to make a claim for WID, three criteria must be met:</p> <ul style="list-style-type: none"> <li>(i) the work injury is a result of the negligence of the employer</li> <li>(ii) the worker must have at least a 15% WPI, and</li> <li>(iii) claims for permanent impairment lump sum compensation must be made prior to or at the same time as the WID claim, and must be settled prior to a WID claim being finalised</li> </ul> <p>A WID claim cannot be started for at least six months after the worker gave notice of the injury to the employer, or not more than three years after the date of injury — Part 5, Division 3, 1987 Act</p>	No. If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme	No
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• Yes (limited)</li> <li>• Access to common law is for workers injured on or after 20 October 1999</li> </ul>	<ul style="list-style-type: none"> <li>• Damages for pain and suffering and/or economic loss may be pursued. There are additional requirements to prove a permanent loss of 40% earning capacity to be able to pursue economic loss damages — Part 7 Division 5</li> <li>• If pain and suffering damages are awarded the amount must be reduced by any lump sum impairment benefit paid — s347</li> </ul>	<p>To obtain common law damages, a worker must first be granted a 'serious injury' certificate, either:</p> <ol style="list-style-type: none"> <li>1. During the impairment assessment process, be assessed as having a WPI of 30% or more (can combine physical and mental impairments), or</li> <li>2. WorkSafe Victoria or the County Court determines that the worker has a 'serious injury' pursuant to the narrative test — Part 7 Division 5.</li> </ol> <ul style="list-style-type: none"> <li>• A worker has the option of having their WPI assessed first or by-passing the impairment assessment process and relying on the narrative test. Either way, the worker must make a serious injury application and have that application accepted or rejected by WorkSafe Victoria before they can proceed to the next step.</li> <li>• If the worker's impairment assessment is under 30% and/or their serious injury application relying on the narrative test has been rejected, the worker has 30 days to issue County Court proceedings for a Judge to determine whether they have a 'serious injury' on the narrative test</li> </ul>	—	<ul style="list-style-type: none"> <li>• Damages for pain and suffering must not be awarded if the amount is less than \$58 100 — s340</li> <li>• Maximum amount for pain and suffering damages is \$589 650 — s340</li> <li>• Damages for economic loss must not be awarded if the amount is less than \$60 150 — s340</li> <li>• Maximum amount for economic loss damages is \$1 354 360 — s340.</li> </ul>



Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?	
		damages — <a href="#">s138AB</a> Note: loss of foetus is deemed to be 20% WPI — <a href="#">s71(3)</a> .			
Northern Territory	No	N/A	N/A	N/A	
Australian Capital Territory	Yes	Unlimited	Nil	Unlimited	
C’wealth Comcare	Yes (limited)	Damages for non-economic loss	To have access to common law the employee must first have a successful permanent impairment claim (see s24). Statutory thresholds for accessing common law are outlined in s45 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> .	Yes Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s45 of the Act. No statutory permanent impairment (s24) or non-economic loss (s27) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	Damages shall not exceed \$110 000 This amount is not indexed
C’wealth Seacare	Yes (limited)	Damages for non-economic loss	To have access to common law the employee must first be eligible for a permanent impairment claim. Statutory thresholds for accessing common law are outlined in s55 of the Seafarers Act.	Yes Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s55 of the Act. No statutory permanent impairment (s39) or non-economic loss (s41) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	Damages shall not exceed \$138 70.52 This amount is not indexed
C’wealth DVA	Yes (limited)	Damages for non-economic loss	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act — s389 MRC Act.	Yes Able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under s389 of the MRCA. No statutory permanent impairment benefits are payable after the date of such an election.	Damages shall not exceed \$110 000. This amount is not indexed
New Zealand	People do not have the right to sue for personal injury, except for exemplary damages.	These damages are punitive, and aimed at punishing the conduct of the offender. They are not intended to compensate for the injury.	No threshold	N/A	N/A

**Table 4.7: Suspension and cessation of benefits**

Criteria for suspension of compensation payments	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act then (except to the extent that ss(2), ss(3), or ss(4) covers the case): <ul style="list-style-type: none"> <li>a) the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid), and</li> <li>b) the amount of any weekly payments of compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person who paid the compensation, and</li> <li>c) the person ceases to be entitled to participate in any injury management program provided for under this Act or the 1998 Act</li> </ul> — s151A, 1987 Act. </li> <li>The insurer may discontinue weekly payments of compensation under this division if the worker fails to comply with a requirement under this section within 7 days after it is communicated to the worker by the insurer — s270(2), 1998 Act.</li> <li>A liability in respect of any of the following kinds of compensation under this Act or the former Act may be commuted to a lump sum as provided by this Division (and not otherwise): <ul style="list-style-type: none"> <li>(a) weekly payments of compensation,</li> <li>(b) compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of this Act or section 10 of the former Act.</li> </ul> </li> <li>As part of a commutation agreement, a worker may agree that payment of a lump sum removes any liability to make a payment under Division 4 of Part 3 in respect of the injury concerned. This Division applies to the agreement for payment of that lump sum as if it were an agreement to commute the liability to pay that compensation to a lump sum. Payment of the lump sum removes any liability to which the agreement of the worker relates' — s87F(8), 1998 Act</li> <li>If a worker has received 5 years of weekly payments and does not meet the threshold of at least 21% permanent impairment they cease to be entitled to weekly payments of compensation — s39, 1987 Act. [Does not apply to exempt workers – police officer, fire fighters, paramedics, volunteers under the Workers Compensation Bush Fire, Emergency and Rescue Services Act 1987 or workers employed in or about a coal mine.]</li> <li>If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination: <ul style="list-style-type: none"> <li>a) the worker's right to recover compensation under this Act with respect to the injury, or</li> <li>b) the worker's right to the weekly payments, is suspended until the examination has taken place</li> </ul> — s119(3), 1998 Act </li> <li>If a worker has been receiving weekly payments for partial incapacity for more than two years, these payments can be discontinued if the worker: <ul style="list-style-type: none"> <li>a) is not suitably employed and is not seeking suitable employment or participating in rehabilitation/retraining, or</li> <li>b) is not suitably employed and has previously unreasonably rejected suitable employment, or</li> <li>c) has sought but has failed to obtain suitable employment primarily because of the labour market</li> </ul> — s52A, 1987 Act (as at 18 June 2012) [Only applies to exempt workers – police officer, fire fighters, and paramedics.] If a worker receiving, or entitled to receive, a weekly payment of compensation under an award ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless an approved medical specialist certifies, or the Workers Compensation Commission determines, that the incapacity for work resulting from the injury is likely to be of a permanent nature' — s53(1), 1987 Act. </li> <li>If a worker refuses to attend an assessment under this section or the assessment does not take place because of the worker's failure to properly participate in it, the worker's right to weekly payments is suspended until the assessment has taken place. — s44A, 1987 Act [Does not apply to exempt workers – police officer, fire fighters, paramedics, volunteers under the Workers Compensation Bush Fire, Emergency and Rescue Services) Act 1987 or workers employed in or about a coal mine.] </li> <li>If a worker does not comply with an obligation of the worker imposed under section 48 [return to work obligations], the insurer may in accordance with this section: <ul style="list-style-type: none"> <li>a) suspend the payment of compensation in the form of weekly payments to the worker, or</li> <li>b) terminate the payment of compensation in the form of weekly payments to the worker, or</li> <li>c) cease and determine the entitlement of the worker to compensation in the form of weekly payments in respect of the injury under this Act.</li> </ul> — s48A 1998 Act. [Does not apply to exempt workers – police officer, fire fighters, paramedics, volunteers under the Workers Compensation Bush Fire, Emergency and Rescue Services) Act 1987 or workers employed in or about a coal mine. </li> </ul>
<b>Victoria</b>	<p>A worker's entitlement to compensation and access to court proceedings may be suspended if the worker unreasonably refuses to have a medical examination or unreasonably obstructs a medical examination until the examination takes place and weekly payments are forfeited for the suspension period — s27</p> <p>Weekly payments may be suspended, terminated or ceased and determined if the worker fails to comply with a return to work obligation — s116</p> <p>Entitlement to weekly payments ceases if the worker is absent from Australia – s175</p> <p>No entitlement to weekly payments while worker serves a sentence of imprisonment – s177.</p>

Criteria for suspension of compensation payments	
Queensland	<p>Insurer may suspend compensation if worker:</p> <ul style="list-style-type: none"> <li>• is serving a term of imprisonment — s137</li> <li>• fails to participate in an independent medical examination — s135</li> <li>• fails to participate in rehabilitation — s232, or</li> <li>• fails to participate in an examination by the medical assessment tribunal — s510.</li> </ul> <p>If compensation payments are suspended, no compensation is payable for the period of suspension — s138.</p>
Western Australia	<ul style="list-style-type: none"> <li>• Suspension of payments during custody — s72</li> <li>• Suspension or cessation of payments for failure to undergo medical examination — s72A</li> <li>• Suspension or cessation of payments for failure to participate in return to work program — s72B</li> <li>• If the employer satisfies an arbitrator that there is a genuine dispute as to liability to pay compensation or as to the proper amount of such weekly payments, and in either case of the grounds of the dispute, the arbitrator may order that the payments be suspended for such time as the arbitrator directs or be discontinued or be reduced to such amount as the arbitrator thinks proper or the arbitrator may dismiss the application — s60(2). An Arbitrator also has powers to suspend weekly payments under — s62(2)</li> <li>• In the event that compensation is suspended, no compensation is payable during the suspension period — s63</li> <li>• A conciliation officer may direct that weekly payments of compensation are to be suspended or reduced if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in the payments being suspended or reduced — s182L.</li> </ul>
South Australia	<p>Reduction or discontinuance of weekly payments is covered by section 48 and covers the following circumstances:</p> <p>Discontinued if dismissed from employment for serious and wilful misconduct — s48(2)(e)</p> <p>Discontinued for breach of mutuality — s48(2)(f), including:</p> <ul style="list-style-type: none"> <li>• failure to submit to a medical examination where required by notice — s48(3)(a)</li> <li>• failure to supply a medical certificate where required by notice — s48(3)(b)</li> <li>• refusal or failure to submit to proper medical treatment — s48(3)(c)</li> <li>• refusal or failure to participate in a recovery/return to work program or — s48(3)(d)(i)</li> <li>• failure to comply with obligations under a recover/return to work program — s48(3)(d)(ii)</li> <li>• refusal or failure to undertake work offered and capable of performing, taking reasonable steps to obtain suitable employment or having obtained suitable employment, unreasonably discontinues the employment — s48(3)(e)</li> <li>• refusal or failure to participate in assessments of worker's capacity, return to work progress or future employment prospects (including failure to attend) — s48(3)(f), and</li> <li>• anything else recognised as a breach of the obligation of mutuality — s48(3)(g)</li> </ul> <p>Payments are suspended whilst a worker is in prison — s193</p> <p>Payments are suspended under s46(7) if a worker fails to comply with a requirement under s46(6) (submit to medical examination or furnish evidence of earnings).</p> <p>Payments can be suspended during absence of a worker from Australia under certain circumstances — s51.</p>
Tasmania	<ul style="list-style-type: none"> <li>• A worker's entitlement to compensation may be suspended if the worker unreasonably refuses to submit to a medical examination or undertake any treatment (with the exception of surgical treatment) <a href="#">s90C</a></li> <li>• An employer may, subject to certain conditions such as providing written notice, terminate or reduce weekly payments where: <ul style="list-style-type: none"> <li>– the payment is in respect of total incapacity and the worker has returned to work</li> <li>– the worker is in receipt of the weekly payment in respect of partial incapacity and is receiving weekly earnings in excess of the amount upon which the amount of such weekly payment was determined</li> <li>– an accredited medical practitioner who has examined the worker has certified that in his/her opinion the worker has wholly or substantially recovered from the effects of the injury or that the worker's incapacity is no longer wholly or substantially due to that injury, or</li> <li>– a worker's entitlement to weekly payments has expired as provided by s69B(2E) — s86(1)</li> </ul> </li> <li>• If a worker does not comply with the requirements of a return to work plan or injury management plan, the matter can be referred to the Tribunal which has the power to suspend compensation — <a href="#">s143E(7)</a> and <a href="#">s143Q(7)</a></li> <li>• A worker is not entitled to weekly compensation whilst serving a term of imprisonment — <a href="#">s82</a>.</li> </ul>
Northern Territory	<ul style="list-style-type: none"> <li>• Section 75B: provides that where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training or a workplace based return to work program which could enable him or her to undertake more profitable employment, he or she shall be deemed to be able to undertake such employment and his or her compensation for incapacity benefits may, subject to s69, be reduced or cancelled accordingly.</li> <li>• Where under section 75B a worker so required under ss(1) unreasonably refuses to present himself or herself for assessment of his or her employment prospects, he or she shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his or her experience and skill and who has sustained a similar injury and is in similar circumstances, having regard to the matters referred to in s68, and his or her incapacity benefits may, subject to s69, be reduced or cancelled accordingly.</li> <li>• Section 91 provides that subject to s69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination by a medical practitioner, provided and paid for by the employer the employer may</li> </ul>

Criteria for suspension of compensation payments	
	<ul style="list-style-type: none"> <li>cancel or reduce the incapacity compensation payable to the worker until the examination takes place.</li> <li>Imprisonment s65A — a person is not entitled to receive incapacity benefits for periods of incarceration.</li> <li>Residing outside Australia unless the claimant provides proof of identity and incapacity. A maximum of 104 weeks is payable if a claimant resides outside Australia - s65B. Failing to provide medical certificate when requested. Worker is no longer incapacitated.</li> </ul>
<b>Australian Capital Territory</b>	A worker's entitlement to compensation may be suspended under s113 (compliance by workers), s44 (living outside Australia) or s83 (no compensation while imprisoned) of the <i>Workers Compensation Act 1951</i> .
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>An employee's right to compensation is suspended for unreasonable refusal to: <ul style="list-style-type: none"> <li>undergo (or for obstructing) a rehabilitation assessment examination — s36</li> <li>undertake a rehabilitation program — s37, or</li> <li>undergo (or for obstructing) a medical examination — s57</li> </ul> </li> </ul> <p>Note: for suspensions under s36 or 37, rights to compensation for medical expenses under s16 continue where the suspension commenced on or after 7 December 2011.</p> <ul style="list-style-type: none"> <li>An employee's right to compensation is suspended for failure to comply with any reasonable requirement of Comcare or the licensee where Comcare or the licensee takes over or initiates a 3rd party recovery action — s50</li> <li>Should an employee fail to comply with a notice to give information or a copy of a document, Comcare or the licensee may refuse to deal with the claim — s58.</li> </ul>
<b>C'wealth Seacare</b>	<ul style="list-style-type: none"> <li>An employee's right to compensation is suspended for unreasonable refusal to: <ul style="list-style-type: none"> <li>undergo (or for obstructing) a rehabilitation assessment examination – s49</li> <li>undertake a rehabilitation program – s50, or</li> <li>undergo (or for obstructing) a medical examination – s66</li> </ul> </li> <li>An employee's right to compensation is suspended for failure to comply with any reasonable requirement of the employer where the employer takes over or initiates a third party recovery action – s59. The employer may refuse to deal with the claim if an employee fails to comply with a notice to give information or a copy of a document - s67.</li> </ul>
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>Failure to undertake a rehabilitation assessment or program or a medical examination where required, or to comply in relation to third party proceedings, compensation (other than treatment) may be suspended — MRCA ss50, 52, 329 and 397</li> <li>Suspension of incapacity payments for periods of imprisonment for conviction of an offence — MRCA s122</li> <li>Failure to provide certain information may result in refusal to deal with claim — MRCA s330.</li> </ul>
<b>New Zealand</b>	<p>The Corporation may decline to provide any entitlement for as long as the claimant unreasonably refuses or unreasonably fails to:</p> <ol style="list-style-type: none"> <li>comply with any requirement of the Act relating to the claimant's claim; or</li> <li>undergo medical or surgical treatment for his or her personal injury, being treatment that the claimant is entitled to receive; or</li> <li>agree to, or comply with, an individual rehabilitation plan. – Section 117 (3)</li> </ol> <p>Corporation may suspend, cancel, or decline entitlements:</p> <ol style="list-style-type: none"> <li>The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.</li> <li>The Corporation must give the claimant written notice of the proposed suspension or cancellation within a reasonable period before the proposed starting date.</li> <li>The Corporation may decline to provide any entitlement for as long as the claimant unreasonably refuses or unreasonably fails to: <ol style="list-style-type: none"> <li>comply with any requirement of this Act relating to the claimant's claim; or</li> <li>undergo medical or surgical treatment for his or her personal injury, being treatment that the claimant is entitled to receive; or</li> <li>agree to, or comply with, an individual rehabilitation plan.</li> </ol> </li> </ol> <p>(3A) If the Corporation declines, under subsection (3), to provide an entitlement for any period, the Corporation must start providing the entitlement again if satisfied that:</p> <ol style="list-style-type: none"> <li>subsection (3) no longer applies to the claimant; and</li> <li>the claimant is eligible to the entitlement.</li> </ol> <p>(3B) The Corporation is not required to make any payment of the entitlement for the period during which it was declined under subsection (3), even though it may have started providing the entitlement again under subsection (3A). However, the Corporation may make such payment if the Corporation believes that—</p> <ol style="list-style-type: none"> <li>exceptional circumstances exist; and</li> <li>it would be inequitable to refuse to do so.</li> </ol>

### Criteria for suspension of compensation payments

- (3C) An entitlement that has been declined for any period under subsection (3) must be provided by the Corporation, with effect from the beginning of that period, if:
- a) the Corporation's decision to decline to provide the entitlement for that period is:
    - (i) revised under section 65; or
    - (ii) quashed on review or appeal; and
  - b) the claimant was otherwise entitled to receive the entitlement for that period.



**Table 4.8: Incapacity benefits settlements**

Coverage	
<b>New South Wales</b>	Yes, some restrictions. Refer Part 3 Division 9 1987 Act
<b>Victoria</b>	Yes, some restrictions — Division 9 of Part 5
<b>Queensland</b>	Yes, as calculated under s174 of the Act
<b>Western Australia</b>	Yes, some restrictions —s67
<b>South Australia</b>	Yes, some restrictions – <a href="#">s53</a>
<b>Tasmania</b>	Yes, some restrictions— <a href="#">s132A</a>
<b>Northern Territory</b>	Yes, some restrictions – s78A
<b>Australian Capital Territory</b>	<p>Yes under s137. Settlement may include pay out of one or more of the following:</p> <ul style="list-style-type: none"> <li>– weekly incapacity benefits</li> <li>– lump sum compensation for permanent injuries</li> <li>– medical treatment, damage and other costs under pt 4.5 of the Act, or</li> <li>– any other amount — s137(2)</li> </ul> <p>A payout of weekly compensation may not be assigned, charged or attached, pass to anyone else by operation of the law or have a claim offset against it — s138</p>
<b>C’wealth Comcare</b>	Yes, some restrictions — s30
<b>C’wealth Seacare</b>	Yes, some restrictions — s44
<b>C’wealth DVA</b>	Yes, some restrictions — s138
<b>New Zealand</b>	Yes



# **Chapter 5: Return to work**



## Return to work

Return to work refers to assisting injured workers in staying at or getting back to work. The aim of the return to work/rehabilitation provisions in legislation is to provide for the safe and durable return to work of the injured worker as early as possible with regard to the worker's injury.

The return to work of an injured worker involves the employer and the injured worker. Depending on the legislation in each jurisdiction, and the severity of the injury, it may also involve workplace rehabilitation coordinators, workplace rehabilitation providers, medical and other health professionals, and the insurer.

Some workers' compensation authorities operate injured worker placement incentive schemes to encourage employers to employ workers who have had an injury and are not able to return to work with their pre-injury employer.

A successful return to work is usually the result of four main factors: early intervention, an effective workplace-based rehabilitation program, effective claims management and cooperation, collaboration and consultation between stakeholders.

Tables contained in this section cover the following topics:

### **5.1 Guidance material and sections of the Acts or regulations referring to return to work or rehabilitation**

#### **5.2 Responsibilities of employers in relation to return to work:**

- workplace rehabilitation/return to work programs or policies
- injured worker return to work plans
- the provision of suitable duties/employment, and
- other requirements of employers.

#### **5.3 Responsibilities of workers in relation to return to work**

#### **5.4 Injured worker placements incentive schemes operated by jurisdictional workers' compensation authorities**

#### **5.5 Responsibilities of the workers' compensation authorities or insurers**

#### **5.6 Functions and training of workplace rehabilitation coordinators**

#### **5.7 Workplace rehabilitation providers:**

- responsibilities, and
- qualifications and fee structure.

**Table 5.1: Sections of workers' compensation Acts and guidance material relating to return to work**

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
<b>New South Wales</b>	Chapter 3, 1998 Act Part 6, Workers' Compensation Regulation 2010	SIRA provides information on return to work including return to work coordinators, workplace rehabilitation providers and vocational rehabilitation programs including related documents at <a href="#">Help with getting back to work</a> The Guidelines for workplace return to work programs 2010 outlines the employer's obligations
<b>Victoria</b>	<p><i>Workplace Injury Rehabilitation and Compensation Act 2013</i></p> <p>s17 — Employer to keep register of injuries.</p> <p>Part 4 — Return to Work</p> <p>Division 1—Preliminary</p> <p>s96 — Definitions</p> <p>s97 — Purpose</p> <p>s98 — Application of Part</p> <p>s99 — Obligations of employers and workers</p> <p>s100 — Part does not derogate from other provisions in Act</p> <p>s101 — Application of part</p> <p>Division 2 — Obligations of employers</p> <p>s102 — Flow chart 4—return to work obligations of employers</p> <p>s103 — Provide employment</p> <p>s104 — Plan Return to Work</p> <p>s105 — Consult about Return to Work</p> <p>s106 — Return to Work Coordinator to be nominated</p> <p>s107 — Make return to work information available</p> <p>s108 — Employer to notify Authority of return to work of worker</p> <p>s109 — Host to cooperate with labour hire employer</p> <p>Division 3 — Obligation for workers</p> <p>s110 — Flow chart 5—return to work obligations of workers</p> <p>s111 — Participate in planning for return to work</p> <p>s112 — Use occupational rehabilitation services</p> <p>s113 — Participate in assessments</p> <p>s114 — Return to work</p> <p>s115 — Participate in an interview</p> <p>Division 4 — Termination of compensation</p> <p>s116 — Failure to comply with Division 3</p> <p>s117 — Notification of return to work</p> <p>Division 5 — General Provisions</p> <p>s118 — Resolution of return to work issues</p> <p>s119 — Information about the employer obligation period</p> <p>s120 — Authority may be given</p> <p>s121 — Compliance Codes</p>	<p><a href="#">Labour hire and return to work — information for employers (WSV1344/01/06.10)</a></p> <p><a href="#">Return to work coordination the basics you need to know (WSV1343/02/02.11)</a></p> <p><a href="#">Returning to work guide for injured workers (WSV1153/03/02.11).</a></p> <p><a href="#">Steps to resolving return to work issues (WSV1347/02/02.11)</a></p> <p><a href="#">What to do if a worker is injured — a guide for employers (WSV696/06/02.11)</a></p> <p><a href="#">Return to work arrangements (FOR699/05/03.11)</a></p> <p><a href="#">Suitable employment for injured workers — a step by step guide to assessing suitable employment options (FOR726/03/03.11)</a></p> <p><a href="#">Information for employers — compliance codes (WSV 1425/01/ 03.11)</a></p> <p><a href="#">Information for employers — Return to Work Coordinator fact sheet (WSV 1342/02/02.11)</a></p> <p><a href="#">Return to Work Compliance codes 1 (WCC011/01/02.11)</a></p> <p><a href="#">Return to Work Compliance codes 2 (WCC010/01/02.11)</a></p> <p><a href="#">Return to Work Compliance codes 3 (WCC009/01/02.11)</a></p> <p><a href="#">Return to Work Compliance codes 4 (WCC012/01/02.11)</a></p> <p><a href="#">Employer Obligation fact sheet</a></p> <p><a href="#">Return to Work Ministerial Direction No 1 — Issue Resolution</a></p> <p><a href="#">Workplace Support Service</a></p> <p><a href="#">Return to Work Inspector fact sheet</a></p>

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
	<p>s122 — Disallowance of certain compliance code orders</p> <p>s123 — Effect of Compliance Code</p> <p>s124 — Effect of compliance with compliance codes</p> <p>s125 — Functions of Authority in respect of compliance codes</p> <p>Division 6 — Return to Work Inspectorate (s126 and s127)</p> <p>Division 7 — Functions and powers of inspectors (s128 to s145)</p> <p>Division 8 — Offences (s146 to s148)</p> <p>Division 9 — Review of decisions (s149 to s151)</p> <p>s222 — Commission or self-insurer may pay for rehabilitation services</p> <p>s224 — Compensation for medical and like services</p> <p>s575 — Offence to engage in discriminatory conduct</p> <p>s609 — Directions issued by the Minister</p> <p>s610 — Directions given for the purposes of Part 4</p>	
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• Act s220 — Insurer's responsibility for rehabilitation</li> <li>• s228 — Employer's obligation to assist or provide rehabilitation.</li> <li>• Reg s116 Standard for rehabilitation</li> </ul>	<a href="#">Guidelines for Standard for Rehabilitation</a>
<b>Western Australia</b>	Workers' Compensation Code of Practice (Injury Management) 2005: cl1–9; Act — s3, s5(1), s64, s65, s72B, s84AA(1), s84AB, Part IX, Part IXA	<p>Publications:</p> <p><a href="#">Injury Management: A Guide for Employers</a></p> <p><a href="#">Workers' Compensation Code of Practice (Injury Management) 2005</a></p> <p><a href="#">Template Return to Work Program</a></p> <p><a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a></p> <p>Website info:</p> <p><a href="#">Returning to work: Workers</a></p> <p><a href="#">Returning to work: Employers</a></p> <p><a href="#">List of approved workplace rehabilitation providers</a></p>
<b>South Australia</b>	<p><i>Return to Work Act 2014</i></p> <p>s3 – Objects of the Act</p> <p>s13(2)(a) – The Corporation</p> <p>s15(3) – Workers</p> <p>s17(2) – Employers</p> <p>s18 – Employer's duty to provide work</p> <p>ss 23 and 24 — Early intervention, recovery and return to work services</p> <p>s25 — Recovery/return to work plans</p> <p>s26 — Return to work co-ordinators</p> <p>s43 – Return to work obligations of worker</p> <p>s52 – Reports of return to work etc</p> <p>Return to Work Regulations 2015</p> <p>Part 3 – Recovery and Return to Work</p>	<p><a href="#">Recovery/return to work plan</a></p> <p><a href="#">Return to work coordinators</a></p>

Sections of the Act or regulations referring to return to work		Names and links to guidance material on return to work
<b>Tasmania</b>	Part XI of the <i>Workers' Rehabilitation and Compensation Act 1988</i> deals with injury management	<a href="#">About Return to Work and Injury Management Plans</a> <a href="#">Helping People Return to Work</a> <a href="#">Guideline for preparing Return to Work Plans and Injury Management Plans</a> <a href="#">The Role of the Primary Treating Medical Practitioner</a> <a href="#">The Role of the Workplace Rehabilitation Provider</a> <a href="#">Developing an Injury Management Program</a> <a href="#">Tasmanian Additional Requirements to operate as a Workplace Rehabilitation Provider</a> <a href="#">Transitional arrangements for the accreditation of Workplace Rehabilitation Providers</a> Further resources are available under the <a href="#">resources</a> page on the <a href="#">WorkCover Tasmania</a> website
<b>Northern Territory</b>	<ul style="list-style-type: none"> <li>Employer must: <ul style="list-style-type: none"> <li>Take reasonable steps to ensure suitable work is provided – s75A(1)(a)</li> <li>take reasonable steps to ensure efforts to retrain worker, if required – s75A(1)(b)</li> </ul> </li> <li>Where worker likely to be incapacitated for more than 28 days, give the worker a proposal in writing for a return to work plan – s75A(1)(c)</li> <li>Worker must cooperate with reasonable return to work and treatment program — s75B</li> <li>Accredited Vocational Rehabilitation Providers — s50</li> </ul>	<a href="#">Employers Managing Rehabilitation</a> <a href="#">Workers Getting Back to Work</a> <a href="#">Alternative Employer Incentive Scheme</a> <a href="#">Medical Practitioners Workers Compensation Guide</a> <a href="#">Accredited Vocational Rehabilitation Providers</a>
<b>Australian Capital Territory</b>	<a href="#">Chapter 5 of the Workers' Compensation Act 1951</a>	<a href="#">Chapter 5 of the Workers' Compensation Act 1951</a>
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li><i>Safety, Rehabilitation and Compensation Act 1988</i> — Part III, Division 2</li> <li>s34A – s34S - Approved rehabilitation program providers</li> <li>Division 3 <ul style="list-style-type: none"> <li>s36 Assessment of capability of undertaking rehabilitation program</li> <li>s37 Provision of rehabilitation programs</li> <li>s38 Review of certain determinations by Comcare</li> <li>s39 Compensation payable in respect of certain alterations etc.</li> <li>s40 Duty to provide suitable employment</li> <li>s41 Rehabilitation authorities to comply with guidelines</li> <li>s41A Delegation by rehabilitation authority</li> </ul> </li> </ul>	First to action - <a href="#">Early intervention to support psychological health and wellbeing</a> <a href="#">Guidelines for Rehabilitation Authorities 2012</a> <a href="#">Helping you recover</a> <a href="#">Returning to work</a> <a href="#">Return to work easy reference guide</a> <a href="#">First steps back: A guide to suitable employment for rehabilitation case managers</a> <a href="#">Work trials: a guide for rehabilitation case managers</a> <a href="#">Working for recovery: suitable employment for return to work following psychological injury</a>
<b>C'wealth Seacare</b>	<ul style="list-style-type: none"> <li><i>Seafarers Rehabilitation and Compensation Act 1992</i> Part 3 <ul style="list-style-type: none"> <li>s48 Approved rehabilitation program providers</li> <li>s49 Assessment of capability of undertaking rehabilitation programs</li> <li>s50 Provision of rehabilitation programs</li> <li>s51 Compensation payable in respect to certain alterations, etc</li> <li>s52 Duty to provide suitable employment</li> </ul> </li> </ul>	<a href="#">A best practice guide Seafarers Rehabilitation and Return to Work</a> <a href="#">Short version</a>
<b>C'wealth DVA</b>	MRCA — ss37-64	<a href="#">Rehabilitation services in DVA</a>
<b>New Zealand</b>	Accident Compensation Act 2001 — ss70-113	-

**Table 5.2a: Requirement to have a workplace rehabilitation/ return to work program or policy**

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
<b>New South Wales</b>	Yes s52, 1998 Act	Yes Refer Part 6 Workers Compensation Regulation 2016	Yes Refer Clause 21 Workers Compensation Regulation 2016	Yes s52, 1998 Act	Yes Refer Clauses 17 and 18 Workers' Compensation Regulation 2016	<p>Must cover the following key areas:</p> <ul style="list-style-type: none"> <li>preventing workplace injuries and illness</li> <li>how the return to work program was developed and implemented including relevant information and training strategies for the workforce</li> <li>consulting with workers and any industrial unions representing those workers</li> <li>early commencement of injury management and early return to work</li> <li>providing suitable duties and/or vocational retraining/job placement assistance, and</li> <li>returning to work not to disadvantage injured workers.</li> </ul>	<a href="#">Guidelines for workplace return to work programs September 2010</a> <a href="#">Standard return to work program</a>
<b>Victoria</b>	Yes — s103 to s107 — required to plan return to work for injured worker and consult on this; to have a return to work coordinator for duration of return to work obligations or at all times if has \$2 303 680 rateable remuneration and to make return to work information available to all workers regardless of organisation size	No Except in relation to return to work coordinator being required at all times or for duration of individual claim based on remuneration (s106)	No	Yes Employer must consult with workers as to how return to work information is to be made available	Yes An employer must make the return to work information available to workers but the Act does not specify how, only that the workers must be consulted about how	<p>The return to work information that employers are required to make available to their workers should contain the following elements:</p> <p>a) the obligations of the employer under the return to work Part of the Workplace Injury Rehabilitation and Compensation Act 2013 and how the employer is meeting the obligations, and</p>	<a href="#">Return to Work Compliance Code 3 — Return to Work Information</a> <a href="#">Return to Work Information Template</a>

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
						<div><div>b)</div><div>the rights and obligations of workers under the return to work part of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> and how workers can obtain further information about the rights and obligations, and</div><div>c)</div><div>the name and contact details of the authorised agent selected by the employer, and</div><div>d)</div><div>the name and contact details of the return to work coordinator, if applicable, and</div><div>e)</div><div>the procedure for resolving return to work issues as specified in s118.</div></div>	
Queensland	Yes An employer must have a workplace rehabilitation policy and procedures if they meet the criteria specified under a regulation. They must also review the policy and procedures every 3 years (Act s227)	Yes If the employer is in a high risk industry there is a lower wage threshold to meet the criteria for needing policy and procedures and a Rehabilitation and Return to Work Coordinator (Act s226)	Yes Employers in a high risk industry with declared wages less than \$3 787 940, and all other employers with declared wages of less than \$7 575 880, do not need a workplace rehabilitation policy and procedure. (The threshold amount varies each year by movements in QOTE: Qld Ordinary Time Earnings)	No There is no requirement for the policy and procedures to be developed in consultation with workers	No	Workplace rehabilitation policies and procedures which outline: <ul style="list-style-type: none"><li>• employer commitment to assist injured workers to access necessary treatment and rehabilitation, and</li><li>• specific steps employer will take to achieve safe, timely and durable return to work.</li></ul>	<a href="#">Workplace Rehabilitation Policy and Procedures.</a>
Western Australia	Yes — s155B and Workers' Compensation Code of Practice (Injury Management) 2005. Employers must establish and implement an Injury Management System	No — s155B and Workers' Compensation Code of Practice (Injury Management) 2005	No — s155B and Workers' Compensation Code of Practice (Injury Management) 2005	No	Yes Code, cl6	Code, cl6 states that the document describing the injury management system has to include: <div><div>a)</div><div>a description of the steps the employer will take when an injury occurs at the</div></div>	<a href="#">Workers' Compensation Code of Practice (Injury Management) 2005</a>



	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
						b) employer's workplace details of the person who has the day to day responsibility for the injury management system, and how to contact that person.	
<b>South Australia</b>	<p>An employer is required to appoint a Return to Work Coordinator – s26. The duties of the Coordinator includes a requirement to comply with training or operational guidelines published by RTWSA [s26(5)(c)]</p> <p>Under s147, an employer can be the subject of an imposed supplementary payment (in addition to their premium) for failing to provide satisfactory recovery/return to work facilities or services</p>	Employers with less than 30 employers are exempt from a requirement to appoint a Return to Work Co-ordinator (Reg 18)	A recovery/return to work plan is not mandatory where the period of incapacity is less than 4 weeks – s25(1)	Section 25(5)	Section 25(7)	Section 25(6) and regulation 15	<a href="#">Return to Work Coordinator Functions</a>
<b>Tasmania</b>	<p>Yes</p> <p>Insurers and employers are required to ensure that there is an approved Injury Management Program in place in respect of each employer and to comply with it — <a href="#">s142</a></p> <p>The approval process for Injury Management Programs is in <a href="#">s143</a></p>	No	No	<p>The WorkCover Tasmania Board can issue Guidelines setting out the matters to be included in an Injury Management Program — <a href="#">s142(1)</a></p> <p>The Guidelines state that an Injury Management Program should be developed in consultation with all parties</p>	The Guidelines indicate that an Injury Management Program should be readily available in the employer's workplace where the workers can readily refer to it	<p>Injury Management Program should include:</p> <ul style="list-style-type: none"> <li>• an injury management policy, including: <ul style="list-style-type: none"> <li>– statement of commitment and objectives; and</li> <li>– statement of roles and responsibilities of all parties</li> </ul> </li> <li>– procedures in relation to information and communication management.</li> <li>• procedures for managing the roles of Injury Management Co-ordinator, Workplace Rehabilitation Provider and Return to Work Co-ordinator</li> <li>• mechanisms to</li> </ul>	<a href="#">Guidelines for developing an Injury Management Program</a>

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
						facilitate early reporting and intervention of injuries/claims and procedures relating to medical management. <ul style="list-style-type: none"> <li>policy for the management of employer injury management programs (licensed insurers only).</li> <li>Return to work and alternative duties management plans.</li> </ul>	
<b>Northern Territory</b>	Yes Where worker likely to be incapacitated for more than 28 days, the employer must give the worker a proposal in writing for a return to work plan – s75A(1)(c)	No	No	Yes Where worker likely to be incapacitated for more than 28 days, the employer must give the worker a proposal in writing for a return to work plan – s75A(1)(c)	Not legislated	Not legislated	—
<b>Australian Capital Territory</b>	Yes s109 <i>Workers' Compensation Act 1951</i>	No	No	The return to work program must be developed in consultation with: workers to whom it relates, unions representing the workers and approved rehabilitation providers. s109 <i>Workers' Compensation Act 1951</i>	Yes s109 (2)	Section 109(3) provides that the return to work program must provide policies and procedures for rehabilitation and be consistent with insurer's injury management program, be established in accordance with any guidelines issued by the Minister.	<a href="#">Workers' Compensation Act 1951</a>
<b>C'wealth Comcare</b>	Yes Section 41(2) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> requires rehabilitation authorities to comply with any guidelines issued under s41(1). Rehabilitation programs and rehabilitation management systems are covered in the <i>Guidelines for Rehabilitation Authorities 2012</i> (the Guidelines); Chapter 4 — Part II	Yes The Guidelines state on page 23 that the level of sophistication and detail in the rehabilitation management system is dependent upon the risk profile of the employer's industry, employee numbers, nature and location of employment premises, and the frequency of injuries warranting rehabilitation assessments	No	The Guidelines promote ongoing consultation and communication of relevant information with employees regarding rehabilitation	Yes	An employer is responsible for developing and maintaining a system for managing rehabilitation under the Guidelines. This system should meet <ul style="list-style-type: none"> <li>(i) the Performance Standards and Measures in Attachment A of the Guidelines;</li> <li>(ii) the rehabilitation needs of the employer to deliver effective</li> </ul>	<a href="#">Guidelines for Rehabilitation Authorities 2012</a>

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
	Rehabilitation Program Attachment A – Performance Standards and Measures for Employers	and rehabilitation programs				(iii) rehabilitation; and the reporting requirements on the employer's rehabilitation performance (see Chapter 5 and Attachment B of the Guidelines)	
<b>C'wealth Seacare</b>	No	N/A	No	In consultation with the employee, employer, rehabilitation provider and medical practitioner	N/A	N/A	<a href="#">A best practice guide: Seafarers Rehabilitation and Return to Work</a>
<b>C'wealth DVA</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>New Zealand</b>	N/A	No	No	N/A	No	N/A	N/A

**Table 5.2b: Return to work plans — Individual return to work plans**

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>Insurer is responsible for the development of an injury management plan — s45 of the 1998 Act.</li> <li>As part of the injury management plan an employer is responsible for the development of a return to work plan.</li> </ul>	If worker sustains significant injury i.e. workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both the insurer is responsible for the development of an injury management plan. Refer s45 1998 Act.	The injury management plan outlines services required to assist a worker to recover and return to work. Includes details about treatment, rehabilitation and retraining. It is developed in consultation with the worker and employer, and outlines the actions and obligations for each participant.	An employer is to develop a return to work plan for each worker who returns to work on suitable employment. For details refer to <a href="#">Guidelines for workplace return to work programs September 2010</a> .	If injury is a significant injury then insurer must establish an injury management plan.
<b>Victoria</b>	Employer — s103 (provide employment) and s104 (plan return to work)	<p>Employer must plan a worker's return to work from the date on which the employer knows or ought reasonably to have known of worker's incapacity, whichever is the earlier date. s96 — Defines this start date as the earliest of the following dates:</p> <ul style="list-style-type: none"> <li>the date the employer receives the worker's medical certificate (issued in accordance with s25(1), or</li> <li>the date the employer receives a claim for compensation from the worker in the form of weekly payments, or</li> <li>the date the employer is notified by the Authority that the worker has made a claim for compensation in the form of weekly payments, or</li> <li>the date the employer is notified by the Authority that the worker has provided the Authority with a medical certificate issued in accordance with s25(1).</li> </ul>	<ul style="list-style-type: none"> <li>Once suitable or pre-injury employment has been confirmed, employers must provide the worker with details of the return to work arrangements. The details of the return to work arrangements must be clear, accurate and up to date. Employers should include (but not limit themselves to including) details about: <ul style="list-style-type: none"> <li>the suitable employment being provided including modified or alternative duties that accommodate restrictions identified in medical information available such as Certificates of Capacity</li> <li>commencement time and date</li> <li>details of any tasks or duties the worker needs to avoid</li> <li>the hours of work and the place of work</li> <li>work breaks, rotations or exercise breaks</li> <li>support, aids or modifications to the workplace to assist the worker's return to work</li> <li>the Return to Work Coordinator contact details</li> <li>details of the worker's supervisor or manager when returning to work, and</li> <li>the review date (reviews may occur earlier than this date as appropriate).</li> </ul> </li> <li>An employer must communicate the details of the return to work</li> </ul>	<a href="#">Return to work Compliance Code 1: Providing employment, planning and consulting about return to work</a>	No

Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
			arrangements to the worker or other relevant parties in a way that is most appropriate for the worker and the other parties. Providing the worker with this information in writing is one way to comply, but it is not mandatory to do so. However, this may not always be adequate and other approaches may be required such as talking through the return to work arrangements with the worker.	
<b>Queensland</b>	Act s220 — The insurer	Act s220 – An insurer must take the steps it considers practicable to coordinate the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the worker's employer and treating registered persons	A written plan outlining the rehabilitation objectives and the steps required to achieve the objectives	<a href="#">Guidelines for Standard for Rehabilitation</a> No
<b>Western Australia</b>	The Employer — Act s155C; Code — cl7	s155C — As soon as practicable after <ul style="list-style-type: none"> <li>the treating doctor indicates the need for a return to work program, or</li> <li>the worker's doctor signs a medical certificate to the effect that the worker has partial capacity for work or has total capacity but is unable to return to their pre-injury position for some reason.</li> </ul>	cl8(1)(a) — (d): <ol style="list-style-type: none"> <li>Names of the injured worker and the employer, and any other details needed to identify them,</li> <li>Description of the goal of the program,</li> <li>List of the action to be taken to enable return to work, identifying who has to take each action, and</li> <li>A statement as to whether the worker agrees with the content of the program.</li> </ol>	<a href="#">Injury Management: A Guide for Employers</a> No A return to work program is an individualised program. An Injury Management System is developed by the employer for all workers describing the steps to be taken if an injury occurs.
<b>South Australia</b>	The insurer/self-insured employer are responsible for ensuring that a recovery/return to work plan is in place for the worker – <a href="#">s25</a>	<ul style="list-style-type: none"> <li>A recovery/return to work plan must be prepared where it appears that a worker is (or is likely) to be incapacitated for work by a work injury for more than 4 weeks – s25(2)(a).</li> <li>A plan must not impose any obligation on a seriously injured worker (more than 30% WPI) to return to work – s25(11).</li> </ul>	Under Regulation 15, the plan must specify: <ul style="list-style-type: none"> <li>worker name</li> <li>date of birth</li> <li>claim number</li> <li>employer name</li> <li>nature of injury</li> <li>date of injury</li> <li>must be appropriate to the circumstances of the worker</li> <li>must have specific employment objectives</li> <li>must promote communication and cooperation between parties</li> <li>must contain recovery/return to work services provided to worker</li> <li>commencement and completion</li> </ul>	<a href="#">Regulation 15</a> Return to Work Regulations 2015 No

Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan	
		<ul style="list-style-type: none"><li>period</li><li>review times</li><li>prescribed notices for employers and workers regarding failure to comply.</li></ul>			
Tasmania	The injury management coordinator — s143E	<ul style="list-style-type: none"><li>If the worker is, or is likely to be, totally or partially incapacitated for work for more than 5 working days but less than 28 days, a return-to-work plan is required before the expiry of 5 days after the worker becomes totally or partially incapacitated for work for more than 5 working days.</li><li>If the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days, an injury management plan is required before the expiry of 5 days after the worker becomes totally or partially incapacitated for work for 28 days. — <a href="#">s143E</a>.</li></ul>	<ul style="list-style-type: none"><li>Contact details for: the worker, worker's supervisor or return to work coordinator, the primary treating medical practitioner; and the injury management coordinator.</li><li>Details of the worker's employment, medical assessment, capacity to work, any current return to work or injury management plan that the worker has been participating in, medical management, barriers or impediments to return to work, suitable duties identified and available, return to work/injury management goals, strategies for achieving goals and agreement to comply with the plan from the worker and employer.</li></ul>	<a href="#">Guideline for Preparing Return to Work Plans and Injury Management Plans (G—020)</a> <a href="#">Return to Work Plan/Injury Management Plan — Sample</a>	s143E — Yes An injury management plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days.
Northern Territory	The employer – s75A	When worker is likely to be incapacitated for more than 28 days	Not Legislated	—	Not Legislated
Australian Capital Territory	The insurer carries the primary responsibility under s97 Workers' Compensation Act 1951	s97 <i>Workers' Compensation Act 1951</i> — all significant compensable injuries (incapacity for seven days or more) must have a personal injury plan. If the worker is not back at work in pre-injury duties at pre-injury hours by 4 weeks post injury notification a rehabilitation provider must be appointed — s99A <i>Workers Compensation Act 1951</i> )	The plan is for coordinating and managing the aspects of injury management that relate to medical treatment and rehabilitation services for the worker to achieve a timely, safe and durable return to work. The content of the plan is not prescribed	<a href="#">Workers' Compensation Act 1951</a>	The return to work plan and the injury management plan are integrated into the personal injury plan
C'wealth Comcare	The employer (defined in s4 as the rehabilitation authority) — ss37(1)	<ul style="list-style-type: none"><li>The <i>Guidelines for Rehabilitation Authorities 2012</i> (the Guidelines) (see paragraph 17.2) state that the case manager, in identifying the potential for early rehabilitation intervention, should have regard to: (a)-(h), including unplanned workplace absences of 3 or more days.</li><li>When a rehabilitation authority makes a determination that an employee who has suffered an</li></ul>	<ul style="list-style-type: none"><li>The Guidelines (see Chapter 4, Part II — Rehabilitation Program) state the purpose of a rehabilitation program (return to work plan) is to deliver structured activities and services that assist an employee to be maintained at or return to work and/or maintain or improve the performance of activities of daily living.</li><li>In deciding to provide a rehabilitation program the</li></ul>	<a href="#">Guidelines for Rehabilitation Authorities 2012</a>	No

Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan	
		<p>injury resulting in an incapacity for work or an impairment should undertake a rehabilitation program — ss37(1).</p>	<p>rehabilitation authority shall have regard to:</p> <ul style="list-style-type: none"><li>(a) the recommendations from the rehabilitation assessment;</li><li>(b) the matters under s37(3) of the Act, including consultation with the employee, the employee's treating practitioner, supervisor and the approved rehabilitation provider as to the program's content; and</li><li>(c) where the current rehabilitation authority is not the liable employer, the potential views and contributions of the liable employer to the rehabilitation program content shall be sought including their ability to provide suitable employment. (Guidelines, Chapter 4, Part II – Rehabilitation Program, paragraph 24).</li></ul>		
C'wealth Seacare	The employer — s50(1)	<p>s49 (1) — If the injury lasts, or is expected to last 28 days or more</p>	<p>Where practical:</p> <ul style="list-style-type: none"><li>• suitable employment</li><li>• an outline of steps by the employer or on the employers behalf, and</li><li>• a start and review date.</li></ul>	<p><a href="#">A best practice guide: Seafarers Rehabilitation and Return to Work</a></p>	No
C'wealth DVA	<ul style="list-style-type: none"><li>• s39 — The rehabilitation authority for a person at a time is:<ul style="list-style-type: none"><li>(a) subject to paragraph (aa), the Chief of the Defence Force for a time when the person:<ul style="list-style-type: none"><li>(i) is a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist; and</li><li>(ii) has not been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons; or</li></ul></li><li>(aa) if the Commission, after considering advice from the Chief of the Defence Force, determines, in writing, that the Commission is to be the rehabilitation authority for a specified person at a specified</li></ul></li></ul>	<p>s51 — Rehabilitation authority may determine that the person is to undertake a rehabilitation program if an assessment has been made of the person's capacity for rehabilitation</p>	<p>s5 — A program that consists of or includes any one or more of the following:</p> <ul style="list-style-type: none"><li>(a) medical, dental, psychiatric and hospital services,</li><li>(b) physical training and exercise,</li><li>(c) physiotherapy,</li><li>(d) occupational therapy,</li><li>(e) vocational assessment and rehabilitation,</li><li>(f) counselling, and</li><li>(g) psycho-social training.</li></ul> <p>s5 — Vocational assessment and rehabilitation consists of or includes any one or more of the following:</p> <ul style="list-style-type: none"><li>a) assessment of transferable skills,</li><li>b) functional capacity assessment,</li><li>c) workplace assessment,</li><li>d) vocational counselling and training,</li><li>e) review of medical factors,</li><li>f) training in resume preparation, job-</li></ul>	<p><a href="#">Rehabilitation services in DVA</a></p>	No

Responsibility for ensuring that a return to work plan is in place		When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
	time—the Commission for that time; or (b) the Commission for any other time.		seeker skills and job placement, and g) provision of workplace aids and equipment.		
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>The Injured Employee — s70</li> <li>Claimant's and Corporation's obligations in relation to rehabilitation</li> <li>A claimant who has suffered personal injury for which they have cover: <ul style="list-style-type: none"> <li>a) is entitled to be provided with rehabilitation, to the extent provided by this Act, to assist in restoring health, independence, and participation to the maximum extent practicable, but</li> <li>b) is responsible for their own rehabilitation to the extent practicable having regard to the consequences of their injury.</li> </ul> </li> </ul>	s86 — After an assessment has been done and the corporation decides that it is reasonably practicable to return the injured employee to the same employment in which they were engaged	Various forms of Rehabilitation based on type of injury, severity, duties normally performed	—	—



**Table 5.2c: Suitable duties**

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
<b>New South Wales</b>	Suitable employment means: employment in work for which the worker is currently suited having regard to capacity, age and other factors but regardless of its availability, location — s32A, 1987 Act. Where reasonably practicable duties should be equivalent to the employment at the time of injury, s49, 1998 Act.	No	Yes – Two years. s247 of the 1987 Act.	Yes – s248(3) of the 1987 Act	No – but cannot dismiss the worker within six months of the injury date on the basis that the worker is unfit for work because of the injury.
<b>Victoria</b>	<ul style="list-style-type: none"> <li>Suitable employment means work that is suited to the worker's current abilities taking into account their capacity for work and, amongst other things, their medical condition, age, skills, work experience, place of residence and pre-injury employment.</li> <li>Pre-injury employment means employment that is the same as, or equivalent to, the job that a worker was employed in before they sustained their injury or illness (see definitions in s3 and s96).</li> </ul>	52 weeks of the worker's incapacity	52 weeks of the worker's incapacity. For the duration of the employment obligation period the employer has to provide suitable employment if the worker has a current work capacity and pre-injury if the worker no longer has an incapacity for work.	Yes – s101	No
<b>Queensland</b>	Act s42 — Suitable duties are work duties for which the worker is suited, having regard to: <ol style="list-style-type: none"> <li>nature of the worker's incapacity and pre-injury employment</li> <li>relevant medical information</li> <li>rehabilitation and return to work plan for the worker</li> <li>provisions of the employer's workplace rehabilitation policy and procedures</li> <li>worker's age, education, skills and work experience;</li> <li>if duties are available at a location other than the location in which the worker was injured — whether it is reasonable to expect the worker to attend the other location, and</li> <li>any other relevant matters.</li> </ol>	No <ul style="list-style-type: none"> <li>The employer has an obligation to provide rehabilitation, which includes suitable duties, while the worker is receiving workers' compensation — Act s228</li> <li>Weekly payments stop when the worker's incapacity stops, or after the worker has received compensation for 5 years, or when the maximum compensation payment is reached — Act s144).</li> </ul>	Yes The employer must hold the worker's former position open for 12 months (the employer must not dismiss the worker solely or mainly because the worker is not fit for employment in a position because of the injury within 12 months of the worker sustaining the injury) — Act s232B.	No	No
<b>Western</b>	<ul style="list-style-type: none"> <li>Employer required to provide pre-injury position to injured worker if</li> </ul>	Previous position offered if reasonably practicable to do so.	Yes	Yes If the employer proves that the worker	Yes

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
<b>Australia</b>	<p>worker attains total or partial capacity within 12 months. If that job is no longer available, or worker can no longer perform, employer must offer a similar position for which worker is qualified, and capable of doing — s84AA(1)</p> <ul style="list-style-type: none"> <li>Employers are required to notify worker and WorkCover WA of any intention to dismiss the worker 28 days before the dismissal is due to take place — s84AB.</li> </ul>		12 months	was dismissed on the grounds of serious or wilful misconduct — s84AA(2)	s84AB
<b>South Australia</b>	<p>Suitable employment is defined in section 4 of the Act as follows: In relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:</p> <ol style="list-style-type: none"> <li>the nature of the worker's incapacity and previous employment,</li> <li>the worker's age, education, skills and work experience,</li> <li>the worker's place of residence,</li> <li>medical information relating to the worker that is reasonably available, including in any medical certificate or report,</li> <li>if any recovery/return to work services are being provided to or for the worker, and</li> <li>the worker's recovery/return to work plan, if any.</li> </ol>	No	No, however, under section 18 an employer must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification and this section, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity).	<p>The requirement to provide suitable employment does not apply in the following circumstances:</p> <ol style="list-style-type: none"> <li>it is not reasonably practicable to provide employment (with the onus of establishing that on the employer); or</li> <li>the worker left the employment of that employer before the commencement of the incapacity for work; or</li> <li>the worker terminated the employment after the commencement of the incapacity for work; or</li> <li>new or other employment options have been agreed between the worker, the employer and the Corporation under section 25(10); or</li> <li>the worker has otherwise returned to work with the pre-injury employer or another employer. <a href="#">s18(2).</a></li> </ol>	<ul style="list-style-type: none"> <li>Pursuant to section 20(1) the employer must provide 28 days notice to the Corporation.</li> <li>Notice to the Corporation is not required if termination has occurred on grounds of serious and wilful misconduct or the worker is not participating in a recover/return to work plan, nor receiving compensation for the work injury or the worker's rights to compensation for the injury have been exhausted or the time for making a claim for compensation has expired.</li> </ul>
<b>Tasmania</b>	<p>Suitable alternative duties, in relation to a worker, are those duties for which the worker is suited, having regard to the following:</p> <ul style="list-style-type: none"> <li>nature of the worker's incapacity and pre-injury employment;</li> <li>worker's age, education, skills and work experience;</li> <li>worker's place of residence;</li> <li>any suitable duties for which worker has received rehabilitation training;</li> <li>and any other relevant</li> </ul>	No	<p>Yes</p> <p>For a period of 12 months commencing on the day on which the worker becomes totally or partially incapacitated by a workplace injury. — <a href="#">s143L(1).</a></p>	<p>Yes</p> <p>The employer does not have to hold the worker's position open if: there is medical evidence indicating that it is highly improbable that the worker will be able to perform the employment in respect of which the worker was engaged immediately before becoming incapacitated; or the work for which the worker was employed is no longer required to be performed — <a href="#">s143L(2).</a></p>	No

What constitutes suitable duties		Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
	<p>circumstances.</p> <ul style="list-style-type: none"> <li>Suitable alternative duties specifically exclude: <ul style="list-style-type: none"> <li>duties that are merely of a token nature or do not involve useful work having regard to the employer's trade or business; or</li> <li>duties that are demeaning in nature having regard to the worker's incapacity, pre-injury employment, age, education, skills and work experience and to the worker's other employment prospects — <a href="#">s143M(5)</a>.</li> </ul> </li> </ul>				
<b>Northern Territory</b>	<p>s75A(6) — Employment is suitable for a worker if it requires the worker to perform work for which the worker is fit as specified in the workers statement of fitness for work, taking the following matters into account:</p> <ol style="list-style-type: none"> <li>his or her age</li> <li>his or her experience, training and other existing skills</li> <li>his or her potential for rehabilitation training</li> <li>his or her language skills</li> <li>the impairments suffered by the worker; and</li> <li>the provision of suitable employment includes the referral of the worker to the alternative employer incentive scheme developed by the Authority if the employer does not have other suitable employment available.</li> </ol>	No	No But must not dismiss worker, if incapacitated, for six months after the injury — s65C	Yes If employer can show worker was dismissed on grounds of serious misconduct — s65C(3)	No
<b>Australian Capital Territory</b>	Suitable duties are not defined	Section 105 — within six months after the day the worker became entitled to weekly compensation	The employer has an obligation to provide duties for up to six months (s105 <i>Workers' Compensation Act 1951</i> )	<p>The employer does not have an obligation to provide duties if — s106(4) <i>Workers' Compensation Act 1951</i>):</p> <ul style="list-style-type: none"> <li>worker leaves voluntarily after the injury</li> <li>employer ends worker's employment after the injury for a reason other than because the worker was not fit for employment because of the injury</li> <li>the employer is a non business employer, and</li> <li>the employer cannot provide</li> </ul>	Insurer must notify Minister prior to ceasing compensation payment for non-compliance with personal injury plan (s113 <i>Workers' Compensation Act 1951</i> ). Employer should notify insurer prior to dismissing worker. Employers can be penalised for failure to provide suitable employment (s106 <i>Workers' Compensation Act 1951</i> ).

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
				suitable employment.	
<b>C'wealth Comcare</b>	<p>Part I – Preliminary, Section 4 – Interpretation s(1)  Suitable employment, in relation to an employee who has suffered an injury in respect of which compensation is payable under this s4 of the SRC Act, means:</p> <p>a) in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed — employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to:</p> <p>(i) the employee's age, experience, training, language and other skills</p> <p>(ii) the employee's suitability for rehabilitation or vocational retraining</p> <p>(iii) where employment is available in a place that would require the employee to change his or her place of residence — whether it is reasonable to expect the employee to change his or her place of residence, and</p> <p>(iv) any other relevant matter.</p> <p>b) in any other case — any employment (including self-employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv).</p> <p>Under s40(1) — Where an employee is undertaking, or has completed, a rehabilitation program, the relevant employer shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment.</p>	Not specified	Not specified	<ul style="list-style-type: none"> <li>• The <i>Guidelines for Rehabilitation Authorities 2012</i> – see paragraph 15.2.</li> <li>• Note 2 states that Section 40 of the Act does not require the employer to provide the employee with, or assist the employee to obtain, suitable employment unless the employee is undertaking, or has undertaken, a rehabilitation program.</li> <li>• Note 3 states: where an employee unreasonably fails or refuses to undertake a rehabilitation program, the employer is not obliged to provide for or assist with suitable employment (this relates to employee non-compliance with rehabilitation).</li> </ul>	No requirements
<b>C'wealth</b>	Suitable employment, in relation to an	Not specified	Not specified	No	No

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
<b>Seacare</b>	<p>employee who has suffered an injury in respect of which compensation is payable under this — s3 of the SRC Act, means any employment (including self employment) for which the employee is suited having regard to:</p> <ul style="list-style-type: none"> <li>(a) the employee's age, experience, training, language and other skills; and</li> <li>(b) the employee's suitability for rehabilitation or vocational retraining; and</li> <li>(c) if the employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and</li> <li>(d) any other relevant matter.</li> <li>(e) Under section 52 — If an employee is undertaking, or has completed, a rehabilitation program, his or her employer must take all reasonable steps to provide the employee with suitable employment, or to assist the employee to find such employment.</li> </ul>				
<b>C'wealth DVA</b>	<p>Work for which the person is suited having regard to the following:</p> <ul style="list-style-type: none"> <li>(a) the person's age, experience, training, language and other skills,</li> <li>(b) the person's suitability for rehabilitation or vocational retraining,</li> <li>(c) if work is available in a place that would require the person to change his or her place of residence — whether it is reasonable to expect the person to change his or her place of residence, and (d) any other relevant matter.</li> </ul>	No	No	No	No
<b>New Zealand</b>	Providing the injured employee with a working environment in which they can perform duties that will not further injure or prohibit recovery of the original injury.	Must be in agreement with the employee, work as a partnership toward full return to work	No requirements for an employer to keep a position open for an injured worker	—	—

**Table 5.2d: Other requirements of employers**

Other requirements of employers	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• Obligation to participate in establishment of injury management plan s46 1998 Act. Employer to provide suitable work s49 1998 Act. Category 1 employer must have return to work coordinator CI 19 Reg 2016</li> <li>• The employer of an injured worker must notify the insurer or the Authority within 48 hours after becoming aware that a worker has received a workplace injury in the manner prescribed by the regulations. Chapter 3 s44, 1998 Act</li> <li>• Register of injuries — The employer must maintain a register of injuries in which workers record details of work-related injuries, (Clause 40 of the Workers Compensation Regulation 2016)</li> <li>• Record of wages — The employer must keep a record of wages for at least the previous 5 years (s174 of the 1987 Act).</li> </ul>
<b>Victoria</b>	<p>s105 — Consult about the return to work of a worker</p> <p>s106 — Return to Work Coordinator to be appointed— must have sufficient seniority and be competent to perform the role</p> <p>s109 — Host to cooperate with labour hire employer</p> <p>s118 — Resolution of return to work issues</p>
<b>Queensland</b>	Employers must appoint a Rehabilitation and Return to Work Coordinator if they meet a wages threshold. The Rehabilitation and Return to Work Coordinator must also be located in Queensland (Act s226)
<b>Western Australia</b>	No
<b>South Australia</b>	<ul style="list-style-type: none"> <li>• An employer must appoint a Return to Work Coordinator if they have 30 or more employees. The Rehabilitation and Return to Work Coordinator must be located in South Australia. — <a href="#">s26</a></li> <li>• An employer must notify the Corporation when: <ul style="list-style-type: none"> <li>◦ a worker who has been receiving weekly payments for total incapacity returns to work; or</li> <li>◦ there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity; or</li> <li>◦ there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity <a href="#">s52</a></li> </ul> </li> </ul>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• An employer must notify its insurer within 3 working days of becoming aware that one of the employer's workers has suffered a workplace injury that results in or is likely to result in the worker being totally or partially incapacitated for work; or is required to be reported under the worker's approved injury management program. — <a href="#">s143A</a></li> <li>• If the employer is a self-insurer and/or submitted its own injury management program to the Board, the employer must appoint an injury management coordinator. — s143B(3) and (4)</li> <li>• An employer who employs more than 50 workers must appoint a suitably qualified return-to-work co-ordinator and must assign workers with significant injuries to the return to work coordinator as soon as practicable. — <a href="#">s143D</a></li> <li>• An employer must take all reasonable steps to comply with the requirements of a return to work plan or injury management plan. — <a href="#">s143E(7)</a></li> <li>• As soon as practicable after making a significant decision in relation to the injury management of a worker, the employer is to notify the worker of the decision and the reason/s for the decision. — <a href="#">s143P(1)</a></li> </ul>
<b>Northern Territory</b>	No
<b>Australian Capital Territory</b>	No
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>• s36 — Assessment of capability of undertaking rehabilitation program. Where an employee suffers an injury resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a rehabilitation program</li> <li>• s36(4) — Decide whether an employee had a reasonable excuse for failing to attend or co-operate in an examination</li> <li>• s37 — If the rehabilitation authority makes a determination that an employee should undertake a rehabilitation program, the rehabilitation authority must provide a rehabilitation program for the employee itself; or make arrangements with an approved program provider for that provider to provide a rehabilitation program for the employee</li> <li>• s37(7) — Decide whether the employee had a reasonable excuse for failing to undertake a rehabilitation program</li> </ul>
<b>C'wealth Seacare</b>	<ul style="list-style-type: none"> <li>• s49 — Assessment of capability of undertaking rehabilitation program. If an employee suffers an injury that lasts, or is expected to last, 28 days, which results in an impairment or an incapacity for work, the employer must arrange for the assessment of the employee's capability of undertaking a rehabilitation program</li> </ul>

Other requirements of employers	
	<ul style="list-style-type: none"> <li>• s49(4) — Decide whether an employee had a reasonable excuse for failing to co-operate in an examination</li> <li>• s50 — If an employee is assessed capable of undertaking a rehabilitation program, the employer must make arrangements with an approved program provider for the provision of an appropriate rehabilitation program.</li> <li>• s50(5) – Decide whether the employee had a reasonable excuse for failing to undertake a rehabilitation program</li> </ul>
<b>C'wealth DVA</b>	No
<b>New Zealand</b>	The employer must take all practicable steps to assist the claimant with the claimant's vocational rehabilitation under his or her individual rehabilitation plan — s71

**Table 5.3: Responsibilities of workers**

	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
<b>New South Wales</b>	s47 1998 Act — Must participate and cooperate in the establishment of an injury management plan. Must comply with obligations under an injury management plan. Must nominate treating doctor. Must authorise treating doctor to provide information for the purposes of injury management.	s47 1998 Act — Must participate	s119 1998 Act — A worker who has given notice of an injury or receiving weekly payments of compensation, must if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.	s48 1998 Act — Must make all reasonable efforts to return to work in suitable employment or pre-injury employment.	s57 1987 Act — If in receipt of weekly compensation, must notify of return to work or commencement of own business or any change in employment.	From the Guidelines for workplace return to work programs, worker obligations include: <ul style="list-style-type: none"> <li>notify their employers as soon as possible after a work related injury and cooperate with the employer to enable the employer to meet their return to work obligations, and advise of any difficulties with return to work as soon as practical to prevent delays in addressing any problems.</li> </ul>
<b>Victoria</b>	Part 4, Division 3—Obligations of workers: <ul style="list-style-type: none"> <li>s111 — Participate in planning for return to work.</li> <li>s114 — Return to work.</li> <li>s115 — Participate in an interview</li> </ul>	s 112 — Use occupational rehabilitation services	s 113 — Participate in assessments	s 114 — Make reasonable efforts to return to work	s 117	
<b>Queensland</b>	Act ss231-232 — The worker must participate in rehabilitation (including suitable duties programs), while they are entitled to compensation. The worker must also mitigate their loss (for the purposes of common law claims) by participating in rehabilitation, return to work program or suitable duties programs.	Act s232 — The worker must participate in rehabilitation while they are entitled to compensation. If they do not, the insurer may suspend the worker's compensation payments.	<ul style="list-style-type: none"> <li>Act s135 — an insurer may require a worker to be examined by a person registered to provide medical treatment. A worker's compensation may be suspended if they fail to attend or refuse examination.</li> <li>Act s500) — an insurer may also refer a matter relating to an injury to a Medical Assessment Tribunal for decision. A worker must attend a Medical Assessment Tribunal if requested by the insurer, and must submit to examination by the tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>Act s232 — A worker must satisfactorily participate in rehabilitation and a worker must mitigate their loss by participating (Act s231) in any return to work program or suitable duties.</li> <li>An insurer must refer a worker who has lodged a common law claim to an accredited return to work program of the insurer, unless the insurer is satisfied that, as a result of the injury, the worker will not be able to participate in the program.</li> </ul>	Act s136 — A worker receiving compensation for an injury must notify the insurer within 10 business days of returning to work.	



	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
			<ul style="list-style-type: none"> <li>Act s510 — if a worker does not attend or refuses to be examined, their compensation may be suspended. An insurer must request the examination in the way specified by Reg s106</li> </ul>			
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>s72B participate in return to work program.</li> <li>To the best of ability carry out agreed actions as outlined in the return to work program.</li> <li>Immediately inform Injury Management Coordinator and manager of any difficulties carrying out the return to work program.</li> </ul>	<p>Workers should:</p> <ul style="list-style-type: none"> <li>Attend medical examinations (s64 and 65)</li> <li>provide medical certificates in timely fashion</li> <li>attend medical and other treatment appointments arranged by treating doctor, or arranged by the employer</li> <li>if referred to a workplace rehabilitation service, participate in all aspects of the service and work cooperatively with the service provider, and</li> <li>advise of any changes to treating doctor or other treatment providers.</li> </ul> <p><a href="#">Returning to work: Workers</a>  <a href="#">Returning to work: Employers</a></p>			s59 —notify employer within 7 days if returning to employment	<ul style="list-style-type: none"> <li>Communicate with parties in open and honest manner and reply to reasonable levels of communication.</li> <li>Advise of any changes in contact details.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li><a href="#">s25(4)</a>— The Return to Work Plan may impose obligations on the worker and in case of dispute will continue to bind the worker subject to the outcome of the dispute.</li> <li><a href="#">s48(3)</a>— A worker's income maintenance can be discontinued if the worker 'breaches mutuality,' including</li> <li>if a worker fails to comply with a return to work obligation [s48(3)(e)(ii)].</li> </ul>	<ul style="list-style-type: none"> <li>Under <a href="#">s48(3)(a)</a> a worker's income maintenance can be discontinued if a worker fails to submit to an examination by a recognised medical expert nominated by the Corporation, and if a worker refuses or fails to submit to proper medical treatment for the worker's condition [<a href="#">s48(3)(c)</a>]</li> <li><a href="#">Section 48(4)</a> states that a worker has not breached mutuality if they reasonably refuse surgery or the administration of a drug or if they choose one form of treatment over another.</li> </ul>	<ul style="list-style-type: none"> <li>See s31(3)(b) – a claim may be rejected if a worker refuses to submit to an examination.</li> </ul>	<ul style="list-style-type: none"> <li>A worker may be discontinued if they refuse to cooperate in establishing a return to work plan or fail to comply with an obligation under the plan - <a href="#">s48(3)(d)</a>.</li> <li>A worker may be discontinued if they refuse to undertake work that has been offered that the worker is capable of performing - s <a href="#">48(3)(e)</a>.— or if they fail to take reasonable steps to find or obtain suitable employment - <a href="#">s48(3)(e)</a>.</li> </ul>	Not defined in the Act	<ul style="list-style-type: none"> <li><a href="#">s16</a> — Upon injury the worker must give notice to the employer within 24 hours after the injury occurred or as soon as practicable.</li> <li><a href="#">s51</a>— If the worker will be absent from Australia in excess of 28 days must notify the Corporation the prescribed details of the proposed absence at least 28 days before leaving.</li> </ul>

	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>Worker to notify employer as soon as practicable after a workplace injury of the primary treating medical practitioner. — <a href="#">s143G(1)</a></li> <li>Worker is to take all reasonable steps to comply with requirements of the return to work plan or injury management plan and to perform any actions that the worker is required to perform under the plan. — <a href="#">s143E(7)</a> and <a href="#">s143N(1)</a>.</li> </ul>	<ul style="list-style-type: none"> <li>Worker to take all reasonable steps to comply with requirements of the return to work or injury management plan. — <a href="#">s143E(7)</a></li> <li>If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment will terminate or shorten the period of incapacity, the worker must submit to treatment or, if the worker is dissatisfied with the report, the worker must submit to an examination by another medical practitioner. If the medical practitioners are in agreement, the worker must submit to the treatment specified. — <a href="#">(s90A(7))</a></li> <li>If worker fails to submit to treatment (with the exception of surgical treatment) the worker's right to compensation and to take any proceedings under the <i>Workers Rehabilitation and Compensation Act 1988</i> can be suspended. — <a href="#">s90C</a>.</li> </ul>	In relation to medical reviews, a worker is to submit to an independent medical review at a reasonable time provided the worker has been given reasonable notice. If the worker objects to the review, he/she can refer it to the Tribunal for consideration. — <a href="#">s90A</a> and <a href="#">s90C</a> .	If worker is unable to perform an action, they are to seek medical advice and if appropriate undergo treatment that may enable the action, and advise the employer and injury management coordinator of the worker's inability and of any medical advice or treatment sought or undergone. A worker who is assigned reduced hours in accordance with an approved plan must take all reasonable steps to ensure attending a medical practitioner does not interfere with worker's employment during those hours. — <a href="#">s143N</a> .	N/A	A worker must not wilfully fail to disclose to any treating medical practitioner any information that the worker knows or ought reasonably be expected to know is relevant to the diagnosis or treatment of the worker's workplace injury. — <a href="#">s143J</a> .
<b>Northern Territory</b>	s75B — worker must cooperate with reasonable return to work process.	s75B — Worker must cooperate with reasonable medical, surgical and rehabilitation treatment and participate in rehabilitation training or a workplace based return to work program.	s75B — Must present at reasonable intervals for assessment of employment prospects.	Obligation is on employer to provide or arrange. Worker must then cooperate.	s90 — Worker must notify employer if returns to work with another employer or circumstances change in a way likely to affect entitlement.	N/A
<b>Australian Capital Territory</b>	s113 — The worker must: <ul style="list-style-type: none"> <li>s101 — Participate in development of personal injury plan</li> <li>s102 — Nominate treating doctor, and</li> <li>s113 — Participate in vocational rehabilitation or a</li> </ul>	s101(2) — The injured worker must comply with reasonable obligations under the plan, including any obligation to receive medical treatment or rehabilitation services.	<ul style="list-style-type: none"> <li>s113 — Attend assessments of the worker's employment prospects.</li> <li>s113 — Attend a medical assessment of the worker's injury.</li> </ul>	<ul style="list-style-type: none"> <li>s104 — an injured worker must make all reasonable efforts to return to work with the workers pre-incapacity employer.</li> <li>s113 — Undertake suitable alternative duties provided.</li> <li>s113 — Take up an offer of</li> </ul>	No	No

	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
	return to work program.			suitable work for which worker is qualified and worker can perform.		
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>The employee is responsible for undertaking a determined rehabilitation program [refer to ss37(1) and 37(7)]</li> <li>Actively participate in any rehabilitation program developed by the case manager or approved workplace rehabilitation provider. Implement recommended and agreed changes to work practices, workplace environment and/or home environment in consultation with employer to minimise the chance of further injuries or accidents (refer to Rehabilitation Program form).</li> </ul>	s37(7) — Provides an employee obligation to participate in a rehabilitation program which may involve medical treatment. An employee's failure to participate carries a 'reasonableness' test. Also refer to <i>Guidelines for Rehabilitation Authorities 2012</i> – Chapter 4 – Part III – Employee Non-compliance.	<ul style="list-style-type: none"> <li>The employee is responsible for attending and co-operating at a required examination to assess the employee's capability of undertaking a rehabilitation program.</li> </ul> [refer to s36(1), s36(3) and s36(4)] <ul style="list-style-type: none"> <li>Employee shall cooperate in the assessment of the capacity to undertake a rehabilitation program: <ul style="list-style-type: none"> <li>s36(3) — Employee shall undergo a required examination.</li> <li>s36(4) — All rights and proceedings under the act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination.</li> </ul> </li> </ul>	s19(4) — Employee has a responsibility to actively seek or participate in suitable employment where that employee has a capacity to return to work.	No legislative requirements	No
<b>C'wealth Seacare</b>	The employee is responsible for undertaking a rehabilitation program provided under s50(1).	s50(5) — If the employee, without reasonable excuse, does not undertake a rehabilitation program provided for them, compensation can be suspended.	<ul style="list-style-type: none"> <li>s49(3) — The employer may require the employee to undergo an examination in relation to an assessment.</li> <li>s49(4) — If the employee does not attend, without reasonable excuse, or obstructs the examination, compensation can be suspended.</li> </ul>	s32 — Employee has a responsibility to actively seek or participate in suitable employment where that employee has a capacity to return to work.	No legislative requirement.	No
<b>C'wealth DVA</b>	s52 — If rehabilitation authority requires person to undertake a rehabilitation program and person refuses or fails to undertake the program, authority may determine that the person's right to compensation (but not the	As adjacent	s50 — If the rehabilitation authority requires the person to undergo an examination and the person: (a) refuses or fails to undergo the examination; or (b) in any way obstructs the examination; the authority may	As adjacent	N/A	N/A

	Responsibilities of the worker in relation to the return to work / injury management plan	Obligations in relation to participating in medical treatment and/or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
	person's right to treatment or compensation for treatment) is suspended until person undertakes the rehabilitation program.		determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment) is suspended until the examination takes place.			
<b>New Zealand</b>	Yes —s72	Yes — s72	Yes — s72	Yes — s72		A claimant who receives any entitlement must, when reasonably required to do so by the Corporation: authorise the Corporation to obtain medical and other records that are or may be relevant to the claim.

**Table 5.4: Injured worker placement incentives**

	Name of scheme	Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
<b>New South Wales</b>	JobCover Placement Program	Yes Up to \$27 400 over a 52 week period can be paid as an incentive payment to the employer.	Yes Injured workers wages not included in wages for premium calculation purposes for two years.	Yes Changes to the existing injury are managed against the original claim for a period of two years.	Yes No limit to amount — justify against the principles for funding of equipment and workplace modification.	Yes No limit to amount — justify against the principles of retraining.	Yes Work experience with a host employer for up to 12 weeks.	<a href="#">JobCover placement program</a> <a href="#">Equipment and workplace modification</a> <a href="#">Training</a>
	Return to Work Assist Program for Micro Employers	Worker continues to receive weekly payments from insurer to enable employer to pay a casual for a maximum of six weeks in the first three weeks after date of injury. Ult is for very small employers - only 5 FTE or less and basic tariff premium of \$30 000 or less.	N/A	No	Yes No limit to amount — justify against the principles for funding of equipment and workplace modification.	No	No	<a href="#">Assistance for micro employers - SIRA</a>
	Workplace modifications	No	No	No	Yes No limits to amount justify against the principles for funding or equipment and workplace modification.	No	Can be linked to a work trial	<a href="#">Equipment and workplace modification</a>
<b>Victoria</b>	WISE	WISE is a 6 month financial incentive of up to \$26 000 payable to employers who offer ongoing employment of 15 hours + to workers with an accepted claim who cannot return to work with their pre-injury employer	<ul style="list-style-type: none"> <li>Employers are offered WorkSafe Victoria Injury Insurance protection if the worker ceases work because of a new injury.</li> <li>Additionally, the cost of that claim is excluded from the employer's injury insurance premium calculation, though the employer is still liable to pay an</li> </ul>	<ul style="list-style-type: none"> <li>If a worker on a WISE placement has a further injury during their placement, the WISE employer's Agent will determine whether this is a new injury or part of the original claim.</li> <li>Where the decision is that the injury is a continuation of the original injury, then any weekly</li> </ul>	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances.	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances.	No	<a href="#">Workplace Incentive Scheme for Employers</a>

Table 1: Summary of WorkCover schemes for second injury compensation								
Name of scheme	Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information	
			excess of the first 10 days' of weekly payments and indexed medical expenses.	payments, medical and like expenses will be paid against the original employer's policy.				
Queensland	Host Placement, run by WorkCover Queensland.	WorkCover continues to pay the workers' compensation entitlements while they participate in the program.	Nil	Any injuries sustained during the host program are covered by WorkCover Queensland and do not affect the host employer's premium. At the end of the program, any aggravation to existing injury is covered by WorkCover Queensland for 6 months following the commencement of employment.	Is considered on a case by case basis. Reasonable costs will be paid by WorkCover.	WorkCover will pay for training/additional skills required to secure employment with the host employer.	The work trial will run for 6 to 8 weeks	<a href="#">Host Placement</a>
Western Australia	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
South Australia	RISE (re-employment incentive scheme for employers)	Reimbursement of 40% of gross wages for up to 52 weeks of employment	No	N/A	Cost associated with minor site modifications, equipment	Considered as part of return to work service based on the claim circumstances	No	RISE information and approval form available from <a href="#">ReturnToWorkSA</a> website
Tasmania	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Northern Territory	Alternative Employer Incentive Scheme — s75A	Yes	N/A	12 months	Yes reasonable and necessary costs — s76	Yes reasonable and necessary costs — s76	Alternative Employer Incentive Scheme provides for 12 week work trial	<a href="#">Alternative Employer Incentive Scheme</a>
Australian Capital Territory	Second Injury arrangements Scheme (s108). The scheme provides for private arrangements between insurers and employers.	The legislation provides for a wage subsidy and indemnity from injuries. Commercial arrangements can be made between insurers and employers.	Yes	Yes Private arrangement between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	No guidance material has been published.
C'wealth Comcare	Work trial placement	Incapacity payments are paid by the relevant claims agent under the	N/A	During the course of the work trial if there is a new injury/illness or	Additional or specialised ergonomic may be included in a	Retraining costs may form part of a rehabilitation program.	Yes	<a href="#">Work trials: a guide for rehabilitation case managers (Pub 83)</a>

Name of scheme				Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
		SRC Act		aggravation of pre-existing injury/illness, the employee should submit a new claim through their rehabilitation authority.	rehabilitation program.					
C'wealth Seacare	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
C'wealth DVA	Vocational Rehabilitation Employer Incentives	Yes	No	Yes	Yes	Yes	Yes	Yes	<a href="#">Rehabilitation Manual Chapter 9.9</a>	
New Zealand	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	

**Table 5.5: Responsibilities of authority/insurer**

Responsibilities of authority/insurer	
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>The insurer must within three working days of being notified that a worker has sustained a significant injury, contact the employer, worker and (if necessary) the nominated treating doctor. Subsequently, the insurer must develop an injury management plan in line with timeframes in the insurer's injury management program.</li> <li>Consult with the injured worker, employer and nominated treating doctor in the development of an injury management plan.</li> <li>Provide the injured worker, employer and nominated treating doctor with information on the injury management plan initially and as the plan progresses.</li> <li>Consult with the injured worker, employer and nominated treating doctor when referring to a workplace rehabilitation provider.</li> <li>Ensure vocational retraining and/or assistance to obtain employment with a new employer is arranged for an injured worker as soon as it is identified that a return to pre-injury duties and provision of suitable duties is no longer possible.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>Agents do not have return to work obligations under the Act, while employers and workers do. While Agents can assist employers and workers to meet their return to work obligations, such as return to work planning, they cannot meet these obligations on the organisation's or individual's behalf. For instance, in relation to complying with s104 (providing the worker with clear and accurate details of the return to work arrangements)</li> <li>Agents can assist employers in developing arrangements. This could in some instances involve assistance in the writing of return to work arrangements provided the employer has ownership of the arrangements. Ownership includes the employer agreeing with and understanding the details of the return to work arrangements and ensuring that the worker and other people such as the worker's supervisor are aware of the arrangements.</li> </ul>
<b>Queensland</b>	<ul style="list-style-type: none"> <li>Act s220 — an insurer must take the steps it considers practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation.</li> <li>An insurer must refer a worker who has lodged a notice of claim to an accredited return to work program of the insurer, unless the insurer is satisfied that, as a result of the injury, the worker will not be able to participate in the program.</li> <li>An insurer must take the steps it considers practicable to coordinate the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the worker's employer and treating registered persons.</li> <li>An accredited return to work program, of an insurer, means a return to work program managed by the insurer that is accredited by the Workers' Compensation Regulator.</li> </ul>
<b>Western Australia</b>	<p><b>Insurers' Responsibilities</b></p> <ul style="list-style-type: none"> <li>s155D — Injury management: insurers' obligations: <ul style="list-style-type: none"> <li>To make employers aware of their obligations in relation to return to work programs and injury management systems.</li> <li>If requested by the employer either: <ol style="list-style-type: none"> <li>assist the employer comply with their obligations in relation to return to work programs and injury management systems, or</li> <li>discharge the employer's obligations on behalf of the employer.</li> </ol> </li> </ul> </li> </ul> <p><b>WorkCover WA Responsibilities</b></p> <ul style="list-style-type: none"> <li>s157 — To provide Information about injury management matters WorkCover WA is to: <ul style="list-style-type: none"> <li>provide information and advice on injury management generally</li> <li>make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management</li> <li>make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters, and</li> <li>provide information on injury management or related matters to an arbitrator.</li> </ul> </li> </ul>
<b>South Australia</b>	<p>Under the <i>Return to Work Corporation Act 1994</i>, the Return to Work Corporation of South Australia is responsible for:</p> <ul style="list-style-type: none"> <li>administration of the Return to Work scheme as a regulator and a service focused insurer;</li> <li>minimising employer's costs while providing fair compensation for work-related injuries; and</li> <li>ensuring the scheme is fully funded.</li> </ul> <p>ReturnToWorkSA appoints agents who are responsible for the management of work injury claims specified in legislated contractual arrangements.</p>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>An insurer must ensure that there is an injury management program in place in respect of each of its employers (note — the insurer can submit an injury management program to the Board for approval that applies to a group of employers or to all of its employers), must comply with each injury management program and must review any programs it has submitted to the Board every 12 months or as requested by the</li> </ul>



Responsibilities of authority/insurer	
	<ul style="list-style-type: none"> <li>board. — <a href="#">s142</a></li> <li>An insurer must appoint an injury management coordinator in respect of its employers. As soon as practicable after becoming aware that a worker (employed by one of its employers) has suffered a significant injury, the insurer must assign that worker to the injury management coordinator. — <a href="#">s143B</a></li> <li>As soon as practicable after making a significant decision in relation to the injury management of a worker, the insurer is to notify the worker of the decision and the reason/s for the decision. — <a href="#">s143P(1)</a>.</li> </ul>
<b>Northern Territory</b>	s75A provides for responsibilities on employers and the return to work process. The insurer will assist the employer to manage this process.
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>Chapter 8 of the <i>Workers' Compensation Act 1951</i> — insurer obligations</li> <li>Chapter 5 — injury management obligations</li> <li>s88 establish and review injury management program — reviewed every two years.</li> </ul>
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>Comcare approves rehabilitation providers including (i) determines criteria for approval and operational standards of rehabilitation providers; (ii) approves, renews and revokes approval of rehabilitation providers.</li> <li>Comcare reviews rehabilitation determinations issued by premium paying entities and Commonwealth authorities (s38).</li> <li>Comcare prepares and issues guidelines in relation to the performance and exercise by rehabilitation authorities of their rehabilitation functions and powers (s41).</li> <li>Comcare develops Recovery Plans in collaboration with the rehabilitation case manager and the employee. Recovery Plans are developed at key points of the claim life cycle to provide an opportunity to share information and identify agreed strategies to achieve sustainable return to employment and wellbeing. Recovery Plans are not a requirement under the legislation.</li> </ul>
<b>C'wealth Seacare</b>	N/A
<b>C'wealth DVA</b>	See Rehabilitation Authority in Table 5.2(b)
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>S70 Claimant's and Corporation's obligations in relation to rehabilitation</li> <li>A claimant who has suffered personal injury for which he or she has cover- <ul style="list-style-type: none"> <li>a) is entitled to be provided by the Corporation with rehabilitation, to the extent provided by this Act, to assist in restoring the claimant's health, independence, and participation to the maximum extent practicable; but</li> <li>b) is responsible for his or her own rehabilitation to the extent practicable having regard to the consequences of his or her personal injury.</li> </ul> </li> </ul>

## Functions and training of workplace rehabilitation coordinators

Some jurisdictions require employers of a certain size to employ an officer in an organisation on a full-time or ad hoc basis to coordinate the return to work of injured workers. Jurisdictions that are not required by their Act to recruit a workplace rehabilitation coordinator are Western Australia, Northern Territory, Australian Capital Territory and New Zealand.

Workplace rehabilitation coordinators have similar functions in the jurisdictions that require their employment. These functions include:

- developing a return to work plan in consultation with the injured worker and the employer
- assisting with the planning and implementation of a return to work program
- identifying suitable duties for the injured worker to enable return to work as soon as possible
- managing the return to work process by liaising with treating doctors, rehabilitation providers and the employer, and
- monitoring the injured workers' progress towards successful return to work.

Jurisdictions that require the employment of a workplace rehabilitation coordinator can have specific training requirements. Most commonly, a short course is undertaken in order to gain a qualification as a workplace rehabilitation coordinator. Normally self-insurers case-manage their own employees; however some jurisdictions allow them to outsource this function. Table 6.7 shows the outsourcing of case management arrangements in Australia.

**Table 5.6: Functions and training of workplace rehabilitation coordinators**

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
<p><b>New South Wales</b></p>	<p>Clause 23 Workers' Compensation Regulation 20106</p> <p>Category 1 employers (see Appendix) must have return to work coordinator</p> <ol style="list-style-type: none"> <li>1) A category 1 employer must: (a) employ a person to be a Return to Work Coordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or (b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a return to work coordinator for injured workers of the employer.</li> <li>2) The following are examples of the arrangements that the guidelines can permit for the purposes of this clause: <ol style="list-style-type: none"> <li>(a) the engagement of a person under an arrangement with a person or organisation that provides Return to Work Coordinators to employers,</li> <li>(b) an arrangement under which a person is engaged on a shared basis by two or more employers.</li> </ol> </li> <li>3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b).</li> <li>4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be Return to Work Coordinators under subclause (1) (b).</li> </ol> <p>Clause 24 <i>Workers Compensation Regulation 2010</i></p> <p>Functions of Return to Work Coordinators:</p> <ul style="list-style-type: none"> <li>• An employer's Return to Work Coordinators has such functions as may be specified in the Guidelines.</li> </ul> <p>Responsibilities:</p> <ul style="list-style-type: none"> <li>• The responsibilities of return to work coordinators are outlined in SIRA's Guidelines for workplace return to work programs. When Category 1 employers engage a return to work coordinator under shared arrangements, or under another type of work arrangement — eg. engaged a Return to Work Coordinator through a labour hire company — it is essential that: <ul style="list-style-type: none"> <li>– the employers have a common interest</li> <li>– the shared or outsourced arrangements provide improvements in the return to work services</li> <li>– workers are not disadvantaged</li> <li>– the return to work coordinator has appropriate qualifications and experience</li> <li>– WorkCover approval is obtained, and</li> <li>– the return to work program is reviewed every two years.</li> </ul> </li> <li>• There is no requirement for Category 2 employers to appoint a Return to Work Coordinator, however, employer associations and unions may establish shared return to work coordinator positions to assist smaller employers to fulfil their obligations.</li> </ul>	<p><a href="#">Guidelines for workplace return to work programs</a>. The Return to Work Coordinator must hold:</p> <ul style="list-style-type: none"> <li>• certificate certifying attendance at the SIRA two-day course Introduction to return to work coordination, or</li> <li>• certificate certifying attendance at a two-day SIRA training course for rehabilitation coordinators conducted prior to February 1995, or</li> <li>• letter from SIRA agreeing to exempt the return to work coordinator from participating in above training.</li> </ul> <p>Introduction to Return to Work Coordination is a two day SIRA approved course for people planning to work as a return to work coordinator in NSW.</p> <p>Applications for exemption from training can be accessed on the SIRA website.</p> <p>Advanced return to work coordination</p> <p>Advanced return to work coordination is a one-day course for experienced return to work coordinators. This is an interactive course with a focus on strategic case management and managing complex cases.</p> <p>Trainers</p> <p>Trainers of return to work coordination courses can be searched for on the SIRA website by name and region. This facility specifies whether a trainer is registered to deliver both levels of training or just the introductory course. For information about availability of trainer services in a particular region, please contact the trainer direct.</p> <p>Shared or engaged return to work coordinators</p> <p>Shared/engaged return to work coordinators must have significant experience in workplace-based workplace rehabilitation, preferably as a Return to Work Coordinator. It is also preferable that a shared Return to Work Coordinator has tertiary qualifications.</p> <p>The shared/engaged return to work coordinator must have the skills and fulfil all the duties of a Return to Work Coordinator as outlined in these guidelines, and have completed the SIRA approved two-day course.</p> <p>Training</p> <p>Applications for registration as an approved trainer can be made to SIRA.</p> <p>Approved trainers are listed on the SIRA website at <a href="#">Return to work coordination training</a>.</p>
<p><b>Victoria</b></p>	<p>s106 — An employer's obligation to have a Return to Work Coordinator depends on their rateable remuneration:</p> <ul style="list-style-type: none"> <li>• an employer with a rateable remuneration of \$2 254 430 must have a Return to Work Coordinator appointed at all times, and</li> <li>• an employer with a rateable remuneration of less than \$2 254 430 must appoint a Return to Work Coordinator for the duration of the employer's return to work obligations to an injured worker.</li> </ul> <p>An employer must appoint a person to be a Return to Work Coordinator who has an appropriate level of seniority and is competent to assist the employer to meet the employer's obligations under Part 4 of the Act</p> <p>A person is competent to assist the employer to meet its obligations under Part 4 of the Act if the person has knowledge, skills or experience relevant to planning for return, including: (a) knowledge of the obligations of employers and workers under Part 4 of the Act (b) knowledge of the compensation scheme provided for under the Act and the <i>Accident Compensation Act 1985</i> and the functions of WorkSafe Victoria</p>	<p>Return to Work Coordinator Training</p> <ul style="list-style-type: none"> <li>• Completion of Return to Work Coordinator training is not mandated by WorkSafe Victoria (WSV). However WSV strongly encourages Return to Work Coordinators to complete the WSV endorsed 2 day Return to Work Coordinator training course developed by WSV in consultation with external stakeholders. Further information can be obtained at <a href="#">Return to Work Coordinator training calendar</a></li> <li>• To become a provider of WorkSafe Victoria endorsed Return to Work Coordinator training interested parties must complete a <a href="#">Provider Application for Approval to Conduct Role of a Return to Work Coordinator Training Program</a> application form and satisfy the necessary requirements to gain approval.</li> </ul> <p>WSV strongly encourages all Return to Work Coordinators to stay <a href="#">up to date</a> with the latest return to work news, information and events, and in doing so build upon and maintain their competence as a coordinator.</p>

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
	<p>and, if relevant, self-insurers under Part 4 of the Act.</p> <p>View the <a href="#">Return to Work Coordinator fact sheet</a> and the publication <a href="#">Return to Work Coordination — The basics you need to know for more detailed information.</a></p>	
Queensland	<p>s41 Meaning of rehabilitation and return to work coordinator</p> <p>A rehabilitation and return to work coordinator is a person who is appropriately qualified to perform the functions of a rehabilitation and return to work coordinator and has the functions prescribed under a regulation. (Reg s114 Functions of Rehabilitation and Return to Work Coordinator). These include:</p> <ol style="list-style-type: none"> <li>initiate early communication with an injured worker in order to clarify the nature and severity of the worker's injury;</li> <li>provide overall coordination of the worker's return to work;</li> <li>if a rehabilitation and return to work plan is required— <ol style="list-style-type: none"> <li>consult with the worker and the worker's employer to develop the suitable duties program component of the plan; and</li> <li>ensure the program is consistent with the current medical certificate or report for the worker's injury;</li> </ol> </li> <li>liaise with— <ol style="list-style-type: none"> <li>any person engaged by the employer to help in the worker's rehabilitation and return to work; and</li> <li>the insurer about the worker's progress and indicate, as early as possible, if there is a need for the insurer to assist or intervene.</li> </ol> </li> </ol> <p>s226 — Employer's obligation to appoint rehabilitation and Return to Work Coordinators</p> <ol style="list-style-type: none"> <li>An employer must appoint a Rehabilitation and Return to Work Coordinator if the employer meets criteria prescribed under a regulation. That is, the employer employs workers at a workplace in a high risk industry and the wages of the employer in Queensland for the preceding financial year were more than 2600 times QOTE. If not in a high risk industry, the wages of the employer in Queensland for the preceding financial year were more than 5200 times QOTE.</li> <li>The Rehabilitation and Return to Work Coordinator must be in Queensland and be employed by the employer under a contract (regardless of whether the contract is a contract of service).</li> <li>The employer must appoint the Rehabilitation and Return to Work Coordinator within 6 months after workplace is established or workers are employed at a workplace. Later period can be granted.</li> <li>A Rehabilitation and Return to Work Coordinator is not civilly liable for an act done, or an omission made, in giving effect to the workplace rehabilitation policy and procedures of an employer.</li> <li>If subsection (4) prevents a civil liability attaching to a rehabilitation and return to work, the liability attaches to the employer.</li> </ol>	<p>s41 Meaning of rehabilitation and return to work coordinator</p> <p>A rehabilitation and return to work coordinator is a person who is appropriately qualified to perform the functions of a rehabilitation and return to work coordinator.</p> <p>The <i>Acts Interpretation Act 1954</i> defines 'appropriately qualified' as:</p> <ol style="list-style-type: none"> <li>for a function or power—means having the qualifications, experience or standing appropriate to perform the function or exercise the power; or</li> <li>for appointment to an office—means having the qualifications, experience or standing appropriate to perform the functions of the office.</li> </ol> <p>Example of standing— a person's classification level in the public service.</p>
Western Australia	N/A	N/A
South Australia	<p><b>Return to work co-ordinators</b> – <a href="#">under section 26</a> - an employer must appoint (and retain) a return to work co-ordinator who is based in South Australia.</p> <p>The employer must appoint a co-ordinator:</p> <ul style="list-style-type: none"> <li>within 6 months after the requirement to be registered as an employer under the <i>Return to Work Act 2014</i> (or within a later period approved by the Return to Work Corporation) and</li> <li>within 3 months after a vacancy occurs in the office of a co-ordinator.</li> </ul> <p>A co-ordinator has the following functions:</p> <ul style="list-style-type: none"> <li>to assist workers suffering from work injuries, where prudent and practicable, to remain at or return to work as soon as possible after the occurrence of the injury;</li> <li>to assist in the preparation and implementation of any recovery/return to work plan for an injured worker</li> </ul>	<ul style="list-style-type: none"> <li>Businesses that employ more than 30 workers are required to appoint a certified return to work coordinator.</li> <li>Return to Work Co-ordinator certificate training provides participants with an understanding of the role, functions and responsibilities of a return to work coordinator.</li> </ul> <p>Training is provided on-line or by a registered training provider. Details are provided on the <a href="#">ReturnToWorkSA</a> website.</p>

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
	<ul style="list-style-type: none"> <li>to liaise with any persons involved in the provision of medical and other relevant services to workers</li> <li>to monitor the progress of an injured worker's capacity to return to work to take steps</li> <li>to as far as practicable, prevent the occurrence of an aggravation, acceleration, exacerbation, deterioration or recurrence of an injury where a worker returns to work.</li> </ul> <p>An employer may be exempt an employer, or employers of a prescribed class, from the requirement to appoint a Return to Work Co-ordinator under the <a href="#">regulation 18</a> of the Return to Work Regulations.</p>	
<b>Tasmania</b>	<p>Injury Management Coordinator — <a href="#">s143B</a>. Injury management coordinator to be appointed</p> <ol style="list-style-type: none"> <li>The licensed insurer of an employer of a worker must appoint an injury management coordinator in respect of the employer.</li> <li>The licensed insurer of an employer of a worker, as soon as practicable after becoming aware that the worker has suffered a significant injury, must assign the worker to the injury management coordinator in respect of the employer.</li> <li>If a worker's approved injury management program was submitted by the worker's employer to the employer's insurer under <a href="#">s143(4)</a>: <ul style="list-style-type: none"> <li><a href="#">subsections (1) and (2)</a> do not apply to the employer's insurer; and</li> <li>the employer must (i) appoint an injury management coordinator in respect of the employer; and (ii) assign a worker to the injury management coordinator, as soon as practicable after becoming aware the worker has suffered an injury.</li> </ul> </li> <li>If a worker's approved injury management program was submitted by the worker's employer to the Board under <a href="#">s143(5)</a> or <a href="#">(6)</a> the employer must: <ul style="list-style-type: none"> <li>appoint an injury management co-ordinator in respect of the employer; and</li> <li>assign a worker to the injury management co-ordinator, as soon as practicable after becoming aware that the worker has suffered a significant injury.</li> </ul> </li> </ol> <p>The employer or insurer who appointed a person to be an injury management co-ordinator may appoint another person to be the injury management co-ordinator in the place of the person first appointed.</p> <p><b>Return to Work coordinator — <a href="#">s143D</a> Return to Work Coordinator may be required to be appointed</b></p> <ul style="list-style-type: none"> <li>An employer who employs more than 50 workers must appoint a Rehabilitation and Return to Work Coordinator.</li> <li>A worker's employer who employs more than 50 workers, as soon as practicable after becoming aware that a worker has suffered a significant injury, must assign the worker to the Rehabilitation and Return to Work Coordinator appointed under <a href="#">subsection (1)</a> in respect of the employer.</li> </ul> <p>A worker's employer may only assign a worker to a Rehabilitation and Return to Work Coordinator if the coordinator is familiar with the workplace, and the management and staff of the workplace, in which the worker is employed.</p>	<p>Injury Management Coordinator — <a href="#">s143B(5)</a></p> <p>A person may only be appointed to be an injury management coordinator if, where the Board approves a course of training:</p> <p>the person has successfully completed the course of training; or</p> <p>the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.</p> <p>WorkCover Tasmania Guideline for Injury Management Coordinator Training Requirements</p> <p>An IMC is required to complete nine units of competency (recognised within the Australian Qualifications Framework) identified by WorkCover. These units focus on the skills required to fulfil the functions of an IMC. The identified units of competency are sourced primarily from the certificate IV Personal Injury Management. The units are also inclusive of the units of competency recommended for Rehabilitation and Return to Work Coordinators.</p> <p>Return to Work Coordinator — <a href="#">s143D</a></p> <p>A person may only be appointed under ss(1) to be a Rehabilitation and Return to Work Coordinator if, where the Board has approved a course of training:</p> <ol style="list-style-type: none"> <li>the person has successfully completed the course of training; or</li> <li>the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.</li> </ol> <p>While the WorkCover Tasmania Board has not approved a course of training for Rehabilitation and Return to Work Coordinators, it is recognised that this role requires certain knowledge and skills to enable the appointed person to effectively perform the role. For this reason, it is highly recommended that a Rehabilitation and Return to Work Coordinator completes the three units of competencies recognised within the Australian Qualifications Framework.</p>
<b>ACT</b>	An employer that pays an annual premium of \$200 000 or more: or is a self-insurer	The SafeWork NSW approved training course <i>Introduction to return to work coordination</i> or its equivalent as named from time to time
<b>Northern Territory</b>	N/A	N/A
<b>C'wealth Comcare</b>	<p><i>Guidelines for Rehabilitation Authorities 2012</i></p> <p>Chapter 4 — Case Manager's Role:</p> <p>16.1 — A case manager shall ensure that they hold a current delegation from the relevant rehabilitation authority to perform the functions and exercise the powers of the rehabilitation authority under s36 and s37 of the Act — Para 13.a.i.</p>	<p><i>Guidelines for Rehabilitation Authorities 2012</i></p> <p>Chapter 3 – Employer to support its rehabilitation authority</p> <p>13. Responsibilities of the employer</p> <p>The employer of the injured employee is responsible for: (a) providing prompt and effective rehabilitation to injured employees by providing adequate and timely support to the rehabilitation authority and case managers through: (i) resourcing and training of case managers, managers and supervisors.</p>

Workplace rehabilitation coordinator requirements and threshold		Training and accreditation
		<p>Chapter 4 — Case Manager's Role:</p> <p>16.1 — A case manager shall ensure that they hold a current delegation from the relevant rehabilitation authority to perform the functions and exercise the powers of the rehabilitation authority under ss36 and 37 of the Act.</p> <p>Also refer to Attachment A – Performance Standards and Measures for Employers which requires a rehabilitation management system including consideration of training needs.</p> <p><a href="#">Rehabilitation Case Manager Core Capabilities</a></p> <p>Describes the core capabilities for delegated rehabilitation case managers in the Comcare scheme. The core capabilities are not a requirement but can be used to establish a scheme standard and support training needs to maintain a skilled injury management workforce.</p>
<b>C'wealth Seacare</b>	N/A	N/A
<b>C'wealth DVA</b>	<ul style="list-style-type: none"> <li>The role of the DVA <a href="#">Rehabilitation Coordinator</a> is to facilitate and monitor the program of activities for the client involved in the rehabilitation process so as to return the person to a level of functioning, consistent with medical advice in accordance with the relevant legislation, policies and procedures which apply to that individual's circumstances. The Rehabilitation Coordinator is a link between the client, treating medical practitioners, allied health workers, service providers, training organisations and the managing agency. The Rehabilitation Coordinator is a DVA staff member, or ADF if a serving member.</li> <li>The Australian Defence Force Rehabilitation Program (ADFRP) provides rehabilitation services for Permanent Force members and Reserve Force members.</li> </ul>	N/A
<b>New Zealand</b>	N/A.	N/A.

## Workplace rehabilitation providers

Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need. It is also aimed at maintaining injured or ill employees in, or returning them to suitable employment.

### Responsibilities

Workplace rehabilitation providers are engaged to provide specialised expertise in addition to what is generally available within the employer's and insurer's operations. Depending on the jurisdiction, workplace rehabilitation providers can undertake a range of services from functional and workplace assessments and advice concerning job modification, to vocational retraining and assistance with job seeking. Table 5.7a provides information on the responsibilities of workplace rehabilitation providers in each jurisdiction.

### Nationally consistent approval framework for workplace rehabilitation providers

During 2006 and 2007 the Heads of Workers' Compensation Authorities (HWCA) developed a Nationally Consistent Approval Framework for Workplace Rehabilitation Providers. Most jurisdictions have implemented the National Framework. Queensland does not accredit workplace rehabilitation providers. While the Department of Veterans' Affairs accepts and supports the framework's principles, it has changed its focus in relation to rehabilitation to include a focus on biopsychosocial needs to ensure a holistic approach to workplace rehabilitation.

### Qualifications and fees structure

The National Framework outlines the minimum qualifications for rehabilitation providers. Some jurisdictions have additional requirements. These are outlined in Table 5.7b as is information on the fees structure in each jurisdiction.

### Prescribed time period to establish a return to work plan

Table 5.8 shows the 3-point contact and the return to work plan development as specified by legislation in various jurisdictions.

**Table 5.7a: Responsibilities of workplace rehabilitation provider**

Responsibilities of rehabilitation provider	
<b>New South Wales</b>	<p>Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on National Occupational Health and Safety Commission (1995) definition: Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.</p> <p>Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by:</p> <ul style="list-style-type: none"> <li>• facilitating an early return to work of the worker</li> <li>• identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers</li> <li>• identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties</li> <li>• forging the link between the insurer, employer and treatment providers to ensure a focus on return to work, and</li> <li>• arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties</li> <li>• initiation of vocational programs to support any of these approaches.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• s3 of the legislation defines the meaning of the term occupational rehabilitation services. For injured workers, there are a number of specific return to work services known as occupational rehabilitation (OR) services to assist them return to work which can only be delivered by OR providers approved by WorkSafe Victoria. Approved occupational rehabilitation providers must comply with conditions of approval and the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.</li> <li>• The type of OR services approved by an Agent for an injured worker depends on whether the return to work focus is to help them back to work with the injury employer (Original Employer Services — OES) or with a new employer (New employer services — NES).</li> <li>• A request for OR services can be made by the worker or the worker's treating health care provider or their employer however, the Agent responsible for managing the injured worker's claim must approve the OR service before it is offered or provided to a worker.</li> <li>• View OES &amp; NES provider service item codes and descriptions — <a href="#">Provide Original and New Employer services</a>.</li> </ul>
<b>Queensland</b>	N/A
<b>Western Australia</b>	<p>To provide vocational rehabilitation services as prescribed in regulation 44 of the Workers' Compensation and Injury Management Regulations 1982 such as:</p> <ul style="list-style-type: none"> <li>• support counselling</li> <li>• vocational counselling</li> <li>• purchase of aids and appliances</li> <li>• case management</li> <li>• retraining criteria assistance</li> <li>• specialised retraining program assistance</li> <li>• training and education</li> <li>• workplace activities</li> <li>• placement activities</li> <li>• assessments (functional capacity, vocational, ergonomic, job demands, workplace, aids and appliances)</li> <li>• travel</li> <li>• medical, and</li> <li>• general reports.</li> </ul> <p>Workplace rehabilitation providers must comply with the conditions of approval and code of conduct for workplace rehabilitation providers. These requirements are contained in:</p> <ul style="list-style-type: none"> <li>• WorkCover WA's Application for Approval as a Workplace Rehabilitation Provider <a href="#">Application for Approval as a Workplace Rehabilitation Provider Form</a>, and</li> <li>• HWCA's Guide: Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.</li> </ul> <p><a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a></p>
<b>South Australia</b>	<p>Return to work services comprises the following six service categories:</p> <ol style="list-style-type: none"> <li>1. Pre-injury employer services</li> <li>2. Fit for work services</li> <li>3. Restoration to the community services</li> </ol>



Responsibilities of rehabilitation provider	
	<p>4. Job placement services</p> <p>5. Return to work assessment services</p> <p>6. Mediation services</p> <p>Each of these six service categories is described in the <a href="#">Return to Work Services Fee Schedule</a>.</p>
<b>Tasmania</b>	<p>Workplace rehabilitation providers are responsible for providing the following workplace rehabilitation services:</p> <ul style="list-style-type: none"> <li>• initial workplace rehabilitation assessment</li> <li>• assessment of a worker's functional capacity</li> <li>• workplace assessment</li> <li>• job analysis</li> <li>• advice about job modification</li> <li>• rehabilitation counselling</li> <li>• vocational assessment</li> <li>• advice or assistance with job seeking, and</li> <li>• advice or assistance arranging vocational re-education or retraining — <a href="#">s3</a></li> <li>• Workplace rehabilitation services may only be provided by a person who meets requirements set out in <a href="#">s77A</a></li> </ul>
<b>Northern Territory</b>	<p>Vocational rehabilitation providers must be accredited by NT WorkSafe. NT WorkSafe has adopted the Nationally Consistent Approval Framework for rehabilitation providers. Vocational providers must comply with the national framework.</p> <p><a href="#">Information for Rehabilitation Providers</a></p>
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>• Public sector scheme: as per Comcare</li> <li>• Private scheme — <a href="#">s99A WC Act 1951</a></li> <li>• The insurer must appoint an approved rehabilitation provider for the injured worker as part of the personal injury plan if the worker has not returned to the worker's pre-injury duties and pre-injury working hours, within four weeks after the day the worker gave notice of the injury.</li> <li>• Procedure for approval of rehabilitation provider:</li> <li>• Providers are assessed and approved in line with the Guide: <a href="#">Nationally Consistent Framework for Workplace Rehabilitation Providers</a> as enforced from time to time. The requirements for the role and responsibilities of providers are outlined in the above guide. ACT provides mutual recognition or approval following direct application to WorkSafe.</li> </ul>
<b>C'wealth Comcare</b>	<p>Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on NOHSC (1995) definition: Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.</p> <p>Comcare has adopted the HWCA nationally consistent approval framework and information regarding this and the responsibilities of the provider is available on the Comcare website- <a href="#">How to get approved and Operate as a WRP</a> and on the <a href="#">HWCA</a> website. Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by:</p> <ul style="list-style-type: none"> <li>• facilitating an early return to work of the worker</li> <li>• identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers</li> <li>• identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties</li> <li>• forging the link between the insurer, employer and treatment providers to ensure a focus on return to work, and</li> <li>• arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties.</li> </ul>
<b>C'wealth Seacare</b>	<p>s48 — states that approved rehabilitation program providers under Part 3 of the <i>Seafarers' Rehabilitation and Compensation Act 1992</i> has the same meaning as in the <i>Safety, Rehabilitation and Compensation Act 1988</i>. Therefore, the responsibilities of rehabilitation providers are the same as Comcare.</p>
<b>C'wealth DVA</b>	<p><a href="#">DVA Service providers</a> are engaged by DVA to provide specific services to meet the rehabilitation needs of an individual. Rehabilitation service providers undertake a range of activities including assessment, plan development and management on behalf of DVA to optimise rehabilitation outcomes. Responsibility for the approval of these provisions recommended by the service provider lies with DVA Rehabilitation Coordinators. The Rehabilitation Coordinator has responsibility for the decision of who will provide what rehabilitation services for the client. The choice of support services will depend on the local services available and the specific needs of the client. Service providers used for a client's rehabilitation fall into four main categories:</p> <ul style="list-style-type: none"> <li>• rehabilitation service providers are responsible for the daily management and the accessing of all approved services required by the client. Rehabilitation service providers have to be approved by Comcare</li> </ul>

Responsibilities of rehabilitation provider	
	<p>Australia, or by the Military Rehabilitation and Compensation Commission (MRCC) to provide such services</p> <ul style="list-style-type: none"> <li>Health and Allied Health service providers are qualified and registered, general practitioners, medical specialists, dentists, psychologists, rehabilitation counsellors, occupational therapists, physiotherapists, osteopaths, podiatrists, prosthetists, orthotists, masseurs or chiropractors and dieticians</li> </ul> <p>training providers are accredited educational institutions or training providers at state or national levels, and</p> <p>support service providers include agencies or individuals who can provide services that assist in job preparation skilling or job placement for people seeking employment; services of a domestic nature (cooking, house cleaning, laundry and gardening services); other services, medical, nursing care, that are required for the essential and regular personal care of the client; and services which assist in altering a client's place of residence, work or training or can provide rehabilitation aids and appliances.</p>
New Zealand	N/A

**Table 5.7b: Rehabilitation provider qualifications and fee structure**

Minimum qualifications		Fee structure
<b>New South Wales</b>	<a href="#">Guide: Nationally consistent approval framework for workplace rehabilitation providers</a> <a href="#">NSW Supplement to the guide</a>	There are no fee structures for workplace rehabilitation services set by SIRA
<b>Victoria</b>	Providers must meet the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers requirements	<a href="#">Original and New Employer Services</a>
<b>Queensland</b>	There are no legislative minimum requirements for Workplace Rehabilitation Providers in Queensland. The Regulator outlines <a href="#">Guidelines for standard for rehabilitation</a>	<a href="#">Allied Health Fees</a>
<b>Western Australia</b>	To provide vocational rehabilitation services as prescribed in regulation 44: <a href="#">Service Provision and Service Descriptions (Standards) for Approved Workplace Rehabilitation Providers</a> <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a>	<a href="#">Fees info for Workplace Rehabilitation Providers</a>
<b>South Australia</b>	Providers must meet requirements in the <a href="#">Return to Work Services Fee Schedule</a> 2016/2017	As outlined in <a href="#">Fee Schedule</a> .
<b>Tasmania</b>	<a href="#">Tasmanian Additional Requirements to Operate as a Workplace Rehabilitation Provider</a> <a href="#">Ongoing requirements</a> (self evaluation etc)	No fee structure Under s75(2A) — a person who provides any services in respect of a claim for compensation must not charge a fee that is in excess of (a) the prescribed fee; or (b) if no fee is prescribed, the fee the person would normally charge (taking into account any discount that would normally be applicable) for that service if that service were to be provided for a matter not connected with a claim for compensation
<b>Northern Territory</b>	As per Nationally Consistent Approval Framework <a href="#">NT Supplement</a>	Not Regulated
<b>Australian Capital Territory</b>	ACT is compliant with <a href="#">Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers</a>	Not Regulated
<b>C'wealth Comcare</b>	The requirements of the Nationally Consistent Approval framework are incorporated into the <a href="#">Criteria and operational standards for workplace rehabilitation providers 2015</a> — refer to Appendix 2 — Principle 4.4.1	Fees are not prescribed by Comcare
<b>C'wealth Seacare</b>	Requirements the same as <a href="#">Comcare's</a>	Providers are approved by <a href="#">Comcare</a>
<b>C'wealth DVA</b>	Approved program provider means: (a) a person or body that is an approved program provider for the purposes of the <i>Safety, Rehabilitation and Compensation Act 1988</i> ; or (b) a person nominated in writing by a rehabilitation authority, being a person the rehabilitation authority is satisfied has appropriate skills and expertise to design and provide rehabilitation programs — (s41)	As per <a href="#">Comcare</a>
<b>New Zealand</b>	s90 vocational rehabilitation occupational assessor An occupational assessment must be undertaken by an assessor whom the Corporation considers has the appropriate qualifications and experience to do the assessment required in the particular case	Fees are not legislated

**Table 5.8: Prescribed time periods to establish a return to work plan**

3-point contact		Return to work plan/personal injury plan developed
<b>New South Wales</b>	N/A	1998 Act s43(4) — 3 working days for workers with a significant injury. This is completed by the insurer for injury management planning. A return to work plan is developed for each injured worker returning to work. <a href="#">Guidelines for workplace return to work programs</a> .
<b>Victoria</b>	N/A	<ul style="list-style-type: none"> <li>s104 — Plan return to work — see more details under 'Return to Work Plans':</li> <li>(1) An employer must, to the extent that it is reasonable to do so, plan the return to work of a worker from the date on which the employer knows or ought reasonably to have known of the worker's incapacity for work, whichever is the earlier date.</li> <li>Under s104(4), an employer knows or ought reasonably to have known of the incapacity for work from the beginning of the employment obligation period under s103 — either the date a medical certificate or claim for compensation for weekly payments is received by the employer or the employer is notified of receipt of these documents by the insurer, whichever is the earliest.</li> </ul>
<b>Queensland</b>	N/A	No time specified — s220(2)
<b>Western Australia</b>	N/A	As soon as practicable after doctor makes recommendation — s155C(1)
<b>South Australia</b>	N/A	Where it appears that a worker is (or is likely) to be incapacitated for work by a work injury for more than 4 weeks, a recovery/return to work plan must be prepared — <a href="#">s25</a> . A plan can also be prepared under other circumstances [see s25(2)].
<b>Tasmania</b>	An injury management coordinator to ensure that contact is made with the worker, the employer and the primary treating medical practitioner as soon as practicable after a worker (suffering a significant injury) is assigned to the injury management coordinator — <a href="#">s143C(2)(a)</a> .	<p>Return to work plan:</p> <p>Where a worker is, or is likely to be, incapacitated for work for more than 5 working days but less than 28 days, a return to work plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 5 working days — <a href="#">s143E(1)(a)</a>.</p> <p>Injury management plan:</p> <p>Where a worker is, or is likely to be, incapacitated for work for more than 28 days, an injury management plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 28 days — <a href="#">s143E(1)(b)</a>.</p>
<b>Northern Territory</b>	N/A	No time specified for plan but employer has 7 days after becoming aware that the worker's total or partial incapacity will exceed 28 days to give a proposal in writing to the worker for a return to work plan — s75A(1)(c)
<b>Australian Capital Territory</b>	N/A	3 business days for significant injury — s96. When suspected that injury is significant (7 days) — s97.
<b>C'wealth Comcare</b>	No time specified	No time specified
<b>C'wealth Seacare</b>	N/A	No time specified
<b>C'wealth DVA</b>	No time specified	No time specified
<b>New Zealand</b>	N/A	<p>s75 Corporation to determine need for rehabilitation plan</p> <p>Within 13 weeks after the Corporation accepts the claimant's claim for cover, the Corporation-</p> <p>(a) must-</p> <p>(i) determine whether the claimant is likely to need social or vocational rehabilitation after the 12 weeks have ended; and</p> <p>(ii) if so, prepare an individual rehabilitation plan in consultation with the claimant; and</p> <p>(b) may include the plan provision for treatment.</p>



# **Chapter 6: Self-insurer arrangements**



## Self-insurers

Each jurisdiction allows employers to self-insure for workers' compensation. This allows companies to manage and pay for their employees' claims for work-related fatality, injury and illness, rather than paying premiums to insurers to take on those responsibilities.

Self-insured companies must conform to each jurisdiction's specific legislative requirements, such as the level of benefits payable to injured employees. However, self-insurance gives them financial freedom to fund and manage their own workers' compensation liabilities.

All workers' compensation jurisdictions in Australia and New Zealand, except Seacare and the Department of Veterans' Affairs, allow employers to self-insure if they meet certain requirements, the most critical of which is the financial capacity to fully fund future liabilities. Regulatory authorities in each jurisdiction also need to be satisfied that self-insuring employers have adequate work health and safety, injury management and return to work arrangements, as well as the capacity to effectively manage workers' compensation.

Once employers self-insure they no longer pay workers' compensation premiums. However, they are still required to pay a levy that is a fair contribution towards the overheads of administering the scheme.

Self-insuring employers can self manage the claims management and rehabilitation of their injured workers and have responsibility for meeting all of their claim liabilities. Self-insurers have to reapply to self-insure after a period of time.

The tables contained in this chapter outline:

- 6.1 Workers' compensation and self-insurance coverage**
- 6.2 Criteria for becoming a self-insurer**
- 6.3 Application and approval process, ongoing costs and duration of license**
- 6.4 Work health and safety requirements and auditing**
- 6.5 Bank guarantees, prudential margins and excess of loss requirements**
- 6.6 Restraints on company structure**
- 6.7 Outsourcing of case management**
- 6.8 Other ongoing license requirements**
- 6.9 Reporting requirements, and**
- 6.10 Requirements for surrendering a self-insurance licence and penalties for exiting the scheme.**

The laws and regulations that must be satisfied to become a self-insurer vary significantly between jurisdictions. If an employer operates in more than one jurisdiction, it must apply separately for self-insurance in each of the jurisdictions in which it operates, except for the Comcare Scheme, which is a national scheme.

As at 30 September 2016 there was no mutual recognition between the jurisdictions. Therefore, if an employer qualifies for self-insurance in one jurisdiction it does not automatically qualify for recognition in another jurisdiction.

All jurisdictions impose a number of requirements that must be satisfied in order for organisations to be eligible to self-insure. In addition, all jurisdictions apply financial/prudential requirements to establish the long term financial viability of the organisation.

**Table 6.1: Workers' compensation and self-insurance coverage**

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Employees covered by workers' compensation 2015–16</b>	3 055 800	2 607 300	1 979 580	1 243 900	500 000 (approx)	207 200	120 000	136 000 (private sector approx)	375 954 (Scheme FTE inc. ACT Gov as at 1 August 2016).	1 783 000 (includes part-time)
<b>Employees covered by self-insurance</b>	790 000 (approx)	1470 003 (approx)	163 165	104 637	Data not collected	10 488 (FTE)	4 999	3000 (approx)	167 726 (FTE as at 1 August 2016)	Approximately 330 898 (FTE)
<b>Employees covered by self-insurance (%)</b>	25.8	7.5 by remuneration (as at June 2016)	8.2	—	38.4 by remuneration (as at June 2016)	4.12	4.17	<1	44.6 (as at 1 August 2016)	24 (FTE)
<b>Number of self-insurer licences</b>	56, plus 6 specialised insurers.	38	28	25	70 self-insured employer groups.	11	4	7	34 (as at 30 September 2016)	140 Contracts
<b>Number of self-insured employers 1</b>	36 self-insurers 20 group self-insurers with 147 subsidiaries	153	288	25	70 private and approx 44 Crown	10	4 private Government is a self-insurer by legislation and is not required to be approved	7	34 (as at 30 September 2016)	394
<b>Employers covered by self-insurance (%)</b>	N/A	0.14	0.2 (approx)	—	N/A	N/A	N/A	<1	17.0 (of employers as at 1 August 2016)	0.03

1. The figures in this table aim to give the reader an indication of the number of self-insurers in each scheme. For exact details on self-insurance statistics, readers should contact the relevant jurisdictional authority.
2. Includes number of employees covered by self and specialised insurer workers' compensation arrangements. Includes government employees covered by the Treasury Managed Fund administered by the NSW Self-insurance Corporation.
3. For Victoria this figure does not include the self-insured employee numbers. The figure provided is the total FTEs of all self-insurers as at 30 June 2016.
4. Self-insurers represent 7.5% of the Victorian scheme by remuneration. Although there are a relatively small number of self-insured bodies corporate, they represent some of the largest companies in Victoria. The two biggest self-insurers, in terms of employee numbers, are Westfarmers and Woolworths.
5. Contractors working for the Commonwealth will be recorded against their State of usual residence and hence all employed persons are recorded as being covered by workers' compensation, again in these figures there is an inherent potential degree of inaccuracy.
6. For New Zealand this figure includes self-insurers and self-employed persons who are covered by the Scheme.

**Table 6.2: Criteria for becoming a self-insurer**

Number of employees	Financial/prudential requirements
<b>New South Wales</b>  500 permanent staff including full-time and part-time  SIRA may use its discretion to grant a licence to an employer which does not meet this requirement if such an employer currently holds a self-insurer licence issued by another workers' compensation jurisdiction.	1987 Act, Part 7, Div 5  A self-insurer must have sufficient financial resources to meet its liabilities and be able to demonstrate long term financial viability by way of audited financial statements prepared in accordance with generally accepted accounting principles for the previous five years.  SIRA must be satisfied that self-insurers: (i) are adequately capitalised, without any undue reliance on external borrowings — i.e. are conservatively geared (ii) have a strong and sound financial position based on net tangible assets, and (iii) have a sound profit history and positive cash flow.  In determining financial viability and strength, SIRA is not restricted to the exclusive use of the above financial indicators.
<b>Victoria</b>  N/A	s379(4)(a) — <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (WIRC Act). Consideration given to both primary and secondary financial indicators and associated benchmarks dependent on industry sector, i.e. Manufacturing, Finance, Retail, Transport and Other (Public/Non-Public).  Primary financial indicators and benchmarks: Balance Sheet Test (1.0-1.5), Current Liquidity (0.8-1.2), Claims Liability (4.0%), Interest Coverage (2.0-3.0), Gearing Ratio (55-60%), Cash Flow Margin (3.0-6.7%), Bad Debt Ratio (2.0%), Excess Capital (10.0%).  Secondary financial indicators and benchmarks: Return on Investment (5.0-10.0%), Profit Margin (pre-tax) (1.4-4.9%), Quick Liquidity (0.5-0.8%), Stock Turnover (5.0-6.0), Debtor Turnover (46-50 days), Labour Costs (33%), Customer Loan Ratio (50), Net Interest Margin (1.5) and Operating Costs to Revenue (65%).
<b>Queensland</b>  2000 full time Queensland workers (s71 — <i>Workers' Compensation and Rehabilitation Act 2003</i> )	<i>Workers' Compensation and Rehabilitation Act 2003</i> s71, s72, s75, s84, s86  s71 — Employers must be considered fit and proper to be self-insurers. (s75) This includes a consideration of the long-term financial viability of the employer, evidenced by its level of capitalisation, profitability and liquidity.  Self-insurers are required to: – s84 — Lodge a security (unconditional bank guarantee, cash deposit, or financial guarantee given by an insurance company that is an approved security provider), for an amount equivalent to 150% of the self-insurer's estimated claims liability, and – s86 — have reinsurance cover, where the self-insurer's liability is an amount chosen by the self-insurer that is not less than \$300 000 or more than the set limit without approval.  NB. The Workers' Compensation Regulator has the discretion to issue or renew a self-insurance licence in circumstances where an employer does not meet one or more of the strict criteria for self-insurance, if satisfied that special circumstances exist that warrant the employer or group employer being issued a licence or having a licence renewed. The circumstances where an employer does not meet the criteria for self-insurance include, but are not limited to, instances where an employer or self-insurer does not have 2000 full time workers.
<b>Western Australia</b>  N/A	s164 and s165 — Self-insurers are to maintain adequate financial resources to comply with the requirements of the WCIM Act 1981.  Self-insurers are required to provide audited financial statements, which include: <ul style="list-style-type: none"> <li>• Balance Sheet Test (i.e. total tangible assets/total liabilities)</li> <li>• quick liquidity (i.e. current assets less stock/current liabilities)</li> <li>• current liquidity (i.e. current assets/current liabilities)</li> <li>• interest coverage (net profit before tax/net interest expense)</li> <li>• return on investment (net profit before tax/total equity)</li> <li>• claims liability as a percentage of net assets (outstanding claims/net assets), and</li> <li>• gearing ratio (loan capital/total capital employed).</li> </ul> WorkCover WA, at its discretion, may apply further secondary financial indicators if there are doubts concerning the organisation's financial viability.
<b>South Australia</b>  There is no number specified in the legislation, but the Code of Conduct states a minimum of 200 employees	ReturnToWorkSA will consider each of the following 4 primary indicators in all cases and the secondary indicator, where considered appropriate:  Primary indicators 1. Balance sheet test, being total tangible assets divided by total liabilities 2. Gearing ratio, being loan capital divided by total capital employers



Number of employees		Financial/prudential requirements
		3. Liquidity ration, being current assets divided by current liabilities 4. Cash flow margin, being operating cash flow divided by net sales Secondary indicator 5. Profitability ratio, being net profit before tax divid by total equity.
<b>Tasmania</b>	N/A	Part IX, Div 2, s105. s105(2) — In granting a self-insurer permit, the Board is to take into account the applicant's financial history and ability to satisfy such prudential standards as the Board determines. On applying for a self-insurer permit, the applicant must provide the Board with, amongst other things: <ul style="list-style-type: none"> <li>• a completed financial indicators form (<a href="#">Self-insurers Financial Indicators Form</a>) (<a href="#">Providing financial indicators information (SI — 9)</a>)</li> <li>• a desktop review of financial information by an independent expert <a href="#">The independent assessment/desktop review of financial indicators (SI — 10)</a></li> <li>• copies of the organisation's last three annual reports</li> <li>• there may be extra requirements for a new entity employer — see <a href="#">Additional financial requirements for a new entity employer (SI — 2)</a></li> <li>• once the Board has granted provisional approval for a self-insurer permit, the applicant must provide:</li> <li>• a financial undertaking from an APRA approved financial institution — see <a href="#">Providing a Financial Undertaking (SI — 11)</a></li> <li>• <a href="#">How the amount of a Financial Undertaking is determined (SI — 12)</a> and <a href="#">Financial Undertaking Form</a></li> <li>• evidence of an Excess of Loss Policy secured by the organisation — see <a href="#">Securing an excess of loss policy (SI — 13)</a>, and</li> <li>• a Deed and Power of Attorney — see <a href="#">Completing the Irrevocable Power of Attorney (SI — 17)</a>.</li> </ul> <a href="#">For more information see How to apply for a permit to insure (self-insurer) (SI — 1).</a>
<b>Northern Territory</b>	N/A	ss119 and 120. Financial viability of the employer — s119(3)(d), which is to be demonstrated through: <ul style="list-style-type: none"> <li>• the provision of the company's three latest detailed annual balance sheets, including profit and loss statements, together with notes and their auditor's report following this</li> <li>• an actuarial report on the company, which details its current NT workers' compensation liabilities and ability to meet both its current and expected liabilities under the Act</li> <li>• reinsurance cover of an unlimited amount in excess of the company's liability of \$1 million (indexed) for any one event, and</li> <li>• a three year history of the company's NT workers' compensation claims.</li> </ul>
<b>Australian Capital Territory</b>	N/A	Workers Compensation Regulation 2002, Part 10. Copy of employer's annual report and balance sheet for the previous 3 years. Actuarial report containing: <ul style="list-style-type: none"> <li>• estimate of current outstanding liability in relation to compensable injuries</li> <li>• estimate of the total of the employer's expected liability for each year in relation to which the employer is applying to be a self-insurer, and</li> <li>• estimate of the total of the expected payments in satisfaction of the employer's liability for compensable injuries that will be made for each year in relation to which the employer is applying to be a self-insurer.</li> </ul> A written statement is required from the employer that the employer will be able to meet present and future claims under the Act for which the employer is, or is expected to be liable.

Number of employees		Financial/prudential requirements
<b>C'wealth Comcare</b>	As per any Ministerial s100 guidelines	<p>Part VIII — Financial<sup>2</sup>:</p> <ul style="list-style-type: none"> <li>• provide previous 5 years' audited statements</li> <li>• financial viability assessment conducted by independent financial consultant, and</li> <li>• provide certification from the principal officer that they are not aware of any likely events which may materially impact on the suitability of the applicant for approval.</li> </ul> <p>Prudential:</p> <ul style="list-style-type: none"> <li>• must have the actuary prepare a liability report to the Safety, Rehabilitation and Compensation Commission's (the Commission) requirements</li> <li>• the liability report must: <ul style="list-style-type: none"> <li>– include an estimate of the applicant's outstanding liability at the end of the first 12 and 24 months of the licence</li> <li>– advise the level of guarantee required (calculated by the actuary at the 95th percentile of projected outstanding claims liabilities in 24 months' time from the licence commencement date, and</li> <li>– the addition of one reinsurance policy retention amount, subject to a minimum amount of \$2.5 million)</li> </ul> </li> <li>• must recommend appropriate reinsurance arrangements and comment on the suitability of arrangements, and assess the applicant's capacity to pay amounts up to the recommended reinsurance excess amount, and</li> <li>• the applicant is required to obtain the bank or other guarantee in the form required by the Commission and appropriate reinsurance cover, before the commencement of the licence.</li> </ul>
<b>New Zealand</b>	<p>No specific minimum employee number</p> <p>In practice, the pricing mechanism makes entry to the program not financially viable to employer whose standard levy is less than NZ\$250 000.</p>	<p>s185 — Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme. ACC is required to satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).</p> <p>The measures are:</p> <ul style="list-style-type: none"> <li>• it has substantial net worth</li> <li>• that its contingent liabilities are not excessive (details to be provided including an evaluation as to likely crystallisation of those liabilities)</li> <li>• it has an appropriate working capital ratio based on current assets divided by current liabilities</li> <li>• it has an appropriate equity to debt ratio, and</li> <li>• it has an appropriate return on equity.</li> </ul> <p>These figures should, where possible, be provided for the 3 financial periods preceding the application and include best estimates for at least the then current financial period and the next financial period ('period' normally meaning a year).</p>

---

<sup>2</sup> These requirements are currently subject to review by the SRC Commission.

**Table 6.3: Approval process, application and ongoing costs and duration of licence**

Applications process		Application and ongoing costs	Duration of license
<b>New South Wales</b>	<ol style="list-style-type: none"> <li>1. Acknowledge receipt of application fee.</li> <li>2. Validate application information and request missing or additional information required for the review.</li> <li>3. Review application in different areas including financial, injury and claims management (case management), and data management and, conduct WHS management system audit.</li> <li>4. Prepare Executive Director Submission to recommend either approving or rejecting application.</li> <li>5. Prepare letter to notify the applicant of either granting the licence with the date of commencement or rejecting the application.</li> </ol>	<ul style="list-style-type: none"> <li>• One-off cost on application of \$25 000 for Single Self-Insurer licence, \$30 000 for Group Self-Insurer licence.</li> <li>• Insurers are required to contribute to the Workers Compensation Operational Fund under s39 of the <a href="#">1998 Act</a> and to the Dust Diseases Fund under s6 of the <a href="#">Workers' Compensation (Dust Diseases) Act 1942</a> on an annual basis.</li> </ul>	A licence will be granted for a standard period of 3 years and be capable of renewal for further three-year terms. SIRA has discretion to grant licences for shorter terms if it believes circumstances are warranted.
<b>Victoria</b>	<p>s375 — WIRC Act</p> <ul style="list-style-type: none"> <li>• Assessment of organisation's eligibility to apply is undertaken: <ul style="list-style-type: none"> <li>– the body corporate must be the ultimate holding company in Australia, and</li> <li>– must satisfy prescribed minimum requirements as to financial strength and viability.</li> </ul> </li> <li>• If eligible, the organisation may submit an application for approval to WorkSafe Victoria. The assessment of the application may include on-site audits, interviews and inspections.</li> <li>• Pre-application eligibility fee must be paid as prescribed in the Schedule 6 of the Act.</li> </ul>	<ul style="list-style-type: none"> <li>• An application fee must be paid by the organisation as prescribed in Schedule 7 of the WIRC Act. The maximum fee payable is \$58 030. (as at 1 July 2016 and subject to indexation).</li> <li>• A self-insurer must pay contributions into the WorkCover Authority Fund in accordance with s388 of the WIRC Act. Quarterly contributions payable by a self-insurer are determined by WorkSafe Victoria based on the rateable remuneration return submitted by a self-insurer pursuant to the Ministerial Order made under s380(3) of the WIRC Act.</li> <li>• The amount of contributions payable by a self-insurer pursuant to s388 of the WIRC Act is determined by the formula given in Regulation 14 of the Workplace Injury Rehabilitation and Compensation Regulations 2014.</li> </ul>	<p>s382 WIRC Act</p> <p>Initial approval is for a period of three years and any subsequent approvals are for four years unless WorkSafe Victoria in its discretion determines that approval has effect for a period of six years.</p>
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• s70 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — The application must: <ol style="list-style-type: none"> <li>a) be made to the Workers' Compensation Regulator in the approved form, and</li> <li>b) for a group employer be made by all the members of the group wanting to be licensed, and</li> <li>c) be accompanied by the fee prescribed under a regulation.</li> </ol> </li> <li>• s77 — The Workers' Compensation Regulator must decide an application within 6 months of receiving it. s71 — The Workers' Compensation Regulator may issue or renew a licence to be a self-insurer to a single employer only if satisfied that certain criteria have been met.</li> <li>• s75 - in deciding whether a single employer or group employer is fit and proper, the Workers' Compensation Regulator may consider any relevant matter and must consider certain matters (refer to legislation).</li> </ul>	<ul style="list-style-type: none"> <li>• Initial application fee for setting up the licence: <ul style="list-style-type: none"> <li>– \$15 000 application fee for single employers, and</li> <li>– \$20 000 application fee for group employers.</li> </ul> </li> <li>• s70 <i>Workers' Compensation and Rehabilitation Act 2003</i>, s16 <i>Workers' Compensation and Rehabilitation Regulation 2014</i>.</li> <li>• A self-insurer must also pay a levy to the Regulator each financial year under s81 of the <i>Workers' Compensation and Rehabilitation Act 2003</i>. The amount a self-insurer must pay is calculated according to the formula in s17 (<i>Workers' Compensation and Rehabilitation Regulation 2014</i>) and is dependent on their estimated claims liability, and the levy rate set by the Regulator.</li> </ul>	<p>s78 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — Original licence issued for a period of two years, on renewal, licence period can be up to four years.</p>
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>• Employer submits application to WorkCover WA.</li> <li>• WorkCover WA reviews and considers the application for self-insurer status and provides recommendation on the application to the Minister.</li> <li>• The Governor, on recommendation of the Minister, may exempt an employer.</li> </ul>	<p>Self-insurers are required to contribute annually to the Authority's General Account. The contribution is a percentage (fixed by the Authority) of the total amount of the notional premium of the self-insurer. The minimum contribution is \$40 000.</p>	<p>No initial duration, however (s165 — <i>Workers' Compensation and Injury Management Act 1981</i>) requires that self-insurance arrangements be reviewed at least once a year or when so required by the Minister. The review of an exemption will be based on adherence to the conditions of approval set by WorkCover WA.</p>

<b>South Australia</b>	<ul style="list-style-type: none"> <li>An indicative time line for the process and requirements is outlined in the <a href="#">Code of Conduct for Self-Insured Employers</a>.</li> </ul>	<p><a href="#">ss129-133</a> — <i>Return to Work Act 2014</i></p> <ul style="list-style-type: none"> <li>A one off application fee applies of \$10 000 (plus GST) plus \$15 (plus GST) for each worker employed by the employer, or group of employers at the time of the application is fixed as the fee that must accompany an application for registration as a self-insured employer, or group of self-insured employers.</li> <li>The maximum fee payable is \$40 000 (plus GST). Return to Work Regulations 2015 – <a href="#">Reg 53</a>.</li> </ul>	Registration as a self-insured employer (license) granted for an initial period (not exceeding three years). A self-insurer may apply to ReturnToWorkSA to renew its registration for further periods. Further periods may not exceed years (s129(5)(f)) and <a href="#">Code of Conduct for Self-Insured Employers</a> .
<b>Tasmania</b>	<p>An employer must make application to the WorkCover Tasmania Board on the approved form (<a href="#">s104</a>) accompanied by:</p> <ul style="list-style-type: none"> <li>completed financial indicators form</li> <li>desktop review of financial information by an independent expert</li> <li>copies of the organisation's last three annual reports</li> <li>evidence of high level safety management practices</li> <li>evidence of high level injury management practices</li> <li>evidence of high level claims management practices, and</li> <li>evidence of the organisation's capacity to meet the necessary data reporting requirements.</li> </ul> <p><a href="#">Applying for a self-insurer permit (Guideline S1 — 020)</a>.  <a href="#">How to apply for a permit to insure (self-insurers)</a>.</p>	<p>No application fee. However, the applicant is responsible for paying all expenses associated with applying for a self-insurer permit, including expenses associated with:</p> <ul style="list-style-type: none"> <li>providing a desktop review of financial information by an independent expert</li> <li>providing a National Audit Tool report by a certified auditor or evidence of JAZ-ANZ certification against AS/NZ 4801:2001 or the National Audit Tool, and</li> <li>seeking approval of an Injury Management Program.</li> <li>Once a permit is granted, there are ongoing expenses. These are set out in detail in the <a href="#">Guideline</a>.</li> <li>Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.</li> </ul>	Duration ranges from one year to three years, depending on the self-insurer's ability to satisfy the criteria.
<b>Northern Territory</b>	s120 — Employer to write to Authority for approval to self-insure	<ul style="list-style-type: none"> <li>There is no cost to employers to lodge a self-insurer application. The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary. Once approved a self-insurer will be required to pay the Territory an amount determined by the Authority as a contribution towards: <ul style="list-style-type: none"> <li>administration costs of the Work Health Court</li> <li>administration costs of the Supreme Court associated with proceedings under the Act</li> <li>costs incurred by the Authority in providing a mediation service, and</li> <li>costs incurred by the Territory in relation to the Authority's (NT WorkSafe) performance of its functions under the Return to Work Act or other Act and in relation to promoting health and safety. - S121A.</li> </ul> </li> <li>They are also subject to contribution to the Nominal Insurer based on notional market share.</li> </ul>	One year
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>Submit application to WorkSafe ACT.</li> <li>WorkSafe ACT will coordinate the review process.</li> <li>Once applications have been reviewed recommendations will be made to the appropriate delegate.</li> <li>Once the Delegate has made their decision, the applicant will be notified.</li> <li>Should the application be successful, the applicant must complete and return an Acceptance Form within 14 days of the date of notification.</li> </ul>	<ul style="list-style-type: none"> <li>Application fee to be a self-insurer — \$7 983.00 (updated each year) and approval fee — \$7 983.00. The insurer must agree to participate in, and pay the costs of an audit to establish that the insurer has adequate resources to meet the insurer's current and expected liabilities.</li> <li>The insurer must agree to participate in, and pay the costs of, an audit to establish that the insurer has complied with its obligations under the Regulatory Framework Appropriate audit costs and application fee on renewal of licence.</li> </ul>	Up to three years
<b>C'wealth</b>	<b>Process for applying for eligibility</b>	<ul style="list-style-type: none"> <li>One off application fee based on size, complexity, costs of assessment process etc.</li> </ul>	Up to eight years

<b>Comcare</b>	<p>By Ministerial declaration and provided that the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that:</p> <ul style="list-style-type: none"> <li>– is, but is about to cease to be, a Commonwealth authority, or</li> <li>– was previously a Commonwealth authority, or</li> <li>– is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.</li> </ul> <p>If the corporation is so declared by the Minister, the corporation is then eligible to apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence.</p> <p><b>Process for applying to become a self-insurer:</b></p> <ul style="list-style-type: none"> <li>• s102 — <i>Safety and Rehabilitation Act 1988</i> — Once a corporation is declared an eligible corporation by the Minister, it may then apply to the Commission for a licence:</li> <li>• To grant a licence, The Commission will consider whether: <ul style="list-style-type: none"> <li>– the applicant has sufficient resources to fulfil the responsibilities imposed on it under the licence</li> <li>– the applicant has the capacity to ensure that claims will be managed in accordance with the Commission's standards for claims management</li> <li>– the applicant has the capacity to meet the Commission's standards for the rehabilitation and work health and safety of its employees</li> <li>– the granting of the licence will not be contrary to the interests of the employees of the licensee whose affairs fall within the scope of the licence, and</li> <li>– because of the applicant's past conduct it is unlikely that the applicant will, if licensed, meet the standards set by the Commission for claims management, rehabilitation and prevention.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Annual licence fee payable. The fee varies based on contributions to regulatory management of the SRC Act scheme with special emphasis on issues relevant to licensees, plus costs specifically applicable to overseeing the licence improvement program for each licence, and the size of the licensee. For licensees with Commonwealth WHS coverage there is a work health and safety contribution to meet regulatory activities in workplace safety.</li> </ul>	
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>• Employer completes an application form providing supporting financial, business and health and safety information.</li> <li>• Notifies all staff in writing about their intention to join.</li> <li>• Consult with employee representatives about intention to join.</li> <li>• Coordinate staff and documentation for the health and safety audit (completed by an ACC approved independent auditor) using the approved audit tool.</li> <li>• Submit application to ACC (the Manager) and: <ul style="list-style-type: none"> <li>– ACC will undertake the approval process</li> <li>– once approval process has been undertaken ACC makes a decision, and</li> <li>– the applicant will be notified.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Pay a portion of the pre-entry audit costs.</li> <li>• Cost of the independent audit of health and safety.</li> </ul>	<ul style="list-style-type: none"> <li>• Approval may be for one to three years at the employer's option.</li> <li>• Annual reviews are undertaken in order to ensure entry (including prudential) requirements are being maintained.</li> </ul>

## Ongoing requirements

The majority of jurisdictions require an applicant for a self-insurance licence to meet a minimum standard for work health and safety and rehabilitation. In determining the minimum standard required for work health and safety, most agencies require the employer to have in place a work health and safety management system or other similar arrangements (i.e. New South Wales, Victoria, the Northern Territory, the Australian Capital Territory and the Commonwealth). These are then audited against a work health and safety audit tool (see Table 6.4).

New South Wales, Victoria, Tasmania and the Commonwealth measure the self-insurer's performance against the National Self-Insurers OHS Audit Tool and audits of rehabilitation and claims management systems. After two years in the scheme, the Commonwealth requires entities to demonstrate, on an ongoing basis, how they have maintained these management systems.

Queensland requires satisfactory work health and safety performance. Although no audit tool is stipulated in legislation, the administrative guidelines indicate that use of the national OHS Audit Tool is required. In South Australia compliance is required with the Self-insurer Standards at Annexure A to the Code, with multi-jurisdictional self-insurers able to elect to be audited against the national audit tool.

In addition to the prudential requirements, employers are required to take out bank guarantees or similar guarantees to cover outstanding claims liabilities. Self-insurers are also required to carry excess of loss insurance to cover catastrophic events. Table 6.5 shows the guarantee requirements for self-insurance eligibility requirements across Australia.

Jurisdictions vary in the extent of self-insurance licence coverage from single companies to fully owned subsidiaries. Table 6.6 details restraints on company structure.

Normally self-insurers case-manage their own employees; however some jurisdictions allow them to outsource this function. Table 6.7 shows the outsourcing of case management arrangements Australia.

Self-insurer companies are obliged to comply with workers' compensation legislation to at least the same extent as premium-paying companies to maintain their self-insurer status. Licensees may have extra conditions imposed on them which also require compliance measures. Table 6.8 details other ongoing licence requirements.

### Reporting requirements

Self-insurance lends itself to self-regulation, providing that adequate control measures are put in place from the outset and a continuous reporting programme is followed. Periodic reporting can be used to monitor performance with the degree of auditing linked to a self-insurer's performance. Table 6.9 shows the reporting requirements across Australia.

### Requirements for surrendering license and penalties for exiting the scheme

Self-insurance is not without risk, the predominant one being that if self-insurers fail, then governments may have to meet the costs of workers' compensation liabilities. Employers may, for a range of reasons, wish to cease being a self-insurer. Some jurisdictions impose penalties on employers who choose to leave their scheme or surrender their self-insurance licence and move to the Comcare scheme. See Table 6.10 for a comparison of these requirements and penalties.

**Table 6.4: Work health and safety requirements and auditing**

Work Health and Safety Requirements		Auditing
<b>New South Wales</b>	SIRA will measure the applicant's performance against the National Self-Insurer OHS management system Audit Tool. The applicant must satisfy all requirements in 3 out of 5 categories during the initial OHS audit and achieve 75% conformance for each of the categories audited.	SIRA will conduct a WHS Management System audit at time of self-insurance application against the National Self-Insurers OHS management system Audit Tool. Routine SIRA audits every 3 years thereafter or more frequently if required. 75% conformance required in 2 categories for these subsequent audits. In addition self-insurers are required to conduct annual self-audits unless a SIRA audit has been conducted during that financial year.
<b>Victoria</b>	Safety Management Systems are audited against the National Self-Insurer OHS Management System Audit Tool for all new applicants and current self-insurers.  <i>Compliance with Occupational Health and Safety Act 2004</i> — Inspectorate field interventions including enforcement activity, prosecutions and incident notifications.	Annual self-audit requirements for the duration of the licence period. The self-audits comprise of the following two components: <ul style="list-style-type: none"> <li>occupational health and safety management system requirements, and</li> <li>claims management obligations of employers and other requirements.</li> </ul> Audits undertaken by the regulator : <ul style="list-style-type: none"> <li>at time of application for approval and renewal of approval against the National Self-Insurer OHS Management System Audit Tool; and</li> <li>claims management audit conducted once in a self-insurer's term of approval.</li> </ul>
<b>Queensland</b>	ss71(4) and 72(4) — The Workers' Compensation Regulator must ask the chief executive of the department within which the <i>Work Health and Safety Act 2011</i> is administered to prepare a report about the employer's work health and safety performance.	The report provided in accordance with ss71(4) and 72(4) includes a summary of prosecutions, enforceable undertakings and notices issued against the self-insurer and a summary of audit findings. The audit for self-insurance is conducted at the time of licence renewal or before an initial licence is granted.
<b>Western Australia</b>	Work health and safety requirements are handled by WorkSafe WA. <a href="#">Occupational Safety and Health Act 1984</a> <a href="#">WorkSafe WA</a>	N/A
<b>South Australia</b>	Compliance with the Self-insurer Standards and the WHS and Injury Management Standards, which can be found in the Code of Conduct. See also section <a href="#">129</a> of the <i>Return to Work Act 2014</i> .	<ul style="list-style-type: none"> <li>Evaluation (work health and safety and injury management/rehabilitation) against the standards will be carried out in preparation for each registration renewal, and at other times should something come to ReturnToWorkSA's attention that indicates a need for a further evaluation. See 2.5.2 'Performance standards' within the <a href="#">Code of Conduct for Self-insured Employers</a></li> <li>ReturnToWorkSA also monitors self-insured employers throughout non-renewal years.</li> </ul>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>Must have an established work health and safety management system.</li> <li>Upon application to self-insure, a National Audit Tool (NAT) audit report is provided by a certified auditor or evidence of JAS—ANZ certification against AS/NZ 4801:200 and the National Audit Tool.</li> <li>Must undertake annual self audits using NAT and forward results to the WorkCover Tasmania Board. (Where certification under a JAS-ANZ certification program has been achieved, the annual self audit will not normally be required).</li> </ul> <a href="#">Meeting self-insurer permit conditions (Guideline S1 — 5)</a> <a href="#">Conducting the annual self-assessment of your occupational health and safety management systems (SI — 15)</a>	<ul style="list-style-type: none"> <li>Work health and safety management system to be self-audited annually, with the use of the National Audit Tool as the audit tool <a href="#">Conducting the annual self-assessment of your occupational health and safety management systems (SI — 15)</a></li> <li>WorkCover surveillance audits are conducted annually as well <a href="#">WorkCover surveillance audits (Guideline SI — 14)</a></li> </ul>
<b>Northern Territory</b>	Evidence that the company's NT operation has in place a Work Health and Safety management system and evidence that the company's work health and safety policy has been brought to the attention of the company's NT workers.	National Self-insurer Audit Tool
<b>Australian Capital</b>	<ul style="list-style-type: none"> <li>Compliant with employer's duties under <i>Work Health and Safety Act 2011</i>.</li> <li>Copy of work health and safety policy and evidence that it has been brought to the attention of the</li> </ul>	The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act.

Work Health and Safety Requirements		Auditing
<b>Territory</b>	<p>employer's workers.</p> <ul style="list-style-type: none"> <li>Has in place a work health and safety management system that complies with Australian Standard 4801.</li> </ul>	The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its regulatory obligations.
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>The SRC Commission sets Performance Standards and Measures for licensees, which include performance targets for WHS.</li> <li>Licensees must demonstrate to the SRC Commission that they are continuing to meet the Performance Standards and Measures throughout the licence term.</li> <li>Licensees with Commonwealth WHS coverage must comply with the <i>Work Health and Safety Act 2011</i> (Cth). They are required to notify relevant incidents and are subject to inspectorate interventions including enforcement activity and prosecutions as and when required.</li> <li>The Commission is provided with regular updates on all aspects of each licensee's performance, taking into consideration audit and compliance performances to determine if the licensee is complying with the conditions of licence or if further action is required to address relevant concerns.</li> </ul>	<ul style="list-style-type: none"> <li>Licence evaluations may occur prior to the grant of licence.</li> <li>In the first two years of a licence, licensees are considered 'Developing' and are subject to extensive annual reviews.</li> <li>From year three, licensees are considered to be established and must provide annual evidence they are maintaining their management systems and meeting the SRC Commission's Performance Standards and Measures in all respects.</li> <li>This evidence can be supplied through internal or external audits, reviews or other means.</li> <li>Data quality audits may also be conducted, if warranted, to assess the accuracy of data submitted.</li> </ul>
<b>New Zealand</b>	<p>An audit of an employer's health and safety systems and practices is carried out as part of the entry requirements. A comprehensive entry audit is undertaken in order to satisfy Accident Compensation Corporation that an employer has the capacity and capability to manage and administer claims at least to the same standard as Accident Compensation Corporation.</p> <p>Every Accredited Employer must agree to provide to each employee without charge a written statement in plain English that specifies the procedures and requirements under its contract in relation to the lodging of claims, provision of treatment, handling of claims, assessment of incapacity, assessment of capacity for work, and dispute resolution.</p>	<p>Monitoring and audit programme includes:</p> <ul style="list-style-type: none"> <li>a review of the reporting of claims details and expenditure to be utilised to provide regular comparative benchmarking reports for the Manager and the individual Accredited Employer</li> <li>onsite audits at least annually of claims management performance</li> <li>regular meetings between the account manager and the Accredited Employer (the frequency of which will depend on the experience of the individual Accredited Employer)</li> <li>in the discretion of the Manager and in conjunction with the annual audit programme, a claimant satisfaction survey to determine overall claimant satisfaction with the Accredited Employers Program</li> <li>active liaison with Accredited Employer's workplace employee representatives (if any)</li> <li>monitoring of the ongoing solvency of the Accredited Employer and its expected ability to meet its obligations under the Accreditation Agreement, and</li> <li>annual health and safety audit using approved audit tool.</li> </ul>



**Table 6.5: Bank guarantees/prudential margins and excess of loss requirements**

Bank guarantees/prudential margins		Excess of loss requirements
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>Initial security equivalent to tariff premium (WIC rate X estimated wages) for the ensuing twelve months plus a prudential margin of 50%.</li> <li>SIRA has discretion to seek additional security if it believes circumstances are warranted. For subsequent reviews 150% of self-insurer liabilities including a prospective component for the 12 months post balance date.</li> </ul>	<ul style="list-style-type: none"> <li>A self-insurer must obtain and maintain unlimited reinsurance cover during the currency of the licence so as to restrict its liabilities under the 1987 Act and independently of the 1987 Act to a maximum amount approved by SIRA in respect of any one event. The reinsurance cover must be provided by an insurance company authorised by the Australian Prudential Regulation Authority.</li> <li>A retention amount under the above policy or policies, provided that it is within the range of \$100 000 to \$1 000 000 per event is acceptable to SIRA.</li> <li>Retentions in excess of \$1 000 000 will require prior approval by SIRA. In such instances SIRA will require the self-insurer to undertake and provide an assessment of the likely cost of risk retention and the appropriateness of the level of retention sought as part of the approval process.</li> </ul>
<b>Victoria</b>	<p>s393 — WIRC Act</p> <ul style="list-style-type: none"> <li>A self-insurer must ensure that there is in force at all times a guarantee in respect of its assessed liability. The guarantee must : <ul style="list-style-type: none"> <li>be given by an Authorised Deposit-Taking Institution (ADI);</li> <li>be in a form approved by WorkSafe Victoria; and</li> <li>guarantee payment of amounts not less than 150% of the assessed liability or \$3 million (whichever is greater).</li> </ul> </li> <li>The valuation of the self-insurer's assessed liability includes a prospective component which is included in the calculation of the quantum coverage of the guarantee.</li> </ul>	<p>s380(3) &amp; s393(1)(b) — WIRC Act</p> <ul style="list-style-type: none"> <li>A Ministerial Order sets out the terms and conditions to which the approval of an organisation as a self-insurer is subject.</li> <li>The Ministerial Order covers the requirements that must be met for a contract of insurance in respect of contingent liabilities that a self-insurer must have in force at all times.</li> <li>A self-insurer may select an excess for its contingent liability insurance policy of any amount not greater than \$5 million. There is no minimum excess amount.</li> </ul>
<b>Queensland</b>	<p>s84 <i>Workers' Compensation and Rehabilitation Act 2003</i> — Provision of a security (an unconditional bank guarantee, cash deposit, or financial guarantee given by an insurance company that is an approved security provider), for an amount equivalent to 150% of the self-insurer's estimated claims liability.</p>	<p>s86 <i>Workers' Compensation and Rehabilitation Act 2003</i> — Retention of reinsurance for an unlimited amount in excess of the self-insurer's liability for each event that may happen during the period of reinsurance. The self-insurer's liability must be not less than \$300 000 and not more than the limit set by the Regulator on application by the self-insurer.</p>
<b>Western Australia</b>	<p>On 1 July 2013, changes to the minimum level of securities for self-insurers came into effect. For current self-insurers:</p> <ul style="list-style-type: none"> <li>The minimum level of securities increases from \$1 million to \$1.5 million.</li> <li>The level of outstanding claims liabilities plus the 50% prudential margins is to be rounded up to the next \$100 000.</li> </ul> <p>For new self-insurers:</p> <ul style="list-style-type: none"> <li>The minimum level of securities is set at \$2 million.</li> <li>Thereafter, the level of securities is to be determined as above.</li> </ul> <p>Actuarial assessments of outstanding claim liability are required on an annual basis and used to determine security amounts.</p>	<p>Common law and catastrophe insurance policy for a minimum of \$50 million for any one claim or series of claims arising out of one event.</p>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>Outstanding liability multiplied by a prudential margin of 2. It is revised annually in accordance with an actuarial report the employer must submit within 3 months after the end of the financial year. Minimum guarantee applies 2016 — \$840 000.</li> <li>Refer <a href="#">Schedule 3</a> — Return to Work Regulations 2015 and <a href="#">Code of Conduct for Self-insured Employers</a>.</li> </ul>	<p>Self-insurers need to maintain an excess of loss insurance policy that must satisfy:</p> <ul style="list-style-type: none"> <li>\$100 million on the sum insured</li> <li>a deductible of not less than \$500 000 per event or series of events, and</li> <li>if the self-insured employer elects to include a stop loss excess or aggregate excess, such stop loss or aggregate excess must not be less than the higher of: <ul style="list-style-type: none"> <li>three times the individual incident excess, or</li> <li>10% above the average incurred claim cost for the prior 3 years.</li> </ul> </li> <li>Refer to Schedule 3 of the Return to Work Regulations 2015 and <a href="#">Code of Conduct for Self-insured Employers</a>.</li> </ul>

Bank guarantees/prudential margins		Excess of loss requirements
<b>Tasmania</b>	<p>For self-insurers with less than 3 years experience:</p> <ul style="list-style-type: none"> <li>Bank guarantee equal to: <ul style="list-style-type: none"> <li>Yr 1: Notional Premium x 100%</li> <li>Yr 2: Notional Premium x 140%</li> <li>Yr 3: Notional Premium x 180%</li> <li>Plus the greater of 30% of the adjusted notional premium, or</li> <li>the amount of excess to be paid (per event retention), or</li> <li>\$500 000.</li> </ul> </li> </ul> <p>For self-insurers with more than 3 years experience:</p> <ul style="list-style-type: none"> <li>Minimum of 150% of central estimate of outstanding claims liabilities or \$1m whichever is greater.</li> </ul> <p><a href="#">Providing a financial undertaking (Guideline S1—11)</a>  <a href="#">How the amount of a Financial Undertaking is determined (S1—12).</a></p>	Excess of loss policy for a minimum amount of \$50 million and an irrevocable power of attorney over the policy — <a href="#">Securing an Excess of Loss Policy (Guideline SI—13).</a>
<b>Northern Territory</b>	150% of self-insurer liabilities on application and as assessed at each review	Catastrophe Reinsurance of an unlimited amount excess of \$1 million
<b>Australian Capital Territory</b>	<p>Guarantee from an authorised deposit-taking institution for the greater amount of:</p> <ul style="list-style-type: none"> <li>\$750 000, or</li> <li>an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.</li> </ul>	The application must provide evidence that the employer has reinsurance of \$500 000 (CPI indexed) for a single event to cover the employer's future liability under the Act.
<b>C'wealth Comcare</b>	<ul style="list-style-type: none"> <li>Deed between the Commission, Comcare and a bank or insurer for an amount that can be called upon by the Commission in the event a self-insurance licence is suspended or revoked.</li> <li>The guarantee is provided annually (date dependent on licensee's financial Balance Date).</li> <li>The guarantee must be for an amount calculated by the actuary as the greater of: <ol style="list-style-type: none"> <li>the 95th percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount, or</li> <li>the 95th percentile of projected Outstanding Claims Liabilities in 12/18/24* months time from the Balance Date and the addition of one reinsurance policy retention amount subject to a minimum amount of \$2.5 million.</li> </ol> </li> </ul> <p>*Note: actual licence will specify: 12 months for licences in the 6th or more year of licence; 18 months for licences in the 4th — 5th year of licence; 24 months for licences in the 1st — 3rd year of licence<sup>3</sup>.</p>	Licensee is required to maintain an appropriate level of reinsurance for any single event in excess of a retention amount determined by the Commission (excess amount) and as recommended by the actuary. A copy of the policy is provided to the Commission within seven days of issuing.
<b>New Zealand</b>	No formal security is taken. No legislative provision to allow formal security arrangements like debentures over assets, bank bonds or guarantees or any other third party guarantees. An employer must prove it has the ability to meet its program obligations completely in its own right in order to be accredited.	Accident Compensation Corporation provides Stop Loss Cover within a range of 160% to 250% of the defined risk. Stop Loss Cover is mandatory for Full Self Cover employers and optional for the Partnership Discount Plans. Any other reinsurance is prohibited under the legislation. The accredited employer is required to carry the risk of work place injury with no ability to offload any of this risk.

<sup>3</sup> These requirements are currently subject to review by the SRC Commission.

**Table 6.6: Self-insurance restraints on company structure**

Restraints on company structure	
<b>New South Wales</b>	<p>An application for a self-insurance licence can be made by 'any employer' (s210 — 1987 Act) in accordance with the requirements of SIRA's licensing policy for self-insurers. A self-insurer licence may be granted to an employer or a group self-insurer licence may be granted to a holding company and all wholly owned subsidiaries of the company that are employers in NSW.</p> <p>Under a group licence there is no provision for selective inclusion of subsidiaries by the applicant. The legislation specifies that only wholly owned subsidiary companies are to be included in the group licence. For group licences the applicant company would generally be the ultimate holding company in Australia.</p> <p>For group licences a cross guarantee or a holding company guarantee is required.</p>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• Ultimate holding company in Australia and all wholly owned subsidiaries — s376(1) of the WIRC Act</li> <li>• Municipal Association of Victoria (MAV) and local government corporations participating in a scheme of self-insurance operated by the MAV as a self-insurer — s376(3) of the WIRC Act.</li> </ul>
<b>Queensland</b>	<p>Group licences are restricted to groups of employers that are made up as follows:</p> <ul style="list-style-type: none"> <li>• employers who are in the same industry and have a pre-existing stable business relationship (classification group self-insurer), or</li> <li>• related bodies corporate as defined by the <i>Corporations Act 2001</i> (related bodies corporate group self-insurer).</li> </ul>
<b>Western Australia</b>	N/A
<b>South Australia</b>	<p>Under <a href="#">s129(2)</a> of the <i>Return to Work Act 2014</i> an application as a self-insured employer or as a group of self-insured employers can only be made:</p> <p>(a) in the case of an application by an individual employer—</p> <ul style="list-style-type: none"> <li>(i) the employer is a body corporate; or</li> <li>(ii) the employer is an indemnified maritime employer;</li> </ul> <p>(b) in the case of an application by a group—</p> <ul style="list-style-type: none"> <li>(i) the members of the group are related bodies corporate or local government corporations; and</li> <li>(ii) if the members of the group are related bodies corporate—no related body corporate of any member of the group that employs a worker or workers in employment to which this Act applies is not a member of the group.</li> </ul>
<b>Tasmania</b>	N/A
<b>Northern Territory</b>	N/A
<b>Australian Capital Territory</b>	N/A
<b>C'wealth Comcare</b>	A licence is required for each legal entity
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>• Any 'employer' in New Zealand is eligible to become 'accredited' provided they are able to meet the eligibility requirements outlined in regulation. Eligibility is not confined by structure. Therefore any employer entity, including by way of example a company (including a consolidated group of companies), a partnership, an incorporated society, a government, state owned entities, district hospital boards, local government authorities and incorporated societies.</li> <li>• A group of employers may become accredited where each member of the group meets the definition of a subsidiary company, as determined by the Companies Act. Any subsidiary where ownership is greater than 50% is able to be a member of the accredited group.</li> </ul>

**Table 6.7: Outsourcing of Case Management**

Outsourcing allowed	
<b>New South Wales</b>	SIRA may use its discretion to approve outsourcing arrangements for injury and claims management and data lodgement to a suitably qualified third party, subject to it being satisfied that such an arrangement will not lead to a decrease in established service standards to injured workers
<b>Victoria</b>	A self-insurer may appoint a person approved by WorkSafe Victoria to act as the agent to carry out claims management functions— s392 of the WIRC Act
<b>Queensland</b>	Yes — s92(4)
<b>Western Australia</b>	Yes
<b>South Australia</b>	Decisions must be made by the self-insurer itself and this cannot be delegated – clause 2.4.3 b of the Code of Conduct
<b>Tasmania</b>	Yes
<b>Northern Territory</b>	Not covered in legislation. Expectation is claims are self managed
<b>Australian Capital Territory</b>	Yes
<b>C'wealth Comcare</b>	Section 108B of the <i>Safety, Rehabilitation and Compensation Act 1988</i> specifies that a licence may authorise a third party (acting on the licensee's behalf) to manage claims under the Act. Section 108B(4) stipulates that, should a licensee enter into such a contract, it does not come into force unless, and until, the Commission has varied the licence to note the identity of the contracted claims manager. The licence does not cover claims with a date of injury which pre-dates the date of the licence and the licensee must continue to manage these claims as per State/Territory arrangements.
<b>New Zealand</b>	Although accredited employers may, with the consent of the Manager, retain third party providers to assist in the management of workplace injuries this is subject to them maintaining direct personal involvement with the claimant

**Table 6.8: Other ongoing licence requirements**

	Compliance with legislation	Ongoing licence requirements	Other matters
<b>New South Wales</b>	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. Failure to meet such requirements may constitute a basis for licence suspension, cancellation or non-renewal. Before taking such action SIRA will provide the self-insurer a reasonable opportunity to rectify any breach.	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. SIRA undertakes ongoing monitoring and review of self-insurers. Self-insurers provide specified information four months after their financial year end to enable an annual review (refer to Table 6.9 Reporting Requirements).	—
<b>Victoria</b>	<ul style="list-style-type: none"> <li>WorkSafe Victoria will monitor the self-insurer's compliance with the WIRC Act, Ministerial Orders, the regulations, any terms and conditions of approval and other legislation (e.g. the <i>Occupational Health and Safety Act 2004</i>) throughout the licence period.</li> <li>An annual performance report is provided to each self-insurer with information on a range of indicators (where possible benchmarked against comparable employers /other self-insurers /or WorkSafe Victoria Agents).</li> <li>The report includes, but is not limited to an assessment of performance in relation to: self-audits; regulatory audits; financial indicators; incidence of injury and cost of claims; injured worker survey; and administrative compliance.</li> </ul>	<ul style="list-style-type: none"> <li>Self-insurers must comply with the WIRC Act, Ministerial Orders, the regulations, any terms and conditions of approval and other legislation (e.g. <i>Occupational Health and Safety Act 2004</i>).</li> <li>Self-insurers are also required to provide specified information at specified times to WorkSafe Victoria.</li> <li>Refer to Tables 6.4, 6.5 and 6.9 for details.</li> </ul>	A self-insurer must notify WorkSafe Victoria as soon as they become aware of any strategically significant matter.
<b>Queensland</b>	<p>s83 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — A licence may be subject to:</p> <p>a) the conditions prescribed under a regulation, and</p> <p>b) any conditions, not inconsistent with the Act, imposed by the Regulator:</p> <p>(i) on the issue or renewal of a licence, or</p> <p>(ii) at any time during the period of the licence.</p>	<ul style="list-style-type: none"> <li>Ability to provide data in the format and at time intervals required by the Regulator.</li> <li>A self-insurer must supply the Regulator summary information about claims processed on their system.</li> </ul> <p>s93 — <i>Workers' Compensation and Rehabilitation Act 2003</i> — When requested, provide copies of:</p> <ul style="list-style-type: none"> <li>documents relating to all claims made</li> <li>documents that may assist in assessing the quality and timeliness of claims and rehabilitation management</li> <li>documents that may assist in assessing the self-insurers financial situation, and</li> <li>any other documents required to be kept under the licence.</li> </ul>	—
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>WorkCover WA monitors self-insurer activities and performance and conducts periodic checks to ascertain if self-insurers maintain an acceptable level of compliance against requirements set out by WorkCover WA and the <i>Workers' Compensation and Injury Management Act 1981</i>.</li> <li>If a satisfactory performance is not indicated, a nominated person of the self-insurer may be called before WorkCover WA to show just cause why the approval and exemption of the self-insurer should not be cancelled in accordance with s165 and s166 of the Act.</li> </ul>	Self-insurers are required to meet their financial, reporting and claims management obligations as specified under the <i>Workers' Compensation and Injury Management Act 1981</i> . Refer to tables 6.8a-e for further information.	<p>Self-insurers must:</p> <ul style="list-style-type: none"> <li>demonstrate expertise to determine claims within the State in time limits specified</li> <li>effect weekly payments within frequency specified</li> <li>carry out responsibility with respect to injury management</li> <li>submit accurate and timely statistical returns/information</li> <li>provide and maintain a copy of their organisational chart</li> <li>demonstrate that an injury management programme is in place, and</li> <li>confirm that information management systems utilised by the self-insurer are able to meet the compliance standards as defined in the Q1 specifications including the provision of data and returns.</li> </ul>
<b>South</b>	<ul style="list-style-type: none"> <li>ReturnToWorkSA may revoke the registration of a self-insured employer or group of self-insured employers, or reduce the</li> </ul>	Self-insurers must comply with all statutory requirements and	—

Compliance with legislation		Ongoing licence requirements	Other matters
<b>Australia</b>	<p>period of registration, if the employer, or a member of the group, (as the case requires) breaches or fails to comply with the Act or a term or condition of registration — <a href="#">s129(9)</a></p> <ul style="list-style-type: none"> <li>Self-insurers must comply with all statutory requirements and conditions of registration for registration continuity. Failure to meet requirements may result in reduction, revocation or non-renewal of self-insured registration. Furthermore, any proven systemic abuse of a delegation under the Act may result in the delegation being removed — <a href="#">Code of Conduct for Self-insured Employers</a></li> </ul>	conditions of registration for registration continuity.	
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>A permit is subject to such conditions as may be imposed by the Board. A self-insurer who fails to comply with, or contravenes, any condition to which the permit is subject is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units. — <a href="#">s 107</a></li> <li>The Board may at any time, in its absolute discretion, by notice in writing served on a licensed insurer or self-insurer, revoke or suspend a licence or permit if it is satisfied: <ul style="list-style-type: none"> <li>that the licensed insurer or self-insurer has failed to comply with any provision of this Act and the failure constitutes a substantial breach of the requirements of this Act, or</li> <li>that the licensed insurer or self-insurer has been convicted of an offence against this Act — <a href="#">s111(1)(b) and (c)</a></li> </ul> </li> </ul>	<p>s107. Conditions of permits</p> <p>(1) A permit is subject to such conditions as may be imposed by the Board:</p> <p>(a) on the granting of the permit; or</p> <p>(b) at any time during the currency of the permit.</p> <p>(2) The Board may, by notice served on a self-insurer, impose conditions (or further conditions) to which the permit is to be subject or vary any conditions imposed on the permit by the Board and any such conditions or variation shall, subject to <a href="#">section 112(3)</a>, take effect on such date as the Board specifies in the notice, being a date not less than 14 days after the service of the notice on the self-insurer.</p> <p>(3) A condition to which a permit is subject has effect whether or not the condition is endorsed on the permit.</p> <p>(4) A self-insurer who fails to comply with, or contravenes, any condition to which the permit is subject is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.</p> <p><a href="#">Permit to Self Insure – Permit Conditions</a></p>	<p>More information for self-insurers may be found on the WorkCover Tasmania website under <a href="#">Self-insurers</a></p>
<b>Northern Territory</b>	<p>s124 — The Authority may at any time, in its absolute discretion, by notice in writing to an approved insurer or self-insurer, revoke or suspend approval</p>	N/A	<ul style="list-style-type: none"> <li>Ongoing satisfactory demonstration of the employer's ability to: <ul style="list-style-type: none"> <li>provide statistical and other information required</li> <li>provide financial contributions as requested, and</li> <li>adequately provide for and manage the company's Northern Territory workers' compensation claims.</li> </ul> </li> <li>Adequate expertise to determine claims within the Territory in the time limits specified. Effect weekly payments within the frequency specified. Carry out responsibility with respect to injury management. Submit accurate and timely statistical returns/information — ss119 and 122.</li> </ul>
<b>Australian Capital Territory</b>	<ul style="list-style-type: none"> <li>Continue to meet obligations under the Act and Regulations and any other protocol approved by the Minister that relate to self-insurers.</li> <li>Ensure that workers' compensation claim form, register of injuries and early injury notification form comply with Workers' Compensation Insurer's Form Specifications.</li> <li>Comply with Workers' Compensation Insurers data reporting</li> </ul>	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity.	<ul style="list-style-type: none"> <li>The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act.</li> <li>The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its obligations under the Regulatory Framework.</li> </ul>

Compliance with legislation		Ongoing licence requirements	Other matters
	requirements.		
<b>C'wealth Comcare</b>	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> <li>the SRC Act, SRC Regulations, the SRC Directions and any other applicable guidelines issued by the Commission under s73A of the SRC Act in respect to rehabilitation and compensation</li> <li>Commonwealth WHS Act and any applicable laws of the states or territories with respect to safety and health of employees</li> <li>any such guidelines dealing with covert surveillance of employees, and</li> <li>conditions of licence and performance standards.</li> </ul>	<ul style="list-style-type: none"> <li>Comply with any written directions given by the Commission. If claims are managed by a claims manager, provide a copy of the Commission's directions to the claims manager. Advise and provide a copy of the initiating process to Comcare as soon as possible of any court proceedings in relation to a matter arising in respect of a claim.</li> <li>Must notify Comcare in writing immediately that the licensee becomes aware: <ul style="list-style-type: none"> <li>a) licensee has not complied with, or not likely to comply with, a condition of the licence</li> <li>b) of any event that may materially impact upon its sustainability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in financial position</li> <li>c) of any material change to its legal structure, ownership or control</li> <li>d) of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.</li> </ul> </li> <li>Provide Commission upon request, information relating to the licensee's operations.</li> <li>Ensure claims manager complies with the conditions of the licence.</li> <li>Be accountable for all claims management policies issued by the claims manager.</li> <li>Notify the Commission in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence.</li> <li>Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the Commission. Obligations imposed by the licence must be written into the contract between the licensee and the claims manager.</li> <li>Provide a yearly guarantee.</li> <li>Maintain an appropriate level of reinsurance.</li> <li>Continue to meet the Commission's standards for prevention, rehabilitation and claims management.</li> <li>A Licensee Compliance and Performance Improvement report, outlining the licensee's achievements for the past 12 months and objectives and targets for the coming year, must be provided annually to Comcare.</li> </ul>	—
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>Licensee must comply with the requirements of:</li> <li>the Accident Compensation Act, Regulations and any other applicable guidelines issued by Accident Compensation Corporation</li> <li>the <i>Privacy Act 1993</i></li> <li>Health Information Privacy Code 1994, and</li> <li>the Code of ACC Claimants' Rights.</li> </ul>	<ul style="list-style-type: none"> <li>Comply with any written directions given by ACC. Advise ACC of: <ul style="list-style-type: none"> <li>any serious ongoing claim or claims with a duration &lt; 12 months as soon as practicable</li> <li>any insolvency event</li> <li>any report from Occupational Health and Safety (Ministry of Business, Innovation and Employment)</li> <li>anything that could contribute to Accident Compensation Corporation reviewing the status of the employer, and</li> <li>provide a copy of the initiating process to Accident Compensation Corporation as soon as possible of any court</li> </ul> </li> </ul>	—

Compliance with legislation	Ongoing licence requirements	Other matters
		<p>proceedings in relation to a matter arising in respect of a claim.</p> <ul style="list-style-type: none"> <li>• Provide Accident Compensation Corporation upon request, information relating to the licensee's operations. Ensure claims manager complies with the conditions of the licence. Retain overall responsibility for claim and case management. Notify Accident Compensation Corporation in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence. Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the ACC.</li> </ul>



Table 6.9: Reporting requirements

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
Claims data										
<b>Frequency</b>	Monthly	Quarterly	Monthly	Monthly	14 days	Monthly Annually	Monthly	Monthly	Monthly or as per direction by the Commission	Monthly
<b>Timing</b>	By the 15th day of the following month	Each year by: 31 March 30 June 30 September 31 December	By the 8th day of the following month	Within 21 days from the end of the month	By fortnightly schedule agreed between ReturnToWorkSA and employer	By the 21st day of the following month  By 31 August each year  By 30 September each year	By the 15th day of the following month	By the 10th day of the following month	By the 5th day of the following month	At the end of each month, and no later than 5 working days
<b>Format</b>	Electronic lodgement  Specifications in accordance with Claims Technical Manual V5.10. Injury coding for claims made after 30 June 2011 in accordance with TOOCS 3.1	Electronic data transfer and reporting: <ul style="list-style-type: none"> <li>• remuneration</li> <li>• count of standardised claims</li> <li>• count of &gt; 10 day claims</li> <li>• count of &gt; 15 day claims (or &gt;13 weeks over excess claims)</li> <li>• total standardised payments on standardised claims</li> <li>• total standardised payments on &gt; 10 day claims</li> <li>• number of companies in the comparator group.</li> </ul>	Electronic data interchange	Electronic/meets WorkCover WA specifications	Electronic Data Interchange  Claim data as detailed in <a href="#">Schedule 3</a> to the Return to Work Regulations 2015	Annual data return. Actuarial assessment of claims	Electronic data interchange	Electronic data transfer	Electronic data interchange/NDS3 format	The Accredited Employer must regularly report to the Manager on claims, entitlements and expenses arising during the Cover Period and ensuing Claim Management Period
<b>More</b>	—	—	<a href="#">Workers'</a>	<a href="#">Approved Self-</a>	<a href="#">Schedule 3</a> to the	<a href="#">WorkCover</a>	<a href="#">Contact NT</a>	Contact <a href="#">WorkSafe</a>	—	Licensee must

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
information			<a href="#">Compensation Insurers' Interface Data Specification</a>	<a href="#">Insurers Performance Indicators. Insurer/Self-insurer Electronic Data Specification</a>	Return to Work Regulations 2015 or the <a href="#">Self-insured Code of Conduct</a>	<a href="#">Tasmania website</a>	<a href="#">WorkSafe</a>	<a href="#">ACT</a>		<p>comply with the requirements of:</p> <ul style="list-style-type: none"> <li>the AC Act, Regulations and any other guidelines issued by ACC</li> <li>the <i>Privacy Act 1993</i></li> <li>Health Information Privacy Code 1994, and</li> <li>the Code of ACC Claimants' Rights.</li> </ul>
<b>Annual financial information</b>										
<b>Annual report/ financial statements</b>	Annual report including audited financial statements within four months of end financial year	Annual report / financial statements within six months of the self-insurer's balance date.	<p>Audited financial statements within 20 business days of becoming publicly available</p> <p>Annual report within 20 business days of becoming publicly available</p> <p>Wages declaration for NDS purposes only be 31 August each year</p>	Return on investment required for initial application and for annual review	Audited financial statements/Annual Report within five months of the end of the employer's financial year	Annual report by 31 July each year	Audited financial statements by 31 August each year Annual report by 31 August each year	—	<p>Audited financial statements provided annually (the date depends on the licensee's Balance Date e.g. end of financial year).</p> <p>The statements must show that provision has been made for meeting the workers' compensation liability as advised in the actuarial report</p>	—
<b>Actuarial report/ assessment of claims liabilities</b>	Actuarial assessment of claims liabilities as at balance date provided within four months of end of financial year	Actuarial assessment of claims liabilities submitted within three months of the self-insurer's balance date	Actuarial assessment on claims liabilities within 20 business days after the end of each year of the Licence or such other time as agreed between the Regulator and	<p>Claims liability as a % of net assets required for initial application and for annual review</p> <p>Gearing ratio required for initial application and for annual review</p>	Actuarial report on outstanding claim liability within three months of the end of the employer's financial year or at such other time as may be agreed between ReturnToWorkSA	—	Actuarial assessment of claims liabilities by 31 August each year	Actuarial assessment of claims liabilities incorporated in licence review process	An annual actuarial assessment of claims liabilities is required (the date depends on the licensee's financial Balance Date)	<p>The measures are:</p> <ul style="list-style-type: none"> <li>it has substantial net worth</li> <li>that its contingent liabilities are not excessive (details to be</li> </ul>

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
			the licensee		and the employer.					<p>provided including an evaluation as to likely crystallisation of those liabilities)</p> <ul style="list-style-type: none"> <li>• it has an appropriate working capital ratio based on current assets divided by current liabilities</li> <li>• it has an appropriate equity to debt ratio, and</li> <li>• it has an appropriate return on equity.</li> </ul> <p>These figures should where possible, be provided for the three financial periods preceding the application and include best estimates for at least the then current financial period and the next financial period ('period' normally meaning a year).</p>
<b>Guarantees/ audit certificates</b>	Update guarantee or security as required in correspondence, normally within four to six weeks of submission of actuarial report and determination of security requirement	Audit certificate submitted within six months of the self-insurer's balance date. Self-insurer notified of guarantee coverage adjustment within two weeks of	Self-insurer notified of bank guarantee amount following assessment of actuarial report	Balance sheet test, quick liquidity, interest coverage, return required for initial application and for annual review	Update financial guarantee. As required in correspondence, normally within one month of submission of actuarial report <a href="#">Schedule 3 Return to Work</a>	Independent financial Audit Report by 31 August each year	—	Bank Guarantees kept by the DI Fund (workers' compensation safety net)	Deed between the Commission, Comcare and a bank or insurer for an amount that can be called upon by the Commission in the event a self - insurance licence is suspended or revoked. The	Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme. ACC is required to

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
		<p>receipt of the actuarial assessment by the regulator</p> <p>Amended guarantee submitted by self-insurer within 4 weeks of regulator's notification</p>			Regulations 2015				<p>guarantee (minimum \$2.5 million) is provided annually (date dependent on licensee's financial Balance Date). Annual certification by the principal officer that: the actuarial assessment complies with licence requirements; provision has been made for meeting the actuarial estimate of liability; the licensee has the capacity to meet any single claim up to the reinsurance retention amount.</p>	<p>satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).</p>
<b>Evidence of excess of loss insurance or reinsurance</b>	<p>Evidence of existence of Excess of Loss insurance provided with annual reporting information four months after financial year end</p>	<p>Annual certificate of currency of the contract of insurance submitted within 21 days of expiry of the previous certificate of currency (seamless coverage). New/revised contract of insurance submitted within 21 days of the contract of insurance being altered or affected with a different insurer</p>	<p>Reinsurance policy/ Certificate of currency submitted annually</p>	—	<p>Evidence of existence of Excess of Loss Insurance policy within three months of the annual renewal of the policy</p>	<p>Evidence of existence of Excess of Loss Insurance by 31 August each year</p>	<p>Claims liabilities and evidence of Excess of Loss Insurance by 31 August each year</p>	—	<p>Required to maintain an appropriate level of reinsurance for any single event in excess of a retention amount determined by the Commission (excess amount) and as recommended by an actuary</p> <p>A copy of the policy as provided to the Commission within seven days of issuing</p>	—
<b>Other company information</b>										
<b>Number of employees/</b>	Number of employees by	Number of FTEs by 31 August each	Number of FTEs (Minimum 500 if	The number of full-time and part-time	Number of FTEs, not specifically	—	Number of employees by 31	Number of employees by 31	Number of employees	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>FTE</b>	31 August each year	year	licence issues pre March 1999 and 2000 if licence after March 1999) annually and at licence renewal — reporting annually and varies by insurer	staff employed during the reporting period is to be provided in the annual self-insurer review	required to report on		August each year	August each year		
<b>Remuneration or wages declaration</b>	Remuneration by 31 August each year	Rateable remuneration return submitted by 31 August each year	Remuneration by 31 August each year	—	Remuneration by 31 July each year	Workers and wages report by 21 July each year	Remuneration by 31 August each year	—	Remuneration	—
<b>Other</b>	Predominant industry/Workers Compensation Industry Classification by 31 August each year	By 31 August each year: <ul style="list-style-type: none"> <li>opened / closed workplaces during the reporting period; workplace location;</li> <li>predominant industry / WorkCover Industry Classification</li> </ul> Self-audit results by 31 August each year: <ul style="list-style-type: none"> <li>OHS management system audit against the NAT;</li> <li>claims management obligations of employers &amp; other requirement</li> </ul>	Rehabilitation policy and procedures (once per licence period — up to 4 years). The insurer's accredited return to work program is reviewed once per licence period — up to 4 years. Self-assessment required for self-insurers at the mid term of the licence period.	Internal dispute resolution services. Material resources (organisational chart). Security obligations (claims liabilities, etc). Insurance obligations (common law cover). Terrorism arrangements (contribution as a result of terrorism) — reporting annually for initial application and for annual review.	Advice of any change in structure or financial relationships that may affect the consideration of the viability of the employer as soon as possible after a change has occurred.	Financial undertaking by 30 September each year.	Claims paid and occupation of workers by 31 August each year.	Workplace location, predominate industry/WorkCover Industry Classification by 31 August each year. Insurer data specification reported monthly by the 10th day of the following month.	—	—
<b>More information</b>	—	—	—	—	—	—	—	—	—	Frequency of reporting — upon entry

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>Irregular reporting requirements</b>										
<b>Changes to Company structure ownership or control</b>	Notify within 10 business days of any change in effective control or any change in ownership exceeding 20% of shareholding  Notify within 10 business days of acquisitions and dispositions of wholly owned subsidiaries employing in NSW	Notify within 28 days of the occurrence of any circumstance under s384 of the WIRC Act  Notify within 1 week after becoming aware of a strategically significant matter	Report within five business days of the proposed change:  any event that could reasonably be expected to materially impact on the licensee's net tangible assets  any event that could reasonably be expected to materially impact on the licensee's financial viability or ability to meet its liabilities for claims, and  any intention of the licensee to withdraw or reduce the bank guarantee or cash deposit lodged with the Regulator	—	Report financial and structural details as early as possible (or in advance) any action affecting the corporate structure of the group including disposal of subsidiary, acquisition of subsidiary, formation of new subsidiary, appointment of receivers, administrators or liquidators and takeover of the company etc	Report as soon as practicable any changes in ownership, directors, structure or financial circumstances	—	—	Licensee must notify Comcare in writing immediately when it becomes aware of any changes to its legal structure, ownership or control	—
<b>Changes to key personnel responsible for OHS or injury management</b>	Notify within 10 business days of any change or vacancy in the senior management position responsible for claims or injury management or the senior management position with overall responsibility for workers' compensation	—	Any intention to change the manner in which any claims are administered or the manner in which the rehabilitation of workers is managed	Report one month prior to the commencement of any arrangement resulting in change in a self-insurer's outsourcing arrangement of claims management	Changes of personnel should be reported to ReturnToWorkSA once they are known as required by the Code	—	—	—	—	—
<b>Breaches or failures to comply with</b>	—	A self-insurer must immediately notify WorkSafe Victoria	Report within five business days of the proposed	—	Immediately report any changes of the self-insurer that	—	—	Immediately report any changes of the self-insurer that	Licensee must notify Comcare in writing immediately	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
<b>licence conditions or changes likely to result in same</b>		if they are unable to pay any debts as and when they fall due or they become aware of any event that may prevent them from meeting any other requirement for approval and operation as self-insurer in accordance with (i) the Act or the regulations; or (ii) any terms or conditions of its approval as a self-insurer; or (iii) a Ministerial Order; or (iv) any other subordinate instrument made under the Act or regulations	change: any event that could reasonably be expected to materially impact on the licensee's financial viability or ability to meet its liabilities for claims		would impact the self-insurance registration			would impact the self-insurance licence	when it becomes aware that it has not complied with, or is not likely to comply with, a condition of licence.  Licensee must notify Comcare in writing immediately when it becomes aware of any event that may materially impact upon its suitability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in its financial position	
<b>Changes to predominant industry/ employee numbers / risk profile of work</b>	—	—	Report within five business days of the proposed change: any event that could reasonably be expected to materially impact on the number of fulltime workers employed in Queensland by the licensee; Any proposed changes to personnel responsible for managing and deciding claims	—	Self-insurer must notify ReturnToWorkSA immediately when it becomes aware of any significant change in its employee numbers or significant change in the risk profile or operations of its employment  Self-insurer must notify ReturnToWorkSA in writing immediately of any group structure changes including acquisitions, sales etc	—	—	—	Licensee must notify Comcare in writing immediately when it becomes aware of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees.  Licensee must notify Comcare in writing immediately when it acquires another company and intends on transferring the employees of that company to the licensed company, or merges with another company	—

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
									and intends on transferring the employees of that company to the licensed company.	
Other	—	Notify WorkSafe Victoria within 28 days of wholly acquiring a scheme-insured or self-insured employer of its election to assume the tail claims liability of the entity that has been acquired	—	—	—	—	—	—	<p>Licensees must inform Comcare as soon as practicable of court or tribunal proceedings in relation to a claim managed by a licensee under the SRC Act</p> <p>The licensee must not make any submission to a court or tribunal in relation to the interpretation of a provision of the SRC Act that Comcare or the Commission requests the licensee not to make</p> <p>The licence requires licensees to report certain workers' compensation and other data to Comcare on a regular basis</p>	—




**Table 6.10: Requirements for surrendering a self-insurance licence and penalties for exiting the scheme**


	Requirements for surrendering a self-insurer licence	Penalties for exiting the scheme (and/ or moving to Comcare scheme)
<b>New South Wales</b>	<p>SIRA requires a written undertaking from the self-insurer to comply with SIRA's licensing policy requirements as outlined in policy item 15 which states:</p> <ol style="list-style-type: none"> <li>should a self-insurer no longer hold a licence, it will still be held responsible for the management of the tail of claims incurred whilst licensed as a self-insurer, and</li> <li>the former licensee will be expected to manage and administer run off claims in a professional manner and continue to cooperate in the provision of claims data and other specified information to SIRA.</li> </ol> <p>Security held by SIRA and other guarantee arrangements will remain in force until SIRA is satisfied that all claims have been discharged or adequately provided for pursuant to s216 of the 1987 Act. Legislation pursuant to s213 of the 1987 Act now allows SIRA to require additional security from former self-insurers.</p>	<p>1987 Act — s208AA</p> <ul style="list-style-type: none"> <li>SIRA may require contributions to the Insurance Fund from exiting employers which includes an employer moving to Comcare.</li> <li>As an alternative to the making of a contribution to the Insurance Fund, the self-insurer may enter into an agreement with SIRA to assume responsibility for the outstanding claim liabilities that would otherwise be payable by the licensed insurer who previously insured the employer.</li> <li>Extra charges: N/A.</li> <li>Time for payment: N/A.</li> <li>Specific review provisions: N/A.</li> <li>Penalties: N/A.</li> </ul>
<b>Victoria</b>	<p>s403, s404, s405, s406, s407 and s408 — WIRC Act</p> <p>Application:</p> <p>At the request of the self-insurer or determined by WorkSafe Victoria (WSV), the self-insurer's approval may be revoked.</p> <p>Tail claims liability:</p> <p>Unless otherwise allowed by WSV, WSV assumes the liability for and responsibility for management of, the tail claims of the former self-insurer. A settlement payment covering the outstanding tail claims liability is payable by the former self-insurer to WSV.</p> <p>Actuarial Assessment:</p> <ul style="list-style-type: none"> <li>An annual actuarial assessment is undertaken for a period of 6 years following the self-insurer's approval being revoked. The actuarial assessment is undertaken by an actuary appointed by the WSV.</li> <li>An adjustment for the settlement payment is undertaken at the third and sixth year following the date the self-insurer's approval is revoked.</li> <li>If the revised assessment at the end of the third year exceeds the initial assessment, the former self-insurer must pay the difference to WSV. If the revised assessment is less than the initial assessment, WSV must pay the difference to the former self-insurer.</li> <li>This process is repeated at the end of the 6 year liability period and if the revised assessment exceeds the assessment at the end of the third year, the former self-insurer must pay the difference to WSV. If the revised assessment is less, WSV must pay the difference to the former self-insurer.</li> </ul> <p>Tail claims:</p> <p>The former self-insurer must ensure all claims are given to WSV and all new claims are lodged with WSV.</p> <p>Other charges:</p> <ul style="list-style-type: none"> <li>The former self-insurer is liable to pay the cost of the actuarial assessments obtained by WSV and any extra assessment, if the former self-insurer disputes WSV's assessment.</li> <li>The former self-insurer must hold a guarantee against insolvency risk and claims deterioration until the final assessment of liability and if applicable, payment for the six year adjustment.</li> </ul> <p>Time for settlement payment:</p> <p>Payment for the tail claims liability and the third year/sixth year adjustments (if applicable) is payable within 28 days of the assessment or determination from WSV or for a further period as may be agreed between WSV and the employer.</p> <p>Specific review provisions:</p> <p>The former self-insurer may appoint its own actuary to review WSV's final assessment of liability. Ability to seek judicial review at common law and actions under the <i>Administrative Law Act 1978</i> are excluded.</p>	<p>Part 9 — WIRC Act</p> <p>Application:</p> <p>Victorian scheme-insured or self-insured employers that exit the scheme to become licensed under the Comcare scheme. Applies from 1 July 2005 onwards.</p> <p>Tail claims liability:</p> <p>WSV assumes the liability for and responsibility for management of, the tail claims of the exiting employer. A settlement payment covering the outstanding tail claims liability may be payable by the exiting employer to WSV.</p> <p>Actuarial Assessment:</p> <ul style="list-style-type: none"> <li>An annual actuarial assessment is undertaken for a period of 6 years following the employer's exit. The actuarial assessment is undertaken by an actuary appointed by WSV.</li> <li>An adjustment for the settlement payment is undertaken at the third and sixth year following the date the employer exited the Victorian scheme.</li> <li>If the revised assessment at the end of the third year exceeds the initial assessment, the exiting employer must pay the difference to WSV. If the revised assessment is less than the initial assessment, WSV must pay the difference to the exiting employer.</li> <li>This process is repeated at the end of the 6 year liability period and if the revised assessment exceeds the assessment at the end of the third year, the exiting employer must pay the difference to WSV. If the revised assessment is less, WSV must pay the difference to the exiting employer.</li> </ul> <p>Other charges:</p> <ul style="list-style-type: none"> <li>The exiting employer is liable to pay the cost of the actuarial assessments obtained by WSV and any extra assessment, if the employer disputes WSV's assessment.</li> <li>The exiting employer must hold a guarantee against insolvency risk and claims deterioration until the final assessment of liability and if applicable, payment for the six year adjustment.</li> </ul> <p>Time for settlement payment:</p> <p>Payment for the tail claims liability and the third year/sixth year adjustments (if applicable) is payable within 28 days of the assessment or determination from WSV or for a further period as may be agreed between WSV and the exiting employer.</p> <p>Specific review provisions:</p> <p>The exiting employer may appoint its own actuary to review WSV's final assessment of liability. Ability to seek judicial review at common law and actions under the <i>Administrative Law Act 1978</i> are excluded.</p> <p>Outstanding payment:</p> <p>Failure to pay any outstanding liability amount may be recovered by WSV under the guarantee in force.</p> <p>Penalties:</p>

Requirements for surrendering a self-insurer licence		Penalties for exiting the scheme (and/ or moving to Comcare scheme)
	<p>Outstanding payment:</p> <p>Failure to pay any outstanding liability amount may be recovered by WSV under the guarantee in force.</p>	<p>Penalties applied for failure to comply with a provision under Part 9 of the WIRC Act are:</p> <ul style="list-style-type: none"> <li>in the case of a natural person, 240 penalty units;</li> <li>in the case of a body corporate, 1 200 penalty units.</li> </ul>
<b>Queensland</b>	<p><i>Workers' Compensation and Rehabilitation Act 2003</i> (s97) If the self-insurer does not intend to renew the licence, the self-insurer must advise the Regulator of that fact at least 20 business days before the current licence period ends. If a self-insurer's licence is cancelled, the premium payable by the former self-insurer is to be calculated in the way prescribed under a regulation. The self-insurer must forward on to WorkCover all claims and related documentation for compensation and any claims that would have been lodged with the self-insurer are to be lodged with WorkCover (s99).</p> <p>Recovery of ongoing costs from former self-insurer (s101 <i>Workers' Compensation and Rehabilitation Act 2003</i>)</p> <p>If after the cancellation of a licence, WorkCover pays compensation or damages, or incurs management costs in managing claims for which a self-insurer is liable, this is a debt due to WorkCover by the self-insurer.</p> <p>Assessing liability after cancellation (s102 <i>Workers' Compensation and Rehabilitation Act 2003</i>)</p> <p>WorkCover must appoint an actuary to assess the former self-insurer's liability. The amount of liability assessed and management costs are a debt due to WorkCover.</p> <p>Return of bank guarantee or cash deposit after cancellation (s103 <i>Workers' Compensation and Rehabilitation Act 2003</i>)</p> <p>When a self-insurer's licence is cancelled and they consider that all accrued, continuing, future and contingent liabilities have been discharged or adequately provided for, the self-insurer may, by written notice, ask the Regulator to return the balance of the bank guarantee or cash deposit.</p>	<p><i>Workers' Compensation and Rehabilitation Act 2003</i> — s105B.</p> <ul style="list-style-type: none"> <li>Application: Solely to former self-insurers who join the Comcare scheme.</li> <li>Tail claims: The employer's State licence continues for 12 months after exit and they retain liability for tail claims. After 12 months, WorkCover takes over responsibility for pre-exit tail claims and seeks contribution from employer or authorises the employer to continue to manage and pay for these claims.</li> <li>Extra charges: Levy fee for 12 months, share of actuary charges, and share of any arbiter costs.</li> <li>Time for payment: Interim payment 12 months after exit date needs to be made within 20 business days of receiving written assessment from WorkCover (s105I).</li> <li>Four years following licence cancellation, WorkCover and the employer must each appoint an actuary to recalculate the amount of liability. The employer must pay</li> <li>WorkCover the difference between the interim payment and the recalculation amount, plus interest on the difference from the day the whole of the interim payment was made.</li> <li>Specific review provisions: If WorkCover and the employer cannot agree on the recalculated amount they may refer to an arbiter.</li> <li>Penalties: No penalties specified for late payment.</li> </ul>
<b>Western Australia</b>	<p>An employer or group of employers that cease to be exempt is required to insure in accordance with s160 of the <i>Workers' Compensation and Injury Management Act 1981</i>. Where cancellation occurs, the bond will be held until all claims relevant to the period of self-insurance are satisfied.</p>	<p>No specific provisions</p>
<b>South Australia</b>	<p>Assumption of liabilities</p> <p>Pursuant to s167 of the <i>Return to Work Act 2014</i>, ReturnToWorkSA is the insurer of last resort and must undertake the liabilities of any self-insured employer that ceases to be registered as a self-insured employer. ReturnToWorkSA may at its sole discretion delay the undertaking of liabilities for such period as it deems appropriate.</p> <p>Where ReturnToWorkSA assumes the liabilities of a self-insured employer, either in whole or part, it is entitled to receive a payment from the employer equal to the capitalised value of all outstanding liabilities multiplied by that same prudential margin applied on calculating financial guarantees. ReturnToWorkSA may recover the amount of liabilities undertaken by ReturnToWorkSA either as a debt due to ReturnToWorkSA or as a claim — s 167(3), reg 62 and 8.6 Code of conduct for self-insured employers</p> <p>Payment</p> <p>ReturnToWorkSA may, at its discretion, give a self-insured employer whose registration is ceasing a choice as to whether to pay the capitalised sum from its own resources, or to have the financial guarantee provided during the period of self-insured employer registration paid to ReturnToWorkSA. Any shortfall in the financial guarantee relative to the assessed value of the liabilities will be payable by the employer to ReturnToWorkSA as a debt.</p> <p>Run off of claims</p> <p>Where ReturnToWorkSA deems a run off to be appropriate or necessary in the circumstances, ReturnToWorkSA may also determine that the former self-insured employer continues to exercise some or all of its delegated powers and discretions. Without limitation, ReturnToWorkSA will ordinarily consider the following circumstances as being suitable circumstances in which to allow the former self-insured employer</p>	<p>ReturnToWorkSA does not impose a discontinuance fee or exit fee</p>

Requirements for surrendering a self-insurer licence		Penalties for exiting the scheme (and/ or moving to Comcare scheme)
	<p>to run off its claims:</p> <ul style="list-style-type: none"> <li>(i) Employers that have substantially reduced their workforce but which have performed their self-insured employer duties and obligations in accordance with the requirements of the Act and its term and conditions of registration.</li> <li>(ii) A subsidiary of a self-insured employer is sold and the subsidiary or the self-insured employer has sufficient resources and financial security to run off its claims.</li> <li>(iii) An employer closes down its operations in the state, but remains a viable company operating interstate.</li> </ul> <p>ReturnToWorkSA will evaluate the former self-insured employer's compliance with the Act, WHS Standards and Injury Management Standards and the agreement referred to in clause 8.8 and may terminate the run off if ReturnToWorkSA considers there are substantive grounds for doing so.</p> <p>Upon cessation of the run off period, ReturnToWorkSA will appoint an Actuary to assess the value of the claims existing at that time in order to calculate the capitalised sum (if any) the employer must pay to ReturnToWorkSA.</p> <p>Agreement</p> <p>In circumstances where ReturnToWorkSA has decided not to delay the undertaking all of the liabilities of the former self-insured employer and to continue the delegation of powers and discretions to the former self-insured employer for a period, ReturnToWorkSA may require the former self-insured employer to enter into an agreement with ReturnToWorkSA.</p>	
<b>Tasmania</b>	Exit provisions are set out in the following Guideline: How to apply to cease being a permit holder (SI — 18)	No specific provisions
<b>Northern Territory</b>	Employer retains responsibility for run off of claims incurred during period of self-insurance	No penalties
<b>Australian Capital Territory</b>	Under s94 of the Workers' Compensation Regulation 2002, the Minister may revoke or suspend a self-insurers exemption. This must be done in writing and is effective seven days after notice has been given.	No specific provisions
<b>C'wealth Comcare</b>	<p>A licensee may request the Commission to revoke its licence at a date from which it no longer wishes to hold such a licence under the SRC Act. There are two general scenarios for a licence revocation:</p> <ul style="list-style-type: none"> <li>1) Comcare continues to hold the bank guarantee and the ex-licencee continues to discharge its SRC Act liabilities post-revocation. The ex-licencee (or a third party) would manage the claims relating to the licence period. In this scenario, a number of licence conditions (including requirements for claims management) survive revocation. The SRC Commission would need to be satisfied that the claims relating to the licence period continue to be managed in accordance with its standards. To verify this, some continued regulatory oversight may be required and payments made by the ex-licencee parties to ensure this regulatory work (post-revocation) is fully funded.</li> <li>2) The bank guarantee is called in and Comcare (or a third party) manages the claims.</li> </ul>	N/A
<b>New Zealand</b>	<p>ACC has the right to terminate in respect of:</p> <ul style="list-style-type: none"> <li>• any insolvency event, or</li> <li>• a material breach</li> </ul> <p>If the Accredited Employer no longer complies with the framework of the AC Act</p>	N/A



# **Chapter 7: Scheme administrative and funding arrangements**



# Administrative and funding arrangements

This section provides background information on the administrative and funding arrangements under which the workers' compensation schemes operate. The key areas for comparison include scheme names, legislation, transitional arrangements and provisions for certain people who are injured in unique ways or at particular places or times.

The tables contained in this chapter include:

## 7.1 Applicable workers' compensation legislation

## 7.2 Transitional provisions

## 7.3 Minor schemes

7.3a	New South Wales
7.3b	Victoria
7.3c	Western Australia
7.3d	South Australia
7.3e	Tasmania
7.3f	Commonwealth
7.3g	New Zealand

## 7.4 Scheme funding positions

## 7.5 Standard average premium rates

## 7.6 Selected industry premium rates

### Scheme administrative arrangements

Employers who operate in more than one Australian state or territory must comply with all relevant laws within each of the jurisdictions in which they work. During the 2015–16 financial year workers' compensation schemes operated under separate laws in each jurisdiction, as shown in Table 7.1.

### Transitional provisions

Not all injured workers are covered under current workers' compensation legislation because their date of injury may have preceded the introduction of that legislation. However, most jurisdictions provide for workers' compensation payments to be made to people who would have had an entitlement to compensation under preceding legislation, or for some transitional arrangements to apply to those people. For example, in Queensland injuries that occurred before 1 January 1991 are covered by the *Workers' Compensation Act 1916*, injuries that occurred between 1 January 1991 and 1 February 1997 are covered by the *Workers' Compensation Act 1990* and injuries that occurred on or after 1 February 1997 and before 1 July 2003 are covered by the WorkCover Queensland Act 1996.

In other circumstances an injured worker may need to meet certain criteria in order for an injury that occurred when previous legislation was in force to be covered under the current legislation. For example, a Commonwealth employee who was injured prior to 1988 would only be entitled to compensation under the SRC Act if there was an entitlement under the preceding pieces of legislation (see Table 7.2).

### Unique provisions and other workers' compensation schemes

A number of jurisdictions have specific workers' compensation or related legislation or other arrangements to provide for people who are injured in unique ways or at particular places or times. For example, the Commonwealth has an administrative scheme for people who may have been affected by nuclear radiation from British atomic tests in Australia in the 1950s. Table 7.3 lists the minor schemes extant in each jurisdiction. Tables 7.3a to 7.3g expand on the specific arrangements in each jurisdiction for the minor schemes.

**Table 7.1: Applicable workers' compensation legislation**

Applicable workers' compensation legislation	
<b>New South Wales</b>	<p><a href="#">Workers' Compensation Act 1987</a> Version valid from 4 July 2014 Historical versions can be accessed from the same link</p> <p><a href="#">Workplace Injury Management and Workers Compensation Act 1998</a> Version valid from 24 November 2014 Historical versions can be accessed from the same link</p> <p><a href="#">Workers' Compensation (Dust Diseases) Act 1942</a> Version valid from 1 August 2012 Historical versions can be accessed from the same link.</p> <p><a href="#">Workers' Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</a> Version valid from 6 July 2009 Historical versions can be accessed from the same link</p> <p><a href="#">State Insurance and Care Governance Act 2015</a> Version valid from 4 December 2015</p>
<b>Victoria</b>	<p><a href="#">Refer Victorian Law Today</a> <a href="#">Workplace Injury Rehabilitation and Compensation Act 2013</a> as at 14 December 2016 <a href="#">Accident Compensation Act 1985</a> Historical versions can also be accessed <a href="#">here</a></p>
<b>Queensland</b>	<p><a href="#">Workers' Compensation and Rehabilitation Act 2003</a> (permalink to current reprint) <a href="#">Workers' Compensation and Rehabilitation Regulation 2014</a> (permalink to current reprint) Superseded versions: <a href="#">Act</a>, <a href="#">Reg</a></p>
<b>Western Australia</b>	<p><a href="#">Workers' Compensation and Injury Management Act 1981</a> Other versions of this Act can be found <a href="#">here</a></p>
<b>South Australia</b>	<p><a href="#">Return to Work Act 2014</a> Version valid from 1 July 2015 Historical versions can be accessed from <a href="#">South Australian Legislation</a></p>
<b>Tasmania</b>	<p><a href="#">Workers' Rehabilitation and Compensation Act 1988</a> (Version valid 1 July 2010 to 4 Feb 2011) (Version valid 1 July 2009 to 30 June 2010) (Version valid 1 July 2010 onwards) <a href="#">Workers' (Occupational Diseases) Relief Fund Act 1954</a> (No. 45 of 1954). (Version valid from 1 Jan 2004)</p>
<b>Northern Territory</b>	<p><a href="#">Return to Work Act 2015</a> <a href="#">Version Valid from 1 October 2015 to present</a> <a href="#">Version valid 1 July 2015 to 30 September 2015</a> <a href="#">Workers rehabilitation and Compensation Act 2008</a></p>

Applicable workers' compensation legislation	
	<a href="#">Version Valid 27 November 2013 to 30 June 2015</a> <a href="#">Version Valid 1 January 2013 to 26 November 2013</a> <a href="#">Version valid 1 July 2012 to 1 January 2013</a> <a href="#">Version valid 1 Sept 2011 to 30 June 2012</a> <a href="#">Version valid 1 Feb 2011 to 1 September 2011</a> <a href="#">(Version valid 1 July 2010 to 1 Feb 2011)</a> <a href="#">(Version valid 16 September 2009 to 30 June 2010)</a> <a href="#">(Version valid 18 June 2009 to 15 September 2009)</a>
<b>Australian Capital Territory</b>	<i>Workers' Compensation Act 1951</i> <a href="#">ACT Legislation Register</a> (All versions can be accessed from this webpage)
<b>C'wealth Comcare</b>	<i>Safety, Rehabilitation and Compensation Act 1988</i> <a href="#">Federal Register of Legislation</a>
<b>C'wealth Seacare</b>	<a href="#">Seafarers' Rehabilitation and Compensation Act 1992</a>
<b>C'wealth DVA</b>	<a href="#">Military Rehabilitation and Compensation Act 2004</a>
<b>New Zealand</b>	<i>Accident Compensation Act 2001 No 49 (current)</i> <a href="#">(Version valid 1 April 2002 onwards)</a> <i>Accident Compensation Amendment Act 2016</i> <a href="#">(Version valid 7 November 2016 onwards)</a> <i>Accident Compensation Amendment Act 2010 No 1</i> <a href="#">(Version valid 3 March 2010 onwards)</a> <i>Injury Prevention, Rehabilitation, and Compensation Act 2001 No 49</i> <a href="#">(renamed Accident Compensation Act 2001 on 3 March 2010)</a>

**Table 7.2: Transitional legislation provisions as at 30 September 2016**

Transitional legislation provisions	
<b>New South Wales</b>	<a href="#">Workers Compensation Act 1987</a> — Schedule 6
<b>Victoria</b>	<a href="#">Accident Compensation Act 1985</a> <i>Accident Compensation (WorkCover Insurance) Act 1993</i> <i>Workers' Compensation Act 1958</i>
<b>Queensland</b>	<a href="#">Workers' Compensation Act 1916</a> <a href="#">Workers' Compensation Act 1990</a> <a href="#">WorkCover Queensland Act 1996</a>
<b>Western Australia</b>	<a href="#">Workers' Compensation and Injury Management Act 1981</a>
<b>South Australia</b>	<a href="#">Return to Work Act 2014</a> Return to Work Regulations 2015 – Part 11 (Schedule 9 Part 9 of Act)
<b>Tasmania</b>	<i>Workers' Compensation Act 1927</i> (for injuries prior to 15 November 1988) <i>Workers' (Occupational Diseases) Relief Fund Act 1954</i>
<b>Northern Territory</b>	<i>Workmen's Compensation Ordinance 1949</i> <i>Workmen's Compensation Act 1979</i> <i>Work Health Act 1986</i> <i>Workers rehabilitation and Compensation Act 2008</i> <i>Return to Work Act 2015</i>
<b>Australian Capital Territory</b>	The ACT legislation is a consolidation of previous enactments
<b>C'wealth Comcare</b>	A person who has a date of injury under a previous Act (the 1971, 1930 or 1912 Acts) is entitled to compensation under the 1988 Act provided compensation for that injury would have been payable under the earlier Act  A person is not entitled to compensation under the 1988 Act if compensation was not payable in respect of an injury suffered under a previous Act
<b>C'wealth Seacare</b>	A person who has a date of injury under the <i>Seamen's Compensation Act 1911</i> is entitled to compensation under the 1992 Act provided compensation for that injury would have been payable under the earlier Act. A person is not entitled to compensation under the 1992 Act if compensation was not payable in respect of an injury suffered under a previous Act



Transitional legislation provisions	
	<a href="#"><i>Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992</i></a>
<b>C'wealth DVA</b>	<a href="#"><i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i></a>
<b>New Zealand</b>	<a href="#"><i>Accident Insurance (Transitional Provisions) Act 2000</i></a> <a href="#"><i>Accident Insurance Act 1998</i></a> <a href="#"><i>Accident Rehabilitation and Compensation Insurance Act 1992</i></a> <a href="#"><i>Accident Compensation Act 1982</i></a> <a href="#"><i>Accident Compensation Act 1972</i></a>

**Table 7.3a: Minor schemes — New South Wales**

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Workers' Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</b>	Icare	To continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers.	Bush fire fighters, emergency service workers and rescue association workers.	163 000 Rural Fire Service, State Emergency Service and Surf Life Saving Association volunteers.	Unique scheme
<b>Workers' compensation (Dust Diseases) Act 1942</b>	Icare	This Act makes provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to a dust disease specified in Schedule 1 of the Act, including any pathological condition of the lungs, pleura or peritoneum that is caused by dust that may also cause a disease so specified, to validate certain payments.	Any worker who has developed a 'dust disease' as defined in Schedule 1 of the Act from occupational exposure to dust as a worker in New South Wales.	As at 25 January 2017 compensation benefits are being provided to a total of 4146 clients: 1126 workers and 3020 dependants of deceased workers.	A system of no fault compensation for workers and their dependants where a worker suffers death or disability from dust diseases.
<b>Coal Industry Act 2001</b>	<a href="#">Coal Services</a>	To operate an innovative, efficient, effective, competitive and fully funded workers' compensation insurance scheme for the coal mining industry in NSW.	Coal Mines Insurance Pty Ltd (CMI) is a specialised insurer and it is the insurer of all Employers in the NSW coal mining industry under the <a href="#">Coal Industry Act 2001</a> .	As at 30 June 2016, 787 policy holders covering 24 864 employees in NSW.	<p>The Joint Coal Board (JCB) was dissolved by enactment of the <i>Coal Industry Repeal Act 2001 (Cth)</i>. The JCB was dissolved on the 1<sup>st</sup> January 2002.</p> <p>The assets, rights and liabilities of the JCB have been transferred to an approved company, namely to the Coal Services Pty Ltd (ACN 099 078 234). This transfer took effect on and from the 1<sup>st</sup> January 2002.</p> <p>CMI is a wholly owned subsidiary of Coal Services Pty Ltd. Coal Services P/L is owned 50% by NSW Minerals Subsidiary Company P/L and 50% by the Construction Forestry Mining and Energy Union. NSW Minerals Subsidiary Company P/L is a company owned by the NSW Minerals Council, an association representing employers in the NSW coal industry.</p> <p>Coal Services P/L and CMI operate as private companies, subject to the Federal <a href="#">Corporations Act 2001</a>, but are also created by statute (the <a href="#">Coal Industry Act 2001</a>).</p>
<b>Treasury Managed Fund (TMF) (NSW Government's self-insurance</b>	<a href="#">icare</a>	icare self-insurance administers the NSW Government's main managed fund scheme, known as the Treasury Managed Fund (TMF). The TMF is the NSW Government's self-insurance	Employees of all member agencies	318 502 employees covered (as at 30 June 2017)	Unique scheme

scheme)		scheme. The TMF protects the insurable assets and liability exposures of all general government sector agencies and a number of state-owned corporations that have elected to join the scheme.			
---------	--	---	--	--	--

**Table 7.3b: Minor schemes — Victoria**

Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Volunteers — recoupable claims</b> <ul style="list-style-type: none"> <li>Claims by volunteers under the: <ul style="list-style-type: none"> <li><i>Country Fire Authority Act 1958</i> are administered by the Country Fire Authority, and</li> <li><i>Police Assistance Compensation Act 1968</i> (PAC Act) are administered by the Police Department.</li> </ul> </li> <li>Except for claims under the Acts above, WorkSafe Victoria administers claims of volunteers as an agent on behalf of the Crown.</li> <li>The claims agent responsible for managing claims for the Department of Justice manages claims by volunteers under the following Acts: <ul style="list-style-type: none"> <li><i>Victorian State Emergency Services Act 1987</i> (applies to registered and casual emergency workers)</li> <li><i>Juries Act 2000</i> (applies to jurors), and</li> <li><i>Emergency Management Act 1986</i> (applies to casual emergency workers).</li> </ul> </li> <li>The agent responsible for managing claims for the Department of Education manages claims by volunteers under the <i>Education Training and Reform Act 2006</i> (applies to volunteer school workers or volunteer student workers).</li> <li>Work Safe Victoria is reimbursed from the Consolidated Fund for any compensation payments made and the costs and expenses associated with administering these claims.</li> </ul>	<p>Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> if injured while carrying out specified duties.</p>	<ul style="list-style-type: none"> <li>Nominated volunteers specified under various pieces of legislation set out below. The term 'volunteers' includes people assisting government agents. Volunteers are not workers unless deemed so and are not entitled to compensation unless specified in one of the Acts of Parliament named.</li> <li>Workers assigned to emergency organisations by their employers as part of their contract of service remain workers of the employer. They will only be entitled to compensation as volunteers if they are covered by the aforementioned Acts.</li> <li>While carrying out the relevant duties volunteers in prisons and offenders working or participating in a correctional order or diversion program are entitled to compensation for personal injury if it would be payable under the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> if they were a worker employed by the Crown and the personal injury had arisen out of or in the course of employment.</li> </ul>	<p>Not known</p>	<p>The aforementioned Acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured while carrying out relevant duties.</p> <p>Go to <a href="#">Victorian Legislation and Parliamentary Documents</a>.</p>

**Table 7.3c: Minor schemes — Western Australia**

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</b>	WorkCover WA	This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant injury under s33 of the Compensation Act, but in respect of whom it is not known who was the employer who last employed the waterfront worker in the employment to the nature of which the 'relevant injury' is, or was, due.  'relevant injury' means mesothelioma, or lung cancer, or that form of pneumoconiosis known as asbestosis.	Waterfront workers, within the meaning of the Compensation Act, employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.	N/A	N/A
<b>Employers' Indemnity Supplementation Fund Act 1980</b>	WorkCover WA	The Supplementation Fund provides for payments to injured workers in the event of the failure of an approved insurer.	The Supplementation Fund is funded through a levy on insurance premiums which is applied as and when required. No levy is currently in place.	N/A	N/A

**Table 7.3d: Minor schemes — South Australia**

Administered by	Purpose	Coverage	Number covered	Basis for legislation	
<b>Statutory reserve fund (clause 61 of schedule 9 of the RTW Act)</b>	<a href="#">ReturnToWorkSA</a>	<ul style="list-style-type: none"><li>The Statutory Reserve Fund was established under the repealed <i>Workers' Compensation Act 1971</i> and came into operation in 1980 against which claims relating to workers' compensation liabilities could be made in the event of the insolvency of an insurance company or the insolvency of an uninsured employer. The Fund was re-established under Schedule 1, Clause 5 of the <i>Worker's Rehabilitation and Compensation Act 1986</i> and continues in its existence pursuant to clause 61 of Schedule 9 of the <i>Return to Work Act 2014</i>. The Fund forms a separate part of the Compensation Fund of the Return to Work Scheme.</li><li>The Statutory Reserve Fund is required to meet any liability arising from a shortfall of the Insurance Assistance Fund.</li></ul>	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	N/A	To provide protection of injured workers arising under the <i>Workers' Compensation Act 1971</i> in the event of the insolvency of an insurance company or an uninsured employer.
<b>Insurance assistance fund (clause 62 of schedule 9 of the RTW Act)</b>	<a href="#">ReturnToWorkSA</a>	<ul style="list-style-type: none"><li>The Insurance Assistance Fund continues to be held as a separate part of the Compensation Fund.</li><li>The Insurance Assistance Fund was established under Schedule 1 Clause 5A of the <i>Workers Rehabilitation and Compensation Act 1986</i> and continues in its existence pursuant to clause 62 of Schedule 9 of the <i>Return to Work Act 2014</i>. The Fund supports policies issued under s118g of the repealed <i>Workers' Compensation Act 1971</i>. As 118g policy relates to a policy of workers' compensation insurance issued by the State Government Insurance Commission as insurer of last resort at a determined premium</li></ul>	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	N/A	To provide assistance to an employer to meet its obligation to be insured under the repealed <i>Workers' Compensation Act 1971</i> in cases where an employer was unable to obtain satisfactory workers' compensation insurance from within the open insurance market.

**Table 7.3e: Minor schemes — Tasmania**

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Asbestos-related Diseases (Occupational Exposure) Compensation Act 2011</b>	Department of Justice	This Act establishes a scheme for the payment of compensation to workers who contract asbestos related diseases in the course of their employment.	Claimants who are or were workers as defined by the Act and who have suffered a compensable disease.	N/A	N/A

**Table 7.3f: Minor schemes — Commonwealth**

Administered by	Purpose	Coverage	Number covered	Basis for legislation	
<b>Administrative scheme for the purposes of compensating persons present at British nuclear test sites in Australia</b>	Department of Employment	To compensate those persons who can establish that they were in the region of the tests at the time of the testing, who sustained an injury or a disease which can be demonstrated to have arisen as a result of exposure to radiation, etc. emanating from the British Nuclear Tests in the 1950s and 1960s. This scheme was formed by Executive Government in 1986.	Non-Commonwealth employees, pastoralists and indigenous persons who were present at or near the test sites at the time of the testing in the 1950's and early 1960's are covered under the scheme.	N/A	As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal, although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
<b>Scheme for the payment of special compensation for injury in exceptional circumstances</b>	Department of Employment	To compensate those persons (listed below) who suffer injuries or contract diseases, under exceptional circumstances, such as injuries which arise a result of actual or threatened acts of violence because the claimant was identified with the Australian Government. It also provides compensation for diseases contracted because of changes in the person's environment arising out of their connection with the Government, who would not have incurred such injuries or diseases but for the claimant's connection with the Australian Government — and for which they have no claim for compensation under a statutory scheme. This scheme was formed by Executive Government in 1986.	The Special Compensation Scheme provides compensation to Commonwealth government employees and/or their dependants, Commonwealth contractors, people undertaking actions at the direction of the Commonwealth and judges.	N/A	As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
<b>Asbestos related claims (management of Commonwealth liabilities) Act 2005</b>	<a href="#">Comcare</a>	Manages the Commonwealth's asbestos related claims liabilities for claims made outside the SRC and MRC Acts.	Claimants with asbestos-related conditions such as asbestosis, an asbestos-induced carcinoma, an asbestos-related non-malignant pleural disease, mesothelioma etc.	There were 160 open claims being managed at 30 September 2016.	A focal point for the Commonwealth to manage its asbestos liabilities.
<b>Veterans' Entitlements Act 1986</b>	Department of Veterans' Affairs	Provides entitlements to compensation and rehabilitation for members and former members of the Australian Defence Force injured in the course of their duties.  Injury, disease or death related to the following service: <ul style="list-style-type: none"><li>peacetime service (after completion of three-year qualifying period) — from 7 December 1972</li></ul>	To be eligible for compensation payments under the VEA a person must first qualify as a 'veteran', a 'member of the Forces' or a 'member of a Peacekeeping Force'. Certain civilians also have access to the VEA.  A member who had not completed the three-year qualifying period before 7 April 1994 is not covered under the VEA, unless he/she was medically discharged	<a href="#">Statistics about the veteran population</a>	Eligible veterans, serving and former defence force members, their war widows and widowers and dependants have access to: appropriate compensation and income support in recognition of the effects of war and defence service, and; to health and other care services that promote and maintain self-sufficiency, well-being and quality of life.



		<p>to 6 April 1994. Members who enlisted before 22 May 1986 and who served continuously until after 6 April 1994 are also covered for service after that date</p> <ul style="list-style-type: none"> <li>• all periods of operational service, peacekeeping service and hazardous service to 30 June 2004, and</li> <li>• war-like operations (for example in East Timor) and non war-like operations to 30 June 2004.</li> </ul>	<p>within that time.</p>		
--	--	---	--------------------------	--	--

**Table 7.3g: Minor schemes — New Zealand**

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
<b>Tuberculosis Act 1948</b>	Ministry of Health	Make better provision for the treatment, care and assistance of persons suffering or having suffered from tuberculosis and for preventing the spread of tuberculosis.	Any person who is suffering from tuberculosis in an active form and who is likely to infect others. Can claim for workers' compensation if contracted during employment.	350–400 new cases a year	N/A

## Scheme funding arrangements

All workers' compensation schemes collect funds to meet liabilities and administer the scheme. There are three different types of scheme funding: centrally funded, hybrid and privately underwritten.

In centrally funded schemes, a single public insurer — a government agency, performs most, if not all of a workers' compensation insurer's functions. Central insurers are responsible for underwriting their scheme.

The management and operation of hybrid schemes involves both the public and private sector. Public central insurers are responsible for underwriting, funds management and premium setting. Other functions, such as claims management and rehabilitation are contracted out to private sector bodies, usually insurance companies with specialised expertise in injury management. Details of the contracted bodies in each jurisdiction are available from the jurisdiction's authorities.

In privately underwritten schemes, most, if not all insurer functions are provided by the private sector through approved insurance companies and self-insuring employers who meet the appropriate prudential and other prerequisites. This includes underwriting. In the Northern Territory scheme, a public insurer competes with private insurers for the provision of workers' compensation. The degree of regulation of privately underwritten schemes by government varies. Table 2.3 outlines the scheme funding arrangements in each jurisdiction.

### **Net funding ratio**

The net funding ratio is a net of outstanding claim liabilities and indicates the financial viability of a scheme. It measures the ratio of assets to outstanding claims liability and is generally expressed as a percentage. Where the ratio is over 100 per cent, the scheme may be over funded, and where the ratio is below 100 per cent the scheme may be under funded. For centrally funded and hybrid jurisdictions where there is a separate workers' compensation fund (centrally funded), the scheme's annual report identifies the assets set aside for future liabilities. For privately underwritten schemes assets are set aside to meet all liabilities.

### **Net assets**

Net assets in centrally funded schemes are the premiums collected and invested by each jurisdiction during a financial year minus any outstanding amount the scheme may recover from third parties. In hybrid schemes, net assets are the assets available to meet the insurer's net claims liability. In privately underwritten schemes, net assets are considered to be the insurers' overall balance sheet claims provisions. Net assets are used in the calculation of funding ratios.

### **Net liabilities**

Net liabilities in centrally funded schemes are the total current and non-current liabilities of the scheme minus any amounts the scheme expects to retrieve at the end of the financial year. In hybrid schemes, net liabilities are claim liabilities including the prudential margin and net of claims recoveries receivable. The liabilities in privately underwritten schemes are taken as the central estimate of outstanding claims for the scheme at the end of the financial year. Net liabilities are used in the calculation of funding ratios. Table 7.4 shows each jurisdiction's scheme funding position as reported in their annual reports.

**Table 7.4: Schemes' funding positions as at 30 June 2016 and 30 June 2015**

	30 June 2016	30 June 2015
<b>New South Wales</b>	Not Available	Target Funding Capital: \$15 434m Liabilities: \$14 030.9m Target Funding Ratio: 110% Additional Solvency: 10%
<b>Victoria</b>	Assets: \$13 550m Liabilities: \$12 058m Funding Ratio: 112%	Assets: \$13 292m Liabilities: \$11 090m Funding Ratio: 120%
<b>Queensland</b>	Assets: \$4511m Liabilities: \$2785m Funding ratio: 162%	Assets: \$4336m Liabilities: \$2571m Funding ratio: 169%
<b>Western Australia</b>	WA is a privately underwritten scheme, therefore this data is not available	WA is a privately underwritten scheme, therefore this data is not available
<b>South Australia</b>	Assets: \$2850m Liabilities: \$2525m Funding ratio: 112.9%	Assets: \$2961m Liabilities: \$2591m Funding Ratio: 114.3%
<b>Tasmania</b>	Tasmania is a privately underwritten scheme therefore this data is not available	Tasmania is a privately underwritten scheme, therefore this data is not available
<b>Northern Territory</b>	Assets: \$370.9m Liabilities: \$326.1m \$m Funding Ratio: 113.7%	Assets: \$359.1m Liabilities: \$327.2m Funding Ratio: 110%
<b>C'wealth Comcare</b>	Assets: \$2307.1m Liabilities: \$2757.9m Funding Ratio: 83.7%	Assets: \$2143.2m Liabilities: \$2825.7m Funding Ratio: 75.8%
<b>C'wealth Seacare</b>	Seacare is a privately underwritten scheme, therefore this data is not available	Seacare is a privately underwritten scheme, therefore this data is not available
<b>New Zealand</b>	Assets: NZ\$8916m Liabilities: NZ\$6368m Funding Ratio: 140%	Assets: NZ\$7722.8m Liabilities: NZ\$4578.3m Funding Ratio: 169%

Care should be taken when analysing the information above as the valuation of liabilities differs across jurisdictions. The [Comparative Performance Monitoring \(CPM\) report 18th Edition](#), attempts to address most of the areas where differences can occur.

## Premiums

Employers, other than self-insurers, are required to pay workers' compensation premiums to cover their workers in the event of a work related injury or illness. The majority of employers in Australia and New Zealand are premium payers. Premiums fund financial and medical support to injured workers, cover the costs of dispute management and administration of the schemes.

In central and hybrid schemes, premium rates are set by a central authority based on actuarial forecasts of claim costs across all industry sectors. In privately underwritten schemes independent insurers charge premiums based on a commercial underwriting basis.

Premium rates are generally pooled across similar risk profile groups. This allows employers who share a common set of risks to spread the risk across their industry type. Across the schemes there are hundreds of specified premium rates for industry types. Employers that operate in more than one jurisdiction have to pay the relevant premium in each jurisdiction.

Premiums are usually expressed as a percentage of employers' total wages bills. The rates depend on an employer's:

- size
- industry
- individual claims experience, and
- the way that 'wages' are defined for workers' compensation purposes, which can vary across the jurisdictions.

In 2014–15 the Australian standardised average premium rate was 1.39 per cent of payroll, which was lower than the previous year 2012–13 (1.52 per cent). Table 7.5 shows the standardised average premium rate in each jurisdiction over the last five financial years as reported in the CPM report 18th edition (Indicator 12).

The standardised premium rates are determined by applying factors that adjust the total average premium rate for employer excess and journey claims in each jurisdiction. A full explanation of the methodology for producing standardised average premium rates is in Appendix 1 of the CPM report.

**Table 7.5: Standardised average premium rates 2010–11 to 2014–15 (% of payroll)**

	New South Wales	Victoria	Queens land	Western Australia	South Australia	Tasmania	Northern Territory	Aus. Capital Territory*	C'wealth Comcare	C'wealth Seacare	New Zealand
<b>2010-11</b>	1.77	1.35	1.23	1.24	2.51	1.51	1.82	2.02	0.92	N/A	1.07
<b>2011-12</b>	1.72	1.34	1.42	1.19	2.50	1.51	1.81	1.99	0.99	N/A	0.89
<b>2012-13</b>	1.70	1.31	1.47	1.25	2.51	1.63	1.94	1.99	1.16	N/A	0.75
<b>2013-14</b>	1.67	1.31	1.44	1.25	2.48	1.60	1.86	1.97	1.15	N/A	0.71
<b>2014-15</b>	1.45	1.31	1.19	1.21	2.42	1.58	1.67	1.84	1.22	N/A	0.60

\* ACT Private

Premiums vary from industry to industry. Table 7.6 provides an indication of some selected premium rates. Apart from Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory, industry rates are not provided for jurisdictions with full private insurance underwriting, as each individual insurer sets their own industry rates. In the Comcare jurisdiction industry rates are not applicable as all employers are experience rated.

Further information on industry premium rates calculations are available for:

- Victoria — Industry descriptions are available in the periodical Victorian Government Gazette — Premiums Order (No. 24) 2016/17 and Industry Rates in the Victorian Government Gazette No. S156 18 May 2016.
- Queensland — [WorkCover Queensland Notice \(No. 1\) of 2016](#).
- Western Australia — The Gazetted industry premium rates for Western Australia.
- The Australian Capital Territory — Recommended reasonable premium rates 2015-16.
- South Australia — Industry descriptions and rates are available on the ReturnToWorkSA website.
- Tasmania — Suggested Rates are available on the WorkCover Tasmania Website.

**Table 7.6: Selected industry premium rates as at 30 September 2016 (% of payroll)**

	New South Wales	Victoria <sup>1</sup>	Queensland <sup>2</sup>	Western Australia <sup>3</sup>	South Australia <sup>4</sup>	Tasmania	New Zealand <sup>5</sup>
<b>Average levy/ premium rate</b>	Not Available	1.272	1.20	1.478	1.950	2.25	0.80
<b>Highest published rate</b>	Not Available	8. 733	9.087 (Tree Lopping and Arborist Services)	7.24 (Beef Cattle Farming)	9.127% (Thoroughbred horse racing)	10.00 (Meat processing)	6.08 (Sport and physical recreation-professional rugby)
<b>Highest experienced rate</b>	Not Available	N/A	N/A	N/A	N/A	N/A	74% loading (expressed as a % of an employers standard levy)
<b>Lowest published rate</b>	Not Available	0.254	0.157 (Computer System Design and Related Services)	0.25	0.300 (Computer system design)	0.39 (Museum Operation, Libraries and Archives)	0.11 (Computer systems design and related services)
<b>Lowest experienced rate</b>	Not Available	N/A	N/A	N/A	N/A	N/A	44% discount (expressed as a % of an employers standard levy).
<b>House construction</b>	Not Available	1.798	2.762	1.03	2.794	3.29	2.45
<b>Non-residential construction</b>	Not Available	1.471	2.218	1.50	2.545	3.18	2.26
<b>Meat products</b>	Not Available	5.036 (Meat Processing)	5.175 (Meat processing)	4.75 (Meat processing)	7.751 (Meat processing)	10.00 (Meat processing)	2.99 (Processing)
<b>Rubber products manufacturing</b>	Not Available	3.4860 (Natural Rubber Product Manufacturing) 2.156 (Synthetic Resin And Synthetic Rubber Manufacturing) 8.733 (Tyre Manufacturing)	2.753 (Natural Rubber Product Manufacturing)	2.14 (Rubber tyre manufacturing). 3.04 (Rubber product manufacturing n.e.c.)	3.831 (Tyre manufacturing) 3.759 (Natural rubber product manufacturing nec) 5.524 (Synthetic resin and synthetic rubber manufacturing)	2.19 (Natural Rubber Product Manufacturing) 2.19 (Tyre Manufacturing)	0.54 (Natural rubber product manufacturing) 0.92 (Tyre manufacturing)
<b>Plastic products</b>	Not Available	3.339 (Rigid And Semi-Rigid Polymer Product Manufacturing) 3.352 (Other Polymer Product Manufacturing) 3.564 (Polymer Film And Sheet Packaging Material Manufacturing)	2.753 (Rigid and semi-rigid polymer product manufacturing)	2.77 (Plastic blow moulded product manufacturing)	4.708 (Rigid and semi-rigid polymer products manufacturing) 3.708 (Polymer film and sheet packaging material manufacturing) 4.655 (Other basic polymer manufacturing)	2.19 (Other polymer product manufacturing). 4.16 (Polymer film and sheet packaging material manufacturing) 4.16 (Rigid and semi rigid polymer products manufacturing)	0.81 (Rigid and semi-rigid polymer product manufacturing)
<b>Basic iron and steel products</b>	Not Available	4.168 (Iron Smelting And Steel Manufacturing)	2.826 (Iron smelting and steel manufacturing)	3.58	4.535 (Iron smelting and steel manufacturing)	2.74 (Iron smelting and steel manufacturing)	1.29 (Manufacturing)

	New South Wales	Victoria <sup>1</sup>	Queensland <sup>2</sup>	Western Australia <sup>3</sup>	South Australia <sup>4</sup>	Tasmania	New Zealand <sup>5</sup>
<b>Steel casting</b>	Not Available	5.607 (Iron And Steel Casting)	2.826 (Iron and steel casting)	2.46 (Iron and steel casting and forging)	6.116 (Iron and steel casting)	2.74 (Iron and steel casting)	1.31 (Iron and steel casting) 1.31 (Iron and steel forging)
<b>Steel pipes and tubes</b>	Not Available	1.910	2.826 (Steel Pipe and Tube Manufacturing)	2.59	2.831 (Steel pipe and tube manufacturing)	2.74 (Steel pipe and tube manufacturing)	1.29 (Manufacturing)
<b>Pulp paper and paperboard</b>	Not Available	3.726	2.644 (Pulp, Paper and Paperboard Manufacturing)	2.51	3.744 (Pulp paper and paperboard manufacturing)	1.10 (Pulp paper and paperboard manufacturing)	0.66 (Manufacturing)
<b>Paints</b>	Not Available	2.429 (Paint and Coatings Manufacturing)	1.675 (Paint and coatings manufacturing)	1.25 (Paint manufacturing)	3.062 (Paint and coatings manufacturing)	4.16 (Paint and coatings manufacturing)	0.42 (Paint and coatings)
<b>Soap and detergents</b>	Not Available	2.096 (Cleaning Compound Manufacturing)	1.675 (Cleaning compound manufacturing)	1.30	2.470 (Cleaning compound manufacturing)	4.16 (Cleaning compound manufacturing)	0.45 (Cleaning Compound)
<b>Glass and glass products</b>	Not Available	3. 568	4.602 (Glass and Glass Product Manufacturing)	3.64	3.487 (Glass and glass products manufacturing)	3.40 (Glass and glass product manufacturing)	1.40 (Manufacturing)
<b>Cement</b>	Not Available	3.109 (Cement and lime manufacturing)	1.909 (Cement and lime manufacturing)	2.46 (Cement and lime manufacturing)	1.100 (Cement and lime manufacturing)	3.40 (Cement and lime manufacturing)	1.40 (Cement and lime manufacturing)
<b>Clothing manufacturing</b>	Not Available	2.345	1.546 (Clothing Manufacturing)	2.07	2.513	2.08	0.62 (Clothing manufacturing)
<b>Beer</b>	Not Available	1.685	1.645 (Beer Manufacturing)	1.54	1.481 (Beer manufacturing)	2.41 (Beer manufacturing)	0.49 (Beer manufacturing)
<b>Hotels</b>	Not Available	2.079 (Accommodation).	2.283 (Accommodation). 1.865 (Pubs, taverns and bars)	2.17 (Accommodation) 1.27 (Pubs, taverns and bars)	2.777 (Accommodation) 2.179 (Pubs, taverns and bars)	2.41 (Pubs, taverns and bars)	0.78 (Accommodation)
<b>Bread manufacturing</b>	Not Available	3.717 (Bread Manufacturing Factory based)	3.282 (Bread Manufacturing (Factory based)	3.24	5.759 (Bread manufacturing – factory based)	2.74	0.87 (Factory based)
<b>Footwear manufacturing</b>	Not Available	4.122	1.546 (Footwear Manufacturing)	1.86	2.955	2.08	0.62 (Footwear manufacturing)
<b>Nursing homes</b>	Not Available	2.012 (Aged care residential services)	2.830 (Aged care residential services).	3.09	4.693 Aged care residential services.	5.26 (Aged care residential services).	1.22 (Aged care residential services)
<b>Department stores</b>	Not Available	2.180	1.443 (Department Stores)	1.71	1.576	2.19	0.44 (Department stores)
<b>Medical practice</b>	Not Available	0.346 (General practice medical services)	0.356 (General practice medical services)	0.63 (General practice medical services)	0.434 (General practice medical services)	0.44 (General practice medical services)	0.12 (General practice medical services)



	New South Wales	Victoria <sup>1</sup>	Queensland <sup>2</sup>	Western Australia <sup>3</sup>	South Australia <sup>4</sup>	Tasmania	New Zealand <sup>5</sup>
		0.254 (specialist medical services)			0.360 Specialist medical services		
<b>Secondary schools — private</b>	Not Available	0.559	0.826 (No distinction is made between private and government schools)	0.79 (No distinction is made between private and government schools)	0.922 (Secondary education — no distinction between private and government schools) 0.945 Combined primary and secondary education	1.10 (Secondary education — no distinction is made between private and government schools)	0.25 (Secondary education — no distinction is made between private and government schools)
<b>Secondary schools — government</b>	Not Available	1.203	0.826 (No distinction is made between private and government schools)	0.79 (No distinction is made between private and government schools)	0.922 (Secondary education — no distinction between private and government schools) 0.945 Combined primary and secondary education	1.10 (Secondary education — no distinction is made between private and government schools)	0.25 (Secondary education — no distinction is made between private and government schools)

1. Victoria — All rates exclude GST
2. Queensland — Published rates exclude stamp-duty and GST. Average premium rates include stamp-duty and exclude GST.
3. Western Australia — All published premium rates are exclusive of GST.
4. South Australia — all listed rates are exclusive of GST. All other listed rates include GST and The New Tax System effects.
5. New Zealand — All published levy rates are exclusive of GST and excludes residual levy.

## Premium setting: Notes relating to the industry rates comparison table

As it is difficult to make exact comparisons between the states and territories, the following qualifications should be noted:

- Industry classifications vary from jurisdiction to jurisdiction.
- On 1 July 2010, WorkCover Queensland moved from ANZSIC 1993 to ANZSIC 2006 to better reflect the evolution of technology and changes in industry during that period. [Current rates are published by Gazette notice.](#)
- On 1 July 2011, Victoria introduced an industry classification system based on ANZSIC 2006 to better reflect the evolution of technology and changes in industry. Current rates are published by Gazette notice.
- The Australian Capital Territory publishes [Suggested reasonable premium rates 2015-16](#) which include a comparison from the preceding year based on ANZIC 2006.
- These actuarially determined rates are released to the community and are provided to the Approved Insurers who underwrite the Scheme to assist in the determination of premium rates for the coming year.
- Levy/Premium category comparisons are done on a 'best match' basis and should not be regarded as exact equivalents.

The number of self-insurers varies across the different jurisdictions. Both South Australia and New South Wales have large numbers of self-insurers, which means that the proportion of workers centrally covered by these schemes is lower than in some other jurisdictions. For the number of self-insurers in each jurisdiction see Table 6.1.

In some jurisdictions, particular industries traditionally have been excluded from the central system. For example, in New South Wales the coal industry is excluded.

Charges in addition to the workers' compensation premium may be levied in some jurisdictions. An example is the Dust Diseases levy in New South Wales, which is levied on employers under the *Workers' Compensation (Dust Diseases) Act 1942* to fund compensation to people who contract a dust disease including asbestosis and silicosis, and to their dependants. Employers engaged in the mining industry in New South Wales also pay a contribution to the Mine Safety Fund, established under the [Mine Safety \(Cost Recovery\) Act 2005](#). This contribution funds the mine safety activities of the New South Wales Department of Trade and Investment, Regional Infrastructure and Services. A work health and safety fee is additional to the levy (premium) payable in South Australia.

The maximum and minimum figures given for experience-rated premium rates represent the extent to which the published rate may be varied according to the various forms of experience rating based on claims rate in a given period. The following information should be noted relating to experience-rated premium rates.

- In Victoria it is based on the employer's remuneration.
- The extent to which insurance companies may discount or load premiums according to experience may vary. For example, amendments to Western Australia's legislation mean that recommended premium rates can be surcharged up to 75 per cent and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75 per cent. There are no limitations on discounting.
- Figures given for highest and lowest experience-rated premium rates should be treated with some caution. Those for South Australia represent actual maximums and minimums. New Zealand applied an experience rating from 1 April 2011. ReturnToWorkSA applied a mandatory experience rating system for medium and large employers and optional retro-paid loss arrangements for large employers from 1 July 2012.

## Calculation of industry rates

Each jurisdiction calculates its industry rates differently. Some calculate certain claims performance elements, while some other jurisdictions also include current industry premium rates. The Northern Territory does not provide industry premium rates because the legislation gives insurers the power to set their own industry premium rates and these do not have to be gazetted. The information below outlines how each jurisdiction calculates their industry premium rates.

### Victoria

Each industry's rate is calculated based on claim cost rates and claim frequency rates over a five year period with 12 months of development. The rates are calibrated to achieve the average premium rate.

### Queensland

There are currently 560 WorkCover Industry Classifications. Rates are calculated annually based on an actuarially verified methodology considering seven years of wages and claims data.

### Western Australia

Recommended premium rates are determined annually according to independent actuarial analysis of claims and wages data provided by current and former approved insurers and self-insurers. The actuarial analysis includes:

- a calculation of relative premium rates
- examination of the adequacy of the declared outstanding claims reserves
- an analysis of insurers' expense and contingency allowances
- a projection of the expected incurred cost of claims for the year
- a calculation of the amount of premium expected to meet the cost of claims, and
- a calculation of the implied uniform percentage variation in the relative premium rates to generate the required premium income.

### South Australia

From 1 July 2015, South Australian industry classifications have been aligned to the Australian and New Zealand Standard Industrial Classification system. Each employer location is allocated to an industry classification that corresponds to the predominant activity for that employer at that location — see [Industry classification rates](#).

### Tasmania

WorkCover Tasmania is required to publish suggested premium rates for employers and licensed insurers. The objective is to ensure full funding, minimisation of cross subsidisation and increased transparency in the premium setting process. The actuarial analysis includes:

- analysis of claim numbers, claim frequency and claim size
- calculation of required premium pool
- examination of effect of legislative change
- analysis of economic assumptions and insurers expense and profit assumptions, and
- a comparison with insurer filed rates.

### Australian Capital Territory

The Australian Capital Territory releases estimated reasonable rates by ANZSIC class. These rates are determined annually according to independent actuarial analysis of wages and premium data provided by current and former approved insurers and self-insurers.

## **New Zealand**

In New Zealand there are 539 classification units and 143 levy risk groups. For each classification unit the levy relativities are compared by year for the last four years. As a result of this comparison and taking into account such things as the impact of large claims, the number of years experience for a new classification unit, the volume of claims etc., the classification unit will either stay within the same levy risk group or be moved to another.

The credibility-adjusted levy rate relativity of each levy risk group is the expected ultimate cost of claims expressed as a percentage of wages for the levy risk group, compared with the expected ultimate cost of claims as a percentage of wages for all levy risk groups. All the expected ultimate cost of claims and wage quantities used for this calculation are weighted averages of the most recent six years of experience. The levy rate relativities are credibility-adjusted (as required) to the self-insurers, then to the levy risk groups, then to the industry groups, and finally to the aggregate rate. The absolute level of the levy rates is set so that the expected costs of the scheme will be met. The classification unit levy rates shown are fully-funded levy rates.

## Appendix 1

### The Evolution of workers' compensation schemes in Australia and New Zealand

This section provides an historical overview of the development of workers' compensation schemes in Australia at both the national and jurisdictional level, and for New Zealand.

In preparing this section the following publications were used extensively: Kevin Purse, 'The Evolution of workers' compensation policy in Australia', 2005, from the Health Sociology Review; the CCH Workers' Compensation Guide, Volume 1; and the Productivity Commission's *National Workers' Compensation and Occupational Health and Safety Frameworks* report of 2004.

#### The national perspective

There are 11 main workers' compensation systems in Australia. Each of the eight Australian states and territories has developed their own workers' compensation scheme and there are also three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self-insurers under the *Safety Rehabilitation Compensation Act 1988*; the second is for certain seafarers under the *Seafarers Rehabilitation and Compensation Act 1992*; and the third is for Australian Defence Force (ADF) personnel with service on or after 1 July 2004 under the *Military Rehabilitation and Compensation Act 2004*.

The origin of these Australian workers' compensation systems lies in 19th century British law. Before the implementation of workers' compensation arrangements an injured worker's only means of receiving compensation was to sue their employer for negligence at common law. However, workers rarely succeeded in these actions due to what has been described as the 'unholy trinity' of legal defences: common employment, voluntary assumption of risk and contributory negligence. To limit the application of those defences, the *Employment Liability Act 1880* was enacted in Britain. This Act was adopted in the Australian colonies between 1882 and 1895. While these Acts were well intentioned, taking them up did not lead to any significant improvement in outcomes for injured workers.

New workers' compensation laws incorporating a 'no-fault' principle came about after Federation in Australia. New laws were prompted by the failure of the *Employment Liability Act 1880* to improve conditions for injured workers, increasing industrialisation and the rise of the labour movement and popular support for state intervention on behalf of workers. To be eligible for workers' compensation under the no-fault principle, workers covered by the legislation merely had to prove that their injuries were work related. It was no longer necessary to prove negligence on the part of an employer. Nonetheless early no-fault coverage for workers' compensation was limited. Firstly, although laws provided for some benefits, the taking out of insurance by employers was not compulsory. Secondly, to be eligible for workers' compensation, an injury had to be found to have arisen out of and in the course of employment.

In keeping with contemporary attitudes, the first workers' compensation laws in Australia were generally known as workmen's compensation and did not expressly cover female workers until challenged by the women's movement of the 1970s. Coverage for workers' compensation gradually expanded to include most workers and lump sum payments for loss of body parts were introduced. By 1926 NSW had introduced compulsory insurance which became the model for most workers' compensation schemes around Australia.

Between the 1920s and 1970s incremental reforms took place across the jurisdictions. Eligibility continued to widen with the broadening of the definition of injury to 'arising out of or in the course of employment'. Reforms from the 1970s to the mid-1980s generally improved compensation benefits for workers. However, economic difficulties in the mid 1980s and early 1990s shifted the focus onto reducing the cost of workplace injuries, containing insurance premiums, underwriting arrangements and administrative efficiency.

In the last quarter of the twentieth century there was a shift in emphasis in the schemes to strengthen the role of work health and safety and to highlight the need for rehabilitation of injured workers. This shift was expected to place downward pressure on costs but did not achieve the level of success expected. Further reform attempts focussed on cutting back benefits and making premiums more competitive. By the mid 1990s, workers' compensation costs had fallen by 20 per cent as a percentage of total labour costs, easing pressure for reform of premiums and costs, although each jurisdiction continues to grapple with these issues.

Since the introduction of the first workers' compensation laws, each jurisdiction has developed its own arrangements. This has resulted in numerous inconsistencies in the operation and application of workers' compensation laws. Some of the inconsistencies include scheme funding, common law access, level of entitlements, return to work and coverage. These inconsistencies can be attributed in part to the varying industry profiles and economic environments of each jurisdiction and judicial decisions that have led to legislative amendments. However, as businesses and workers become increasingly mobile, the need to understand the various workers' compensation systems at the national level is becoming increasingly important.

## New South Wales

### 1910-1987

New South Wales introduced the *Workmens' Compensation Act 1910*. It applied to personal injury by accident arising in the course of employment, which was limited to defined 'dangerous occupations'. Compulsory insurance for employers and the first specialised workers' compensation tribunal in Australia, the Workers' Compensation Commission, were introduced in the *Workers' Compensation Act 1926*. This Act remained essentially unchanged until the mid-1980s.

### 1987-2012

The *Workers' Compensation Act 1987* repealed the 1926 Act and introduced a radically different scheme which included public underwriting of the scheme and removing the right of workers to make common law damages claims against their employers. In 1989 the *Workers' Compensation (Compensation Court Amendment) Act 1989* re-established common law rights and set out the role of the Compensation Court.

From 1987 to 1991 the workers' compensation scheme performed well and in the early 1990s premium levels were reduced and there were a number of legislative amendments that expanded the range and level of benefits. However, the previous surplus of almost \$1 billion quickly eroded and by mid 1996 there was a \$454 million deficit. The Grellman Inquiry of 1997 was initiated to address continuing financial problems. The inquiry recommended structural changes including stakeholder management, accountability controls and greater incentives for injury management.

Changes in the period 2000–2005 continued to focus on greater competition and choice for employers, improved outcomes for injured workers and reducing the scheme's deficit, which was eliminated in mid 2006.

The improved performance of the NSW WorkCover Scheme saw the target premium collection rate for NSW employers reduced by an average 30 per cent between November 2005 and 2008. A 10 per cent increase in lump sum compensation benefits for permanent impairment was also implemented for injuries received on or after 1 January 2007.

The structure of the Scheme also continued to evolve. In 2005 the Scheme transitioned from using insurers on open-ended licences to appointing Scheme Agents on commercial performance contracts for claims management and policy administration services that commenced on 1 January 2006. The contracts made Agents more accountable for delivering good Scheme outcomes and improved service standards.

From 30 June 2008 employers whose annual wages are \$7500 or less receive automatic coverage and are no longer required to hold workers' compensation insurance, except where an employer engages an apprentice or trainee or is a member of a group of companies for workers' compensation purposes.

In December 2008 the compensation available to families of workers who die as a result of a workplace injury or illness was increased for deaths occurring on or after 24 October 2007. The lump sum death benefit was increased from \$343 550 to \$425 000 (indexed). The changes also required payment of the lump sum to be made to a deceased worker's estate where they leave no financial dependants. Previously only financial dependants were entitled to the lump sum payment.

An optional alternative premium calculation method for large employers based on commercial retro-paid loss premium arrangements was introduced from 30 June 2009. The retro-paid loss premium method derives an employer's premium almost entirely from their individual claims experience and success in injury prevention and claims management during the period of the insurance policy. This provides a strong financial incentive for these employers to reduce the number and cost of workers' compensation claims.

## **2012**

In June 2012 the NSW Government introduced significant changes to the NSW workers' compensation system. The *Workers' Compensation Legislation Amendment Act 2012* was assented on 27 June 2012 and amended the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. The changes affected all new and existing workers' compensation claims, except for claims from:

- police officers, paramedics and fire fighters
- workers injured while working in or around a coal mine
- bush fire fighter and emergency service volunteers (Rural Fire Service, Surf Life Savers, SES volunteers), and
- people with a dust disease claim under the *Workers' Compensation (Dust Diseases) Act 1942*.

Claims by these exempt workers will continue to be managed and administered as though the June 2012 changes never occurred. The changes came into effect in stages and included:

- changes to permanent impairment lump sum compensation claims made on or after 19 June 2012
- changes to parameters around journey claims, heart attack and stroke injuries and disease injuries for an injury received on or after 19 June 2012
- reforms for seriously injured workers (injured workers with a permanent impairment of more than 30 per cent) which came into effect on 17 September 2012
- changes to weekly payments (1 October 2012 for new claims, 1 January 2013 for existing claims) including calculation methods, step-downs and caps
- the introduction of work capacity assessments
- the establishment of the WorkCover Independent Review Officer (now Workers' Compensation Independent Review Officer from 1 October 2012, and
- changes to medical and related treatment (1 October 2012 for new claims, and 1 January 2013 for existing claims).

## **2014**

The *Workers Compensation Amendment (Existing Claims) Regulation 2014* was made on 3 September 2014 and applies some benefit reforms to workers who made a claim for compensation before 1 October 2012.

## **2015**

In August 2015, the NSW Government announced a \$1 billion staged reform package with three elements:

- enhanced benefits for injured workers, including changes to lump sum compensation for permanent impairment, increased death benefit lump sum and funeral expenses, extension of

weekly payments beyond retiring age, extended medical entitlements, the introduction of work capacity decision 'stay', the introduction of new return to work assistance benefits, the regulation of legal costs for work capacity decision reviews and the regulation of pre-injury average weekly earnings.

- premium reductions for employers with good safety and return to work records
- structural reform for better service and regulation

On 1 September 2015 the *State Insurance and Care Governance Act 2015* commenced, paving the way for three new organisations - Insurance & Care NSW (icare), the State Insurance Regulatory Authority (SIRA), and SafeWork NSW. icare manages approximately \$30 billion in assets and \$26 billion in liabilities, making it the largest general insurer service provider in Australia. SIRA is a new government organisation responsible for the regulatory functions in relation to workers' compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation.

## 2016

The 2016/17 Market Practice and Premiums Guidelines replaced the publication of the WorkCover Insurance Premiums Order, and provide a new mechanism for the setting and assessment of workers' compensation premiums. The Guidelines are published with four Annexures on the SIRA website and apply to policies issued or renewed from 30 June 2016.

## Victoria

Victoria introduced the *Workers' Compensation Act 1914* with benefits payable to workers arising 'out of and in the course of' employment. The *Workers' Compensation Act 1946* changed to arising 'out of or in the course of' employment. Major amendments were made in 1984 and the *Accident Compensation Act 1985* was introduced. The *Accident Compensation Act 1985* made sweeping changes to the system including public underwriting, vocational rehabilitation, work health and safety reforms and a new dispute resolution system.

The Act has been constantly updated with major reforms as follows:

### 1992

- restricting weekly benefits for workers with a partial work capacity
- introducing a non-adversarial dispute resolution system via conciliation
- establishing expert Medical Panels to determine medical questions
- limiting access to common law to seriously injured workers, and
- reinstating the right to sue for economic loss.

### 1993

- introducing the premium system.

### 1997

- removing access to common law
- significantly changing the structure of weekly benefits
- introducing impairment benefits to replace the Table of Maims, and
- restructuring death benefits.

### 2000

- reinstating access to common law damages for seriously injured workers with a new threshold for economic loss.

### 2004

- improving the efficiency of the claims process, and
- facilitating early and sustainable return to work.



## 2005

- making provision for previously injured workers whose employers exit the Victorian scheme to become licensed corporations under the Comcare scheme.

## 2006

- enhancing existing benefits including death benefits and the extension of the weekly benefits entitlement period from 104 to 130 weeks with increased payments for workers with a partial work capacity.

## 2007

- clarifying the financial guarantee requirements on employers who exit the Victorian WorkCover scheme (or Victorian self-insurer arrangements) to self insure under the federal Comcare scheme
- mandating the return of the management of tail claim liabilities to the Victorian WorkCover Authority (WorkSafe Victoria) for Victorian self-insurers who cease their self-insurance arrangements under the Victorian scheme
- restoring the original approach to the assessment of permanent impairment for injured workers who suffer spinal injuries prior to the decision of the Full Court of the Supreme Court in *Mountain Pine Furniture Pty Ltd v Taylor*
- confirming that compulsory employer superannuation payments are not taken into account in the calculation of weekly benefit compensation
- improving counselling benefits for the families of deceased or seriously injured workers, and
- contributions towards the purchase price of a car where the current car is unsuitable for modification, home relocation costs and portable semi-detachable units in addition to car and home modifications.

## 2008

- preservation of the higher impairment rating regime for workers with musculoskeletal injuries assessed under Chapter 3 of the American Medical Association Guides (4th edition) in place since 2003
- retrospective amendments to the Act to maintain the status quo regarding recovery rights against negligent third parties that contribute to the compensation costs payable for a worker's injury, and
- workers with asbestos-related conditions can claim provisional damages and access expedited processes to bring on court proceedings quickly where the worker is at imminent risk of death.

## 2009

- on 17 June 2009 the Victorian Government responded to 151 recommendations made in a commissioned report following a review undertaken in 2008 by Mr Peter Hanks QC of the *Accident Compensation Act 1985* and associated legislation, and
- improvements to benefit both workers and employers and aimed at enhancing the scheme as a whole were introduced into Parliament in December 2009.

## 2010

The *Accident Compensation Amendment Act 2010* was passed with the majority of the reforms commencing from 5 April 2010, except for new return to work rights and obligations commencing from 1 July 2010. The Act introduced the following changes:

- almost a doubling of lump sum death benefits, and improved access to pensions for dependants of deceased workers
- for injured workers who suffer a permanent impairment, the reforms provided:
- a 10 per cent increase in no-fault lump sum benefits for workers with spinal impairments

- a 25 per cent increase in the maximum impairment benefit, increasing no-fault lump sum benefits for the most profoundly injured workers, and
- a five-fold increase in benefits awarded to workers who suffer a serious psychiatric impairment.
- for injured workers who receive weekly payments:
  - an increase in the rate of compensation from 75 per cent to 80 per cent of income after workers have received compensation for 13 weeks
  - a superannuation contribution for long term injured workers
  - the extension of the inclusion of overtime and shift allowances from 26 weeks to 52 weeks when calculating a worker's weekly payments
  - increasing the statutory maximum for weekly payments to twice the state average weekly earnings, and
  - payment of limited further weekly payments for workers who have returned to work, but who require surgery for their work-related injury.

Other changes include:

- the replacement of prescriptive return to work requirements with a performance based regulatory framework from 1 July 2010 and the appointment of a Return to Work (RTW) Inspectorate with the power to enter workplaces and issue return to work improvement notices for any contravention by an employer of the return to work part of the Act
- greater accountability and transparency of decisions made by Victorian WorkCover Authority and its agents, including the right of employers to request written reasons for agents' claims decisions and to appeal premium determinations, and
- less red tape for employers and improved understanding and usability of the legislation by the removal or reform of anomalous, obsolete, inoperative or unclear provisions.

**Further reforms were introduced in the latter half of 2010 with amendments to:**

- streamline the provision that sets out the calculation of pre-injury average weekly earnings (PIAWE) and correct an anomaly in relation to the incorporation of commissions into PIAWE
- codify current policies that relate to the impact on remuneration of salary packaging and injury prior to taking up a promotion, on the calculation of PIAWE
- restructure and streamline the provisions that govern the coverage of contractors
- align the value of impairment benefits for injured workers assessed at 71 per cent WPI or above with the equivalent value of common law damages payable for pain and suffering on an ongoing basis
- introduce greater clarity and equity for dependants of deceased workers in relation to medical and like benefits, how earnings are calculated and how partial dependant partners of deceased workers are compensated
- improve the usability of provisions relating to medical expenses, and
- extend an existing provision in the Act to allow the making of a Governor in Council Order that would permit the introduction of a fixed costs model (FCM), with built-in increases linked to inflation, for plaintiff's legal costs in the litigated phase of serious injury applications.

## **2011**

On 1 July 2011, the new ANZSIC 2006 based WorkCover Industry Classification (WIC) system commenced.

## **2013**

The *Workplace Injury Rehabilitation and Compensation Act 2013* commenced on 1 July 2014. The Act recasts the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993* into a single Act.

## Queensland

### 1905-1990

Queensland's first workers' compensation legislation was the *Workers' Compensation Act 1905*. This limited scheme was repealed and replaced by the *Workers' Compensation Act 1916*, which became the foundation for workers' compensation until 1990. In the 1970s benefits were increased and a new Workers' Compensation Board was created.

### 1990

By the late 1980s the legislation in Queensland had become outdated and unwieldy and a review resulted in the *Workers' Compensation Act 1990*. Key features included increased and additional benefits for workers, rehabilitation initiatives, increased employer and worker representation on the Workers' Compensation Board, increased penalties for fraud and failure of employers to insure, and streamlined administrative arrangements.

### 1996

In 1996 a further inquiry was held to address financial, regulatory and operational difficulties resulting in the *WorkCover Queensland Act 1996*. It repealed the 1990 Act and 'effected a total rewrite of the workers' compensation legislation'.

### 2003

Following a review under National Competition Policy, the *Workers' Compensation and Rehabilitation Act 2003* repealed the 1996 Act and introduced separate delivery and regulation of the workers' compensation scheme.

### 2010

Legislative amendments capping damages and increasing the onus on plaintiffs to prove negligence (in line with aspects of civil liability legislation) were passed in June 2010.

### 2013

Legislative amendments were passed in response to the Inquiry into the Operation of Queensland's Workers' Compensation Scheme by the Queensland Parliament's Finance and Administration Committee. A greater than five per cent degree of permanent impairment threshold was introduced for injured workers seeking damages. Regulatory functions were merged into the Department of Justice and Attorney-General.

### 2015

The common law threshold was removed effective 31 January 2015 and deeming provisions for firefighters with prescribed diseases were introduced.

### 2016

The National Injury Insurance Scheme for workplace accidents connected with Queensland was introduced to provide eligible seriously injured workers with a statutory entitlement to lifetime treatment, care and support payments (from 1 July 2016).

## Western Australia (WA)

Western Australia introduced the *Workers' Compensation Act 1902*. There were frequent and complex amendments over the next 79 years until the *Workers' Compensation and Assistance Act 1981* amended and consolidated the law. In 1991 the Act was renamed the *Workers' Compensation and Rehabilitation Act 1981*, reflecting a general shift of emphasis to rehabilitation.

A number of reviews and reports between 1999–2001 recommended changes and the *Workers' Compensation Reform Bill 2004* introduced changes to statutory benefits, injury management, access to common law, employer incentives in relation to return to work for disabled workers, and fairness in dispute resolution. As part of the reforms the Act was renamed the *Workers' Compensation and Injury Management Act 1981* which reflects an emphasis on injury management within the workers' compensation scheme in Western Australia.

## 2009 Legislative Review

In 2009 a further review of the *Workers' Compensation and Injury Management Act 1981* was undertaken. Consequently, the first stage of legislative change saw the:

- removal of all aged based limits on workers' compensation entitlements
- extension of the safety net arrangement for workers awarded common law damages against uninsured employers, and
- inclusion of various amendments of an administrative nature (including the removal of time limit for writ lodgement after election and the incorporation of diffuse pleural fibrosis into the industrial disease provisions of the legislation).

The establishment of the Conciliation and Arbitration Service and other changes to the dispute resolution process commenced on 1 December 2011.

The second stage of the legislative review progressed in 2013/2014 and saw the release of the *Review of Workers' Compensation and Injury Management Act 1981 Discussion Paper*. Stakeholder feedback on the discussion paper informed the subsequent *Review of Workers' Compensation and Injury Management Act 1981 Final Report* (final report).

The final report was tabled in Parliament on 26 June 2014. The report contains 171 recommendations for inclusion in the new statute. Drafting of a bill commenced in 2015/16 but is currently on hold until the conclusion of the 2017 WA State election.

## South Australia (SA)

South Australia introduced the *Workmens' Compensation Act 1900* which was consolidated in 1932 and remained essentially in that form until the introduction of the *Workers' Compensation Act 1971*. The 1971 Act completely restructured the workers' compensation legislation in the state. The Act increased the amounts of compensation payable and broadened the grounds for which a worker could gain compensation.

In June 1978 the Government established a Committee of Inquiry, chaired by D. E. Byrne, to examine and report on the most effective means of compensating those injured at work. In September 1980 the Committee released the report entitled 'A Workers' Rehabilitation and Compensation Board for South Australia — the key to rapid rehabilitation and equitable compensation for those injured at work' (*'Byrne Report'*). Included among the Committee's recommendations was that a new Act be introduced repealing the *Workers' Compensation Act 1971*, that a Board be established to administer a workers' compensation scheme and that the Board be responsible for overseeing and confirming rehabilitation programs.

A Joint Committee was established to investigate those areas where employers and the unions were in agreement or disagreement with respect to changing the workers' compensation system. Essentially, the Joint Committee reviewed the Byrne Committee recommendations to determine which of those should be implemented. A joint agreement was reached that led to the drafting of new legislation that was considered by Parliament in 1986 and the establishment of WorkCover in September 1987.

Amendments to the *Workers' Rehabilitation and Compensation Act 1986* were made in 1992 (abolishment of common law), 1994 (compensability, redemptions, hearing loss), 1996 (dispute resolution, rehabilitation and return to work plans, two year reviews and more), and 2006 (territorial).

In 2008 legislative amendments followed an independent review by the South Australia Government to reassess the structure of the Scheme.

The 2008 amendments included the introduction of work capacity assessments, Medical Panels, restrictions on redemptions and changes to weekly payments (commonly referred to as 'step-downs'). The Amendment Act also included a requirement for the Minister for Industrial Relations, to initiate a further independent review in 2011 to consider the impact of the 2008 changes.

In 2008 WorkCover commenced a review of all regulations supporting the Act. All SA regulations expire after being 10 years in force (under the *Subordinate Legislation Act 1978*). In June 2010 Cabinet approved the Workers' Rehabilitation and Compensation Regulations 2010. The regulations were made by the Governor and published in the SA Government Gazette on 24 June 2010 and commenced on 1 November 2010.

The review (generally referred to as the Cossey Review) of the 2008 legislative amendments was undertaken by Mr Bill Cossey and Mr Chris Latham, with the report tabled in Parliament on 23 June 2011. The review found that overall it was too soon for the long term impacts of the 2008 amendments to be known. Emerging trends were identified where possible noting that trends were based on limited experience, limited data and it was unclear if they would prevail in the longer term.

On 13 September 2011, the Government made a statement in relation to the Cossey Review to announce that it would continue to work on developing the Government's response, including consideration of recent court judgements and other reform proposals and working closely with employee and employer representatives, the WorkCover Board and Executive and other interested parties.

On 27 October 2012, the Premier announced the Workers' Compensation Improvement Project. Phase one outcomes included a new WorkCover Charter and Performance Statement signed on 19 August 2013, with a range of initiatives that were expected of WorkCover to place a greater focus on early intervention and return to work. These initiatives were intended to cap the growing unfunded liability. Amendments were also made to the *WorkCover Corporation Act 1994* in November 2013 to put the Board on a more commercial footing. Phase two of the Workers' Compensation Improvement Project was announced to include a root and branch recasting of the fundamental characteristics of the legislation.

On 30 October 2014 new legislation to reform workers' compensation in South Australia was passed by Parliament. The *Return to Work Act 2014* and the *South Australian Employment Tribunal Act 2014* replace the *Workers Rehabilitation and Compensation Act 1986* and establish the Return to Work scheme.

The Return to Work scheme is underpinned by the following key principles:

- a strong focus on early intervention, targeted return to work services and provision of retraining (where required)
- recognition that workers who are seriously injured require different services and support to those workers who are not seriously injured
- clearly articulated rights and obligations for all parties: workers, employers and the Corporation
- a simple and efficient dispute resolution process with an improved framework including clear boundaries and requirements for evidence-based decision making.

The Return to Work scheme became operational on 1 July 2015.

On 2 February 2015 the *WorkCover Corporation Act 1994* was amended to the *Return to Work Corporation of South Australia Act 1994*. These amendments arising from the *Return to Work Act 2014* provide for the name change of the Corporation.

On 6 February 2015 ReturnToWorkSA (RTWSA) was launched. RTWSA is responsible for insuring and regulating the Return to Work scheme. RTWSA continued to administer the WorkCover scheme until it was replaced by the Return to Work scheme on 1 July 2015. Section 203 requires the Minister to cause a review of the Act and its operation to be conducted on the expiry of three years from its commencement.

## Tasmania

Tasmania first introduced workers' compensation in 1910. The *Workers' Compensation Act 1927* repealed earlier Acts and introduced compulsory insurance against injury to workers. A 1986 Tasmanian Law Reform Commission report recommended sweeping changes to the system and led

to the *Workers Rehabilitation and Compensation Act 1988*. This Act introduced many new features to the Tasmanian workers' compensation scheme, including:

- the establishment of the Workers' Compensation Board which included representatives of employers, employees, insurers and the medical profession
- extension of coverage to police officers, ministers of religion and sportsmen (restricted)
- revision of payment of the costs of treatment, counselling, retraining or necessary modifications to an injured worker's home or workplace, and
- licensing of insurers and self-insurers.

## **1995**

During 1995 amendments were made to strengthen the rehabilitation and return to work aspects of the Act, including a requirement for:

- an employer to hold an injured worker's pre-injury position open for 12 months
- an employer to provide suitable alternative duties to an injured worker for a period of 12 months
- a return to work plan to be developed if a worker is incapacitated for more than 14 days, and
- an employer with more than 20 employees to have a rehabilitation policy.

The amendments also removed a worker's right to compensation on the journey to and from work (in most circumstances) and introduced the first step-down provisions in relation to weekly benefits.

## **2000**

In response to rising costs and concerns from unions and other groups about the fairness of the scheme, a Joint Select Committee of Inquiry into the Tasmanian workers' compensation system was initiated. Its 1998 report recommended significant changes to the workers' compensation system and resulted in the establishment of the new WorkCover Tasmania Board. Many of the recommendations of this Report were incorporated into the *Workers Rehabilitation and Compensation Amendment Bill 2000* including:

- access to common law being restricted to those workers who had suffered a Whole Person Impairment of 30 per cent or more
- replacing the monetary cap on weekly payments with a 10 year limit
- without prejudice commencement of weekly payments to injured workers on receipt of a workers' compensation claim form and medical certificate
- an increase in the level of benefits to the dependants of deceased workers, and
- increases in the levels of step-downs in weekly payments.

## **2004**

In 2003 the Government initiated a review to investigate concerns that the step-downs in weekly benefits were causing hardship for some workers. The Rutherford Report was completed in March 2004 and contained a number of recommendations for both the government and the WorkCover Tasmania Board. As a result of Rutherford's report, the legislation was amended to retain the first step-down provision of 85 per cent of Normal Weekly Earnings but increase its duration to 78 weeks and reduce the impact of the second step-down from 70 per cent to 80 per cent of NWE. To offset the additional cost to employers of this change, the maximum period of entitlement was reduced from 10 to nine years. The time limit for deciding initial liability was also increased from 28 days to 12 weeks.

## **2007**

In 2007 Parliament passed the *Workers Rehabilitation and Compensation Amendment Act 2007*. The aim of this Act was to make the system fairer and provide greater certainty for all parties. The key changes included:

- improved compensation for industrial deafness. In the past some workers were unable to establish a claim for industrial deafness because their employer had failed to conduct baseline audiometric testing — the amendments rectified this

- a fairer method of calculating the rate of weekly compensation, especially for workers who have a short employment history and where the award does not include an 'ordinary-time rate of pay'
- workers' compensation coverage for jockeys
- amendments to address a Supreme Court decision that limited the ability of employers to recover compensation costs from a negligent third party
- clarification of coverage of luxury hire car drivers and consolidation of provisions relating to taxi drivers
- amendments to the work-relatedness test for injury from 'arising out of and in the course of' to 'arising out of or in the course of', so it is clear that injuries can be compensable even when symptoms only become apparent after the worker has left the relevant employment (however, to be compensable all injuries and diseases must be caused by work), and
- measures to better deal with disputes between insurers or disputes between employers.

## 2009

The *Workers Rehabilitation and Compensation Amendment Act 2009* was passed by Parliament in late 2009 and commenced on 1 July 2010. The amendments had four main purposes:

- to implement the Government's response to the Clayton Report
- to establish the legal framework for the WorkCover Return to Work and Injury Management Model
- to amend the timing and level of weekly payment step-downs, and
- to reduce the common law threshold from 30 per cent WPI to 20 per cent.

### The amendments:

- introduced a statement of scheme goals
- encourage early reporting by holding the employer liable for claims expenses until the claim is reported
- provide for the payment of counselling services for families of deceased workers
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation (with the possibility of extension on application to the Tribunal)
- increase the maximum lump sum payable to a dependant on the death of a worker to \$266 376.05 (indexed annually)
- increase weekly payments payable to a dependant child of a deceased worker from 10 per cent basic salary to 15 per cent basic salary
- increase the maximum lump sum payable for permanent impairment to \$266 376.05 (indexed annually)
- provide for the extension of weekly payments from nine years to 12 years for workers with a WPI between 15 per cent and 19 per cent, to 20 years for workers with a WPI of between 20 per cent and 29 per cent and until the age of retirement for workers with a WPI of 30 per cent or more
- amend the first step-down to 90 per cent of NWE rather than 85 per cent of NWE
- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks
- provide that the step-downs are not to apply where a worker has returned to work for at least 50 per cent of his or her pre-injury hours or duties
- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties

- reduce the threshold for access to common law damages from 30 per cent WPI to 20 per cent WPI, and
- repeal s138AB requiring a worker to make an election to pursue common law damages.

The amendments also included a range of measures that support the WorkCover Return to Work and Injury Management Model including:

- requirements for return to work and injury management plans
- obligations on employers to encourage early reporting of injuries and claims
- providing an entitlement to the payment of limited medical costs before the claim is accepted, and
- introduction of an injury management coordinator to oversee the injury management process.

## **2012 amendments**

The *Workers Rehabilitation and Compensation Amendment (Validation) Act 2012* (the 2012 Validation Act) commenced on 30 August 2012. It amended the *Workers Rehabilitation and Compensation Act 1988* (the Act) to remove any doubts about the validity of versions two and three of the Guidelines for the Assessment of Permanent Impairment (the Guidelines). The amendments also clarified that version two of the Guidelines took effect on and from 1 April 2011 to 30 September 2012 and version three of the Guidelines took effect on and from 1 October 2011. The Guidelines are used to assess the degree of WPI under both the Act and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*. Both Acts provide lump sum compensation based on the percentage of impairment. Under the Act the level of impairment is also relevant in relation to weekly compensation and for access to common law damages.

## **2013 amendments**

The *Workers Rehabilitation and Compensation Amendment (Fire-Fighters) Bill 2013* was passed by Parliament on 26 September 2013 and commenced operation on 21 October 2013.

The legislation establishes a rebuttable presumption that particular forms of cancer developed by career and volunteer firefighters are work related for the purpose of the Act. The amendments will make the process of claiming workers' compensation less cumbersome for firefighters and recognises that firefighters are at greater risk of developing certain types of cancers as a result of exposure to hazardous substances while performing firefighting activities. Under the presumption, if a career firefighter is diagnosed with one of the 12 cancers listed in the schedule, and served as a firefighter for the relevant qualifying period, it will be presumed that the cancer is an occupational disease and is therefore compensable. For volunteer firefighters there is an additional requirement that the person must have attended at least 150 exposure events within any five year period for brain cancer and leukaemia, and within 10 years for the remaining 10 cancers. This requirement ensures that the presumption only applies to volunteers who have had a significant level of exposure to the hazards of fire.

The legislation limits the operation of the presumption to diseases that occurred during the period of employment or up to 10 years post retirement or resignation as a firefighter. It will only apply to firefighters, both career and volunteer, appointed or employed under the *Fire Service Act 1979*.

The Parliament endorsed an amendment to the Bill to require a review of the legislation after 12 months of operation and every 12 months thereafter. This will provide an opportunity to assess the fairness and effectiveness of the legislation and to take into account any developments in medical research.

## **Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011**

The *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* commenced on 31 October 2011. The Act establishes a scheme for the payment of compensation to workers who develop or developed asbestos-related diseases (ARD) through exposure to asbestos during the course of their employment. A person may still come within the scope of the Act notwithstanding that he or she may have retired some time ago. Compensation may also be available to certain family members of a worker that has died from an ARD.



Compensation is not available where a worker has already received compensation for the same ARD at common law or under legislation in another jurisdiction or under the *Tasmanian Workers Rehabilitation and Compensation Act 1988* or the *Workers' Compensation Act 1927*.

To be entitled to compensation under the Act, the worker must have or have had a compensable disease. A person has a compensable disease if:

1. the person has an ARD, and
2. the contraction by the person of the disease is reasonably attributable to exposure to asbestos in the course of the person's employment as a worker during a relevant employment period in which the person's employment is connected with Tasmania.

### **Compensation under the Act**

Where the worker has an imminently fatal compensable ARD (less than two years' life expectancy from the date of correct diagnosis):

- the worker is entitled to lump sum compensation of 360 compensation units (as at 31 October 2011 a compensation unit was \$696.85. On 1 January 2016 a compensation unit increased to \$826.53) plus a further age-based payment (if under 80 years of age), and
- the worker is also entitled to have their reasonable medical expenses paid for by the scheme. However, when total medical expenses reach 125 compensation units a review is to be held to ensure that the worker is receiving the correct treatment.

Where the worker has a non-imminently fatal compensable ARD (more than two years' life expectancy from the date of correct diagnosis):

- a worker with a non-imminently fatal ARD must undergo an impairment assessment. Compensation is only payable if the worker has a WPI of 10 per cent or more
- three lump sum payments are payable to the worker depending on the degree of impairment up to a total of 360 compensation units. However, if the worker is assessed at 51 per cent or more WPI at their first assessment, they will receive all three lump sums at the same time — 360 compensation units
- the worker is also entitled to the payment of reasonable medical expenses. There is no dollar cap on the payment of these expenses
- where the worker is still employed weekly payments are payable based on incapacity, and
- where a worker has received compensation in relation to a non-imminently fatal ARD which is subsequently diagnosed as being imminently fatal or they develop a different imminently fatal ARD, they will be paid any remaining lump sum compensation up to 360 compensation units. They will also receive the age-based payment if eligible.

Members of the family:

- where a worker has died from a compensable ARD, the members of the worker's family are entitled to the same amount of lump sum compensation (not including payment of medical expenses or weekly payments) that the worker would have received had they not died. They may also be entitled to funeral expenses in relation to the deceased worker, and
- members of the family include a spouse (including a person in a significant relationship with the worker within the meaning of the *Relationships Act 2003*), and a child who is less than 22 years of age (natural child, adopted child and in some circumstances, a step-child).

Further information can be found at:

- [Worksafe Tas – Asbestos safety](#)
- [Tasmanian Asbestos Compensation – Information brochure](#)
- [Asbestos Compensation in Tasmania – A Guide](#)

## Northern Territory (NT)

The first workers' compensation statute introduced in the NT was the *Workmens' Compensation Act 1920*. Before then, the *Employer's Liability Act 1884* applied. In 1985 the name of the Act was changed to the *Workers' Compensation Act*.

A review of the legislation in 1984 resulted in the *Work Health Act 1986*, which contained provisions for both work health and safety and workers' compensation. This Act provided for a scheme which is privately underwritten, featured pension based benefits and promotes rehabilitation and an early return to work. There is no access to common law for injured workers.

### Cross-Border Amendments

'Cross border' amendments to the *Work Health Act 1986* commenced on 26 April 2007 so employers are only required to maintain a workers' compensation policy in the NT when they employ workers with a 'State of Connection' to the NT. The new cross-border arrangements reduce red tape for employers and make it easier to do business by removing the need for the majority of employers to obtain multiple workers' compensation policies for workers who are temporarily working interstate. All the other Australian states and territories have introduced cross-border provisions that allow workers to work across their borders for temporary periods, under an existing NT workers' compensation policy.

### 2007

In December 2007 the Legislative Assembly passed the *Workplace Health and Safety Act* and the *Law Reform (Work Health) Amendment Act 2007*. These Acts separated the work health and safety and rehabilitation and workers' compensation provisions of the previous *Work Health Act 1986* into the new *Workplace Health and Safety Act* and the *Workers' Rehabilitation and Compensation Act*. The rehabilitation and workers' compensation provisions of the *Work Health Act 1986* were transferred almost unchanged into the new *Workers' Rehabilitation and Compensation Act*.

### 2008

On 1 July 2008 the *Workplace Health and Safety Act* and parts of the *Workers' Rehabilitation and Compensation Act* came into effect.

Prior to taking effect however, the *Workplace Health and Safety Act* underwent a number of amendments. The amendments made relate to three areas:

- prescribed volunteers are no longer eligible for compensation for life, but instead will now be eligible for compensation similar to that provided to other injured workers
- if an employer/insurer defers a decision on liability but fails to make a decision to accept or dispute liability within the prescribed timeframe (56 days), then the employer/insurer is deemed to have accepted the claim until 14 days after the day on which the employer notifies the claimant of a decision to accept or dispute liability
- parties are now required to provide all written medical reports and other specified written material relating to the disputed matters to NT WorkSafe so they can be considered by the parties and mediator prior to the mediation process. The mediation process must now be completed within 21 days instead of 28 days, and
- GIO became an approved insurer pursuant to s121(1) of the *Workers' Rehabilitation and Compensation Act* on 30 June 2008, bringing the total number of approved insurers in the jurisdiction to five.

### 2012

The *Workers' Rehabilitation and Compensation Legislation Amendment Bill 2011* was passed in Parliament on 28 March 2012. The amendments came into effect on 1 July 2012 and are:

- the definition of 'worker' was amended to remove the reference to the Australian Business Number (ABN) and to apply the 'Results Test' so that:

A person performing work for another person will be a worker unless, in relation to the work, the following tests apply:

- The person is paid to achieve a stated outcome; and

- The person has to supply the plant and equipment or tools of trade needed to carry out the work; and
- The person is, or would be, liable for the cost of rectifying any defect in the work carried out.

The new laws also provide that a person will not be considered a 'worker' for workers' compensation purposes where there is a personal services business determination in effect for the person performing the work under the *Income Tax Assessment Act 1997 (Cth)*.

Section 65B of the Act was amended to allow access to compensation by workers injured in Australia but who reside overseas. The change will provide for weekly payments to continue if an injured worker is living outside Australia. The key elements of the change are as follows:

- For weekly compensation payments to continue the injured worker must, at not less than 3 month intervals, provide proof of identity and proof of ongoing incapacity.
- The duration of compensation payments will be a maximum of 104 weeks from when the worker starts living outside Australia.
- Flexibility will exist for applications to be made to the Work Health Court for payments beyond 104 weeks if the worker is permanently and totally incapacitated, or exceptional circumstances apply. However, any such extension by the Court must be a single period that does not exceed 104 weeks.

Section 65 of the Act was amended to provide immediate and fairer access to compensation for older workers who are injured and to reflect the Australian Government's decision to increase the qualifying age for the aged pension:

- The new legislation establishes a link to the qualifying age for the age pension under the *Social Security Act*. This will mean that the age limit in the *Workers' Rehabilitation and Compensation Act* will increase in stages between 2017 and 2023 in line with the increase in the pension age.
- In addition, the legislation establishes a transitional benefit for workers who sustain a work injury after 1 July 2012 and who at the time of injury are 63 years of age or over. These workers will be entitled to weekly compensation for a maximum period of 104 weeks or until the worker attains 67 years of age, whichever occurs first.
- It should be noted that workers who are older than 67 years when they are injured, will be entitled to weekly compensation for up to 26 weeks (no change from the past situation).

Section 49 of the Act was amended to provide certainty of the types of non-cash benefits that can be taken into account in calculating the worker's NWE for the purposes of payment of weekly compensation. These are limited to accommodation, meals and electricity.

Section 89 of the Act was amended to bring the interest rate payable on late payments of weekly compensation in line with the interest rate applicable to Supreme Court judgment debts.

Section 116 of the Act was amended to provide specific power of the Supreme Court to remit matters back to the Work Health Court in appropriate circumstances.

## 2015

The *Workers' Rehabilitation and Compensation Legislation Amendment Bill 2015*, was tabled in February 2015, passed in March 2015 and came into effect 1 July 2015. The key amendments are:

### Legislation name change

The name of the legislation has changed to 'Return to Work Act' and Regulations. The change is to reflect the primary objective of the legislation, which is to assist injured workers to return to work.

### Presumptive legislation for firefighters and volunteers

Presumptive legislation has been introduced to make it easier for firefighters and volunteer firefighters to claim workers' compensation if they are diagnosed with one of the 12 cancers listed in the legislation schedule. This change recognises that fire fighters are at greater risk of developing certain types of cancers as a result of exposure to hazardous substances while performing firefighting activities.

## **Definition of worker**

The definition of worker has been aligned with the PAYG definition used by the Australian Taxation Office (ATO). This change will make it easier for employers and workers to identify who is covered for workers' compensation.

## **Increased period of compensation for older workers**

This change recognised that Territorians are staying in the workforce beyond the pension age. The period of compensation for workers aged 67 years or older has increased from 26 weeks to 104 weeks, providing older workers with a more reasonable level of financial protection should they get injured at work.

## **Five year cap on benefits for less serious injuries**

Under this change, workers who suffer a less serious injury will be limited to five years of compensation, with a maximum of one additional year for medical and other costs. This change does not affect workers who have suffered a more serious injury and have been evaluated as having a permanent impairment of 15 per cent or higher. These more seriously injured workers depending on work capacity may be entitled to compensation payments until pension age.

## **Increase in death and funeral benefits**

The death benefit for the dependants of a deceased worker has increased from 260 times to 364 times the average weekly earnings. Based on the 2015 average weekly earnings figure of \$1417.20, the death benefit will increase from \$368 472 to \$515 860.

## **Stroke and heart attack claims**

Compensation will not be provided for stroke or heart attacks that are not caused by work. Compensation will be paid if it is established that a person's employment is the real, proximate or effective cause of the heart attack or stroke.

## **Capping the calculation for normal weekly earnings**

During the first 26 weeks when a worker is unable to work, their compensation payments are paid at their normal weekly earnings. After 26 weeks, compensation payments are paid at 75 per cent of their normal weekly earnings. There is now a cap on the calculation of a worker's normal weekly earnings after 26 weeks to 250 per cent of the average weekly earnings (\$3543). This provision will only affect very high income earners, and in such cases will provide incentive, for both the worker and the employer to focus on return to work.

## **Clarification on when compensation payments are reduced to 75 per cent of normal weekly earnings**

The legislation has been amended to clarify that compensation payments to an injured worker are reduced to 75 per cent of their normal weekly earnings after receiving a total of 26 weeks of compensation payments, rather than the period of 26 weeks from the date they were injured.

The *Return to Work Legislation Amendment Bill 2015*, was tabled in June 2015, passed in August 2015 and came into effect on 1 October 2015. The key amendments are:

## **Payment of reasonable expenses for family counselling**

This provision relates to broader counselling and support at an early stage, including in relation to a worker's family to assist the process of rehabilitation. The amount payable will be to a maximum of 1.5 times Average Weekly Earnings (this is currently equal to \$2125.80).

## **Reasonable payment for medical and rehabilitation costs during deferment**

Where a decision is made to defer liability of a claim, there is a requirement on the employer to make weekly payments of compensation and, in the case of claims for mental stress, engage in rehabilitation.

Now for all deferred claims, payments for treatment and rehabilitation during the deferral period will ensure that a worker's recovery is not compromised by lack of treatment or rehabilitation during that period. This benefit excludes hospital inpatient and associated surgical costs as well as costs of interstate evacuations.

### **Mental stress claims**

The former defence to a mental injury claim was based on reasonable administrative action and reasonable disciplinary action.

Reasonable administrative action is now replaced with management action. Management action has been defined in the legislation and will include any communication in connection with identified actions.

### **Formal notice to be provided to the worker of any pending step down or cancellation**

Formal notice is required to be provided to the worker of the pending step down (or cancellation), and the step down not to take effect until 14 days after the worker has been notified. This applies to all step downs 26 weeks, 260 weeks and 104 weeks (age).

### **Payment for legal advice at mediation**

A mediator may recommend workers receive paid legal advice of and incidental to the mediation for an amount up to one times AWE (currently \$1417.20). The entitlement is subject to approval by NT WorkSafe.

Access to a lawyer will not be provided as a right, however the mediator can recommend to the Authority that legal advice be paid for by the employer where the mediator believes it will facilitate the mediation. Examples would be a more complex matter or where a worker is mentally impaired.

### **Negotiated settlements**

There is now provision for the finalisation of the claim by the payment of a lump sum through negotiated settlement.

The legislation requires a qualifying period of 104 weeks before a negotiated settlement. This will minimise the possibility of negotiated settlements preventing effective rehabilitation.

Any settlement will involve mandatory independent legal advice funded by the employer (insurer).

Financial advice funded by the employer (insurer) is to be provided on the request of the worker.

It will not apply to claimants that are catastrophically injured and covered by the NIIS.

### **Settlement of disputed claims**

There is provision to allow for the settlement of disputed claims for compensation (whether disputed on a question of fact or law or both) and settlement of contested applications to the Work Health Court.

As with negotiated settlements, any settlement will involve mandatory independent legal advice funded by the employer (insurer) and financial advice at the request of the worker also to be funded by the employer (insurer). Any settlement within the first 104 weeks from injury will be subject to a six month cooling off period. In other words, the settlement is not binding until six months has elapsed.

### **Exclusion of journey claims**

This provision excludes claims for all journeys to and from work. Journeys that are considered to be in the course of employment are not excluded. Examples are where the journey is to or from a workplace other than the worker's normal workplace at the request of the employer or where the worker is required to work outside their normal hours of work and is paid for the time taken for the journey to or from work.

### **Enforcement of compulsory insurance provisions by ability to stop work**

If an employer does not hold the necessary workers' compensation insurance policy there is the power to order the employer to stop work until such time as the situation is rectified.

### **Involvement of support persons at mediation**

Mediators will now be able to consent to a person, who is not a legal representative, to represent a claimant during the mediation.

If the mediator considers that a claimant is not best equipped to fully present their own case and that the mediation will be best facilitated if assistance is provided by an advocate, then the mediator may consent to the claimant being represented by an advocate.

## Improving return to work outcomes

To assist in improving return to work outcomes the legislation includes the following:

- The employer must produce a return to work plan, developed and agreed between the employer and worker for any injury that involves incapacity of more than 28 days.
- An employer will be unable to dismiss a worker for a period of six months following the date of injury unless during that period the worker ceases to be totally or partially incapacitated because of the injury.
- This is not to apply if the employer proves the worker was dismissed on the grounds of serious and wilful misconduct.

## Latest Development

The Northern Territory has adopted the recommended list from the report “Deemed Diseases in Australia” as commissioned by Safe Work Australia, effective 1 July 2016 – see Return to Work Regulations, Schedule 2.

## Australian Capital Territory (ACT)

In 1951 the ACT introduced the *Workmens’ Compensation Ordinance 1951* to repeal the original 1946 Ordinance. With the advent of self-government in the ACT on 11 May 1989, the 1951 Ordinance became the *Workmens’ Compensation Act 1951* and from 22 January 1992 it became the *Workers’ Compensation Act 1951*. Significant amendments were made by the *Workers’ Compensation (Amendment) Act 1991* to the *Workers’ Compensation Act 1951*, following reviews of the system in 1984, 1987 and 1990.

The *Workers’ Compensation Act 1951* was significantly amended in 2002 to create a workers’ compensation scheme based upon the principles of early rehabilitation and return to safe and durable work for injured workers. The *Workers’ Compensation Amendment Act 2001* introduced a number of new elements to ensure that employers, insurers, treatment providers, and the injured worker were equally obliged to participate in personal injury plans, claims were dealt with expediently and statutory benefits were aligned with the Scheme’s return to work goals.

An advisory committee to the responsible Minister was also established to look at the ongoing operation of the scheme and regulations. In 2006 further amendments were made to the *Workers’ Compensation Act 1951* to allow certain categories of carers to be deemed as ‘workers’ under the Act and to create a Default Insurance Fund, which superseded the previous Nominal Insurer and Supplementation Fund.

Other inconsequential amendments have been made through the *Justice and Community Safety Legislation Amendment Act 2006* and the *Statute Law Amendment Act 2007* (no. 2). Also, for infringement notice offences under the Act, see the *Magistrates Court (Workers’ Compensation Infringement Notices) Regulation 2006*.

During 2007 a review of the Scheme was conducted. The purpose of the review was to evaluate the success of the earlier reforms and identify the Scheme’s ongoing cost drivers. The Review team made over 50 recommendations for improvement to the ACT Scheme consistent with the objectives underpinning the earlier reform.

## The Commonwealth

In 1912, the Commonwealth introduced the *Commonwealth Workmens' Compensation Act 1912* to provide compensation for Commonwealth workers. Before then, compensation was paid to widows and orphans of deceased Commonwealth officers under the *Officers' Compensation Acts of 1908, 1909 and 1912* via determinations of Parliament.

In 1930, the *Commonwealth Workers' Compensation Act 1930* was enacted and provided a more extensive system of compensation for Commonwealth workers. In 1971 the *Compensation (Commonwealth Employees) Act 1971* repealed the 1930 Act.

The introduction of the SRC Act in 1988 was the most significant reform in the Commonwealth jurisdiction as it introduced a focus on rehabilitation, which was seen as the best way to reduce spiralling costs of compensation. It included incentives through tiered income support rates for employees, gave employers statutory powers and responsibilities for rehabilitation and was paired with more reviews and investigations of claims. It also replaced lump sum compensation methodology from assessment against a limited table of maims to a Guide prepared with comprehensive criteria assessing impairment based on the WPI concept.

In 1992, the SRC Act was amended to enable Commonwealth Authorities and certain corporations to apply to the Safety, Rehabilitation and Compensation Commission for a licence to accept liability for workers' compensation and to manage workers' compensation claims. The first licensees were Telstra Corporation Ltd and Australian Postal Corporation Ltd followed by a number of government business enterprises undergoing privatisation such as Australian Defence Industries (later ADI Limited and now Thales Australia), Commonwealth Serum Laboratories (now CSL Limited) and National Rail Corporation (later Pacific National (ACT) Limited, now Asciano).

In 2005 Optus Administration Pty Ltd was the first licence granted to a corporation that had no previous connection to the Commonwealth other than that it was in competition with Telstra. By December 2012, there were 30 licensees in the Comcare scheme, including banks such as National Australia Bank and the Commonwealth Bank, transport companies such as Linfox Australia, Border Express, Australian air Express and K&S Freighters, and construction or industrial companies such as John Holland and Visionstream Pty Ltd.

On 11 December 2007, the Federal Government placed a moratorium on new applications from private corporations wanting to move to the Comcare workers' compensation scheme. However, companies that had already been declared eligible to apply for a self-insurance licence by the previous government were not affected by the moratorium. This moratorium was lifted in December 2013.

The Commonwealth first became involved in workers' compensation arrangements for seafarers with the passage of the *Seamens' Compensation Act 1911*. Despite a number of minor amendments, the 1911 arrangements remained in place until 1992. In 1988, the Seamens' Compensation Review conducted by Professor Henry Luntz recommended a number of changes to the *Seamens' Compensation Act* to modernise it and to ensure consistency with arrangements being considered for Commonwealth employees. The *Seafarers' Rehabilitation and Compensation Act 1992* sets out similar provisions to those applying to Commonwealth employees under the Comcare scheme.

In 2004, the MRCA 2004 was enacted to provide a system of compensation for current and former members of the ADF and their dependants, with service on or after 1 July 2004. Service prior to that date is covered by the SRC Act and the *Veterans' Entitlements Act 1986* (VEA).

The Military Rehabilitation and Compensation Commission (MRCC) regulates the MRCA and SRC Act (for ADF members) schemes and, with the assistance of the Department of Veterans' Affairs (DVA), administers them. The types of compensation provided under the MRCA are based on the SRC Act and VEA provisions.

Under the MRCA, DVA provides rehabilitation, treatment and compensation for current (in conjunction with the relevant Service Chief) or former ADF members who sustain a mental or physical injury or



contract a disease as a result of military service rendered on or after 1 July 2004. DVA also provides compensation to their eligible dependants if their death, on or after 1 July 2004, is related to that service, if they were entitled to maximum permanent impairment compensation or had been eligible for a Special Rate Disability Pension.

DVA has a focus on providing rehabilitation services to help injured or sick personnel make as full a recovery as possible and, if possible, return to their normal employment. DVA also increases the amount of compensation available in the event of severe service-related injury, disease or death.

Note: A reference to the Commonwealth in this publication does not include Seacare or DVA unless specifically stated.

### **Review of the SRC Act 1988**

On 24 July 2012, a review of the SRC Act review was announced. The SRC Act review was undertaken in two parts — a review of the legislative provisions of the SRC Act and a review of the performance, governance and financial framework of the Comcare scheme.

On 30 May 2013, the then Minister released the [report](#) from the [review of the SRC Act](#). The report listed over 100 recommendations for modernising the SRC Act and Comcare scheme.

### **Self-insurance changes**

On 2 December 2013, the Minister for Employment announced the lifting of a moratorium on new self-insured licensees entering the Comcare scheme. This enables private corporations to seek a declaration of eligibility to apply to self-insure under the SRC Act. A number of new self-insurers have entered the Comcare scheme since that date.

Note: See Chapter 1

### **Seacare coverage**

On 22 December 2014, in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the Aucote decision), the Full Court of the Federal Court held that the application provisions of the [Seafarers Act](#) operated to apply the Seafarers Act to seafarers employed by a trading, financial or foreign corporation on a prescribed ship, including ships engaged in intrastate trade. This is a substantially broader coverage than what has been historically understood by maritime industry regulators and participants.

While the decision did not specifically address the application provisions of the [OHS \(MI\) Act](#), these provisions are similar to those of the Seafarers Act.

The [Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015](#) (the Act) was introduced to address the consequences of the Aucote decision. The Act commenced on 26 May 2016 and clarified the application of the Seafarers Act and OHS(MI) Act up until the date of commencement (26 May 2016). As such, the Act, as passed by the Parliament, only addresses the historical application of the Seacare scheme.

To address the coverage of the scheme going forward, the Seacare Authority has issued two multi-ship exemptions under section 20A of the Seafarers Act that (generally) exempt the employment of employees on any ship listed in those exemptions from the Seafarers Act if the ship is engaged in intrastate trade.

The former Assistant Minister for Employment also made two Ministerial Declarations in response to the Aucote decision: the [Seafarers Rehabilitation and Compensation \(Prescribed Ship — Intra-State Trade\) Declaration 2015 \(No. 2\)](#) and the [Occupational Health and Safety \(Maritime Industry\) \(Prescribed Ship or Unit — Intra-State Trade\) Declaration 2015 \(No. 2\)](#). These declarations provide that certain ships only engaged in intra-state trade are not prescribed ships (or units) for the purposes of the Seafarers Act and OHS (MI) Act. The declarations are due to cease in 2017.



## New Zealand

The first example of periodic earnings-related payments in New Zealand had its origins in the *Workers' Compensation for Accidents Act 1900*. This was the first in a long line of legislation that eventually prompted Sir Owen Woodhouse's 1967 Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry (the Woodhouse Report). This led to the *Accident Compensation Act 1972*, which was updated in 1982 and replaced by a substantially amended scheme in 1992.

In 1999 elements of private insurance competition were introduced with the *Accident Insurance Act 1998*. This was reversed in 2001 with the *Injury Prevention, Rehabilitation and Compensation Act* (IPRC Act) renamed the *Accident Compensation Act 2001* (AC Act).

### Recent Developments (New Zealand)

A 2007 legislative amendment to the *IPRC Act 2001* established a new merged Work Account that incorporated the Self-Employed Work Account and Employers' Account and their respective reserves and liabilities. The *Injury Prevention, Rehabilitation and Compensation (Employer Levy) Regulations* and the *Injury Prevention, Rehabilitation and Compensation (Self-Employed Work Account Levies) Regulations* were replaced with a single set of Levy Regulations covering levies for employers and self-employed.

Also in the *2007 Amendment Act*, the Medical Misadventure Account was renamed as Treatment Injury to reflect the fact that a 2005 amendment had replaced medical misadventure with the less restrictive concept of 'treatment injury'.

## Appendix 2

### Diseases

Compared to work-related injuries, it is more difficult to prove that a disease was contracted in, or caused by, particular employment. In recognition of this, all jurisdictions except Queensland\* and DVA have enacted special provisions in their workers' compensation legislation which deem specified occupational diseases as being caused by specified work related activities.

The effect of these provisions is to reverse the onus of proof. A worker with the disease who has been exposed to the relevant exposure in the course of their work is assumed to have developed that disease because of the exposure unless there is strong evidence to the contrary. Diseases that are not included on the jurisdictional prescribed lists can still be the subject of a workers' compensation claim through the normal approach, where the reverse onus of proof would not apply. Table 1 provides a jurisdictional comparison of these lists.

\* with the exception of certain firefighters with prescribed diseases.

**Appendix Table 1: Occupational diseases as prescribed at 30 September 2016 — Occupational diseases caused by agents arising from work activities**

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Chemical agents</b>									
<b>Alcohols, glycols or ketones</b>	—	—	Diseases caused by alcohols, glycols or ketones	—	Poisoning by alcohols, glycols or ketones	Acute poisoning/toxicity	—	Diseases caused by alcohols, glycols or ketones	—
<b>Antimony</b>	—	—	—	Antimony poisoning or its sequelae (antimony or its preparations or compounds).	—	Acute poisoning/toxicity.	Poisoning by antimony or a compound of antimony; any of the sequelae of such a poisoning	—	—
<b>Arsenic</b>	Arsenic poisoning by arsenic or its compounds, and its sequelae (Schedule 1 of the Workers' Compensation Regulation 2016)	Arsenic poisoning or its sequelae (arsenic or its preparations or compounds)	Arsenic poisoning (arsenic or its preparations or compounds)	Arsenic poisoning or its sequelae (arsenic or its preparations or compounds)	Poisoning by arsenic or its toxic compounds	Acute poisoning/toxicity. Lung malignancy, Peripheral neuropathy	Poisoning by arsenic or a compound of arsenic; any of the sequelae of such a poisoning	Diseases caused by arsenic or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by arsenic or its toxic compounds
<b>Asphyxiants: carbon monoxide, hydrogen sulphide, hydrogen cyanide</b>	—	Carbon monoxide poisoning	Poisoning by cyanogen compounds. Poisoning by carbon monoxide. Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulphide	Carbon monoxide poisoning or its sequelae	Poisoning by asphyxiants: carbon monoxide, carbon dioxide, hydrogen sulphide, hydrogen cyanide, nitrogen	Acute poisoning/toxicity. Occupational asthma	Poisoning by carbon monoxide. Poisoning by hydrogen cyanide or a compound of hydrogen cyanide. Poisoning by hydrogen sulphide	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide	—
<b>Benzene</b>	Poisoning by benzene or its homologues, their nitro and amido-derivatives, and its sequelae (Schedule 1 of the Workers' Compensation Regulation 2016)	Poisoning by benzol, its homologues, or its nitro and amido-derivatives, and the sequelae of these poisonings	Poisoning by benzol. Poisoning by a homologue of benzol	Benzene poisoning (i.e. poisoning by benzene or its homologues or their nitro and amido-derivatives) and its sequelae	Poisoning by benzene or its toxic homologues	Acute poisoning/toxicity. Leukaemia (excluding chronic lymphatic leukaemia)	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning	Diseases caused by benzene or its toxic homologues	Diseases of a type generally accepted by the medical profession as caused by benzene or its toxic homologues

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Beryllium</b>	—	—	—	—	Poisoning by beryllium or its toxic compounds	Acute poisoning/toxicity Pneumoconiosis Lung malignancy	Poisoning by beryllium or a compound of beryllium; any of the sequelae of such a poisoning	Diseases caused by beryllium or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by beryllium or its toxic compounds
<b>Cadmium</b>	—	—	—	—	Poisoning by cadmium or its toxic compounds	Acute poisoning/toxicity Lung malignancy	Poisoning by cadmium or a compound of cadmium; any of the sequelae of such a poisoning	Diseases caused by cadmium or its toxic compounds	Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes
<b>Carbon disulphide</b>	—	Carbon bisulphide poisoning	Poisoning by carbon bisulphide	—	Poisoning by carbon disulphide	Acute poisoning/toxicity. Peripheral neuropathy	Poisoning by carbon bisulphide	Diseases caused by carbon disulphide	Diseases of a type generally accepted by the medical profession as caused by carbon bisulfide or its toxic compounds
<b>Chromium</b>	—	Chrome ulceration or its sequelae (chromic acid, bichromate of ammonium, potassium or sodium or their preparations)	Chrome ulceration (chromic acid or bichromate of ammonium, potassium or sodium or their preparations)	Chrome ulceration or its sequelae (chromic acid, bichromate of ammonium, potassium or sodium or their preparations)	Poisoning by chromium or its toxic compounds	Acute poisoning/toxicity. Lung malignancy (chromium VI)	Chrome ulceration of skin or mucous membrane; any of the sequelae of such an ulceration (chromic acid, bichromate of ammonium, potassium or sodium or their preparations)	Diseases caused by chromium or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by chrome or its toxic compounds
<b>Copper</b>	—	Copper poisoning or its sequelae (copper or its preparations or compounds)	—	Copper poisoning or its sequelae (copper or its preparations or compounds)	—	Acute poisoning/toxicity	Poisoning by copper or a compound of copper; any of the sequelae of such a poisoning	—	Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes
<b>Ethylene oxide</b>	—	—	—	—	—	Acute poisoning/toxicity	—	—	Diseases of a type generally accepted by the medical profession as caused by ethylene oxide
<b>Fluorine</b>	—	—	Poisoning by fluorine	—	Poisoning by fluorine or its toxic compounds	Acute poisoning/toxicity	—	Diseases caused by fluorine or its toxic compounds	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Halogen derivatives of aliphatic or aromatic hydrocarbons</b>	Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series (Schedule 1 of the Workers' Compensation Regulation 2016)	Poisoning by the halogen derivatives of hydrocarbons of the aliphatic series	Poisoning by a halogen derivatives of a hydrocarbon of the aliphatic series	Halogen poisoning (ie: poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its sequelae	Poisoning by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons	Acute poisoning/toxicity	Poisoning by a halogen derivate of a hydrocarbon of the aliphatic series	Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons	Diseases of a type generally accepted by the medical profession as caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series
<b>Lead</b>	Poisoning by lead, its alloys or compounds, and its sequelae. (Schedule 1 of the Workers' Compensation Regulation 2016)	Lead poisoning or its sequelae (lead or its preparations or compounds).	Lead poisoning (lead, or its preparations or compounds).	Lead poisoning or its sequelae (lead or its preparations or compounds).	Poisoning by lead or its toxic compounds.	Acute poisoning/toxicity. Peripheral neuropathy	Poisoning by lead or a compound of lead; any of the sequelae of such a poisoning	Diseases caused by lead or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by lead or its toxic compounds
<b>Manganese</b>	—	—	—	—	Poisoning by manganese or its toxic compounds	Acute poisoning/toxicity. Parkinson's disease	Poisoning by manganese or a compound of manganese; any of the sequelae of such a poisoning	Diseases caused by manganese or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by manganese or its toxic compounds
<b>Mercury</b>	Poisoning by mercury or its amalgams or compounds, and its sequelae (Schedule 1 of the Workers' Compensation Regulation 2016)	Mercury poisoning or its sequelae (mercury or its preparations or compounds)	Mercury poisoning (mercury, or its preparations or compounds)	Mercury poisoning or its sequelae (mercury or its preparations or compounds)	Poisoning by mercury or its toxic compounds.	Acute poisoning/toxicity. Peripheral neuropathy	Poisoning by mercury or a compound of mercury; any of the sequelae of such a poisoning	Diseases caused by mercury or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by mercury or its toxic compounds
<b>Nitro and amino-derivatives of benzene</b>	Poisoning by benzene or its homologues, their nitro and amido-derivatives, and its sequelae (Schedule 1 of the Workers' Compensation Regulation 2016)	Poisoning by benzol, its homologues, or its nitro and amido derivatives, and the sequelae of these poisonings	Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others)	Benzene poisoning (i.e. poisoning by benzene or its homologues or their nitro and amido-derivatives) and its sequelae	Poisoning by nitro or amino or chloro-derivatives of benzene or its derivatives	Acute poisoning/toxicity	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning	Diseases caused by toxic nitro and amino-derivatives of benzene or its homologues	Diseases of a type generally accepted by the medical profession as caused by nitro and amido-toxic derivatives of benzene or its homologues
<b>Nitroglycerine or other nitric acid esters</b>	—	—	—	—	Poisoning by nitroglycerine or other nitric acid esters	Acute poisoning/toxicity	Diseases caused by nitroglycerine or other nitric acid esters	Diseases caused by nitroglycerine or other nitric acid esters	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Organic solvents</b>	—	—	—	—	—	Acute poisoning/toxicity. Peripheral neuropathy	—	—	Chronic solvent-induced encephalopathy diagnosed as caused by organic solvents, particularly styrene, toluene, xylene, trichloroethylene, methylene chloride or white spirit  Peripheral neuropathy diagnosed as caused by organic solvents such as n-hexane, carbon disulphide, or trichloroethylene, pesticides such as organophosphates; acrylamide
<b>Oxides of nitrogen</b>	—	—	Poisoning by nitrous fumes	Nitrous fumes poisoning and its sequelae	Poisoning by nitrous fumes	Acute poisoning/toxicity	Poisoning by an oxide of nitrogen; any of the sequelae of such a poisoning	—	—
<b>Phosphorus</b>	Phosphorus poisoning by phosphorous or its compounds, and its sequelae (Schedule 1 of the Workers' Compensation Regulation 2016)	Phosphorous poisoning or its sequelae (phosphorous or its preparations or compounds)	Phosphorus poisoning (phosphorus, or its preparations or compounds)	Phosphorus poisoning or its sequelae (phosphorus or its preparations or compounds)	Poisoning by phosphorus or its toxic compounds	Acute poisoning/toxicity	Poisoning by phosphorus or a compound of phosphorus; any of the sequelae of such a poisoning	Diseases caused by phosphorus or its toxic compounds	Diseases of a type generally accepted by the medical profession as caused by phosphorus or its toxic compounds
<b>Tungsten</b>	—	—	—	—	—	Acute poisoning/toxicity	—	—	Diseases of a type generally accepted by the medical profession as caused by tungsten
<b>Zinc</b>	—	Zinc poisoning or its sequelae (zinc or its preparations or compounds)	—	Zinc poisoning or its sequelae (zinc or its preparations or compounds)	—	Acute poisoning/toxicity	Poisoning by zinc or a compound of zinc; any of the sequelae of such a poisoning	—	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Other chemical agent at work not mentioned in the preceding terms</b>	—	—	Arsenic, phosphorus, lead, mercury or other mineral poisoning (arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds)	Primary epitheliomatous cancer of the skin from work involving handling of tar, pitch, bitumen, mineral oil, paraffin or the compounds products or residues of those substances	—	Hexane, osmium, ozone, pesticides consisting of organophosphate and organochlorine compounds, herbicides and related compounds, pharmaceutical agents, phosgene, selenium, styrene, thallium, tin, toluene, vanadium, methylene chloride, benzoquinone and other corneal irritants and other less common, specific substances known to result in poisoning/toxicity	—	—	—
<b>Hearing impairment caused by noise</b>	—	—	Noise induced hearing loss	Noise induced hearing loss	Industrial deafness caused by workplace deafness <a href="#">S72A</a>	Hearing impairment caused by noise above 85dB(A)	—	—	—
<b>Ionizing radiations</b>	Pathological manifestations of a kind that are due to or contributed to by: (a) radium and other radioactive substances, (b) X-rays. (Schedule 1 of the Workers' Compensation Regulation 2016)	Pathological manifestations due to radium and other radioactive substances, or X-rays	Pathological manifestations due to: a) radium and other radioactive substances b) X-rays, or c) Lasers	Pathological manifestations due to: a) radium and other radioactive substances, or b) X-rays	Disease caused by ionising radiations.	Malignancy of salivary gland, oesophagus, stomach, colon and rectum, nasal cavity and para-nasal cavity, lung, bone skin (non-melanoma), breast (female), kidney, bladder, brain, thyroid, leukaemia(excluding chronic lymphatic leukaemia and non-Hodgkin's lymphoma	Pathological condition caused by: a) radium or other radioactive substance, or b) X-rays	Diseases caused by ionising radiations	Diseases of a type generally accepted by the medical profession as caused by ionising radiations
<b>Vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves</b>	—	—	Effects of vibration (including Raynaud's phenomenon and dead hand)	—	—	Raynaud's disease	—	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)	Hand-arm vibration syndrome diagnosed as caused by hand and/or arm vibration

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
Work in compressed or decompressed air	—	—	Compressed air illness	—	Compressed air illness including avascular necrosis (underground, underwater, high altitude)	—	—	Diseases caused by work in compressed air	—
Diseases caused by other physical agents at work not mentioned in the preceding terms	—	—	Effects of insolation (prolonged exposure to sunlight) Effects of electrical currents	—	—	Bursitis at elbow or knee – all work involving prolonged external friction pressure or repetitive motion at or about the elbow or the knee	—	—	—
<b>Biological agents and infectious or parasitic diseases</b>									
Anthrax	Anthrax infection. (Schedule 1 of the Workers' Compensation Regulation 2016)	Anthrax	Anthrax	Anthrax	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible	Anthrax	Anthrax	—	Anthrax infection
Brucellosis	Brucellosis. (Schedule 1 of the Workers' Compensation Regulation 2016)	Brucellosis (Undulant fever)	—	Brucellosis	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible. Note — <a href="#">s25(2)(b)</a> provides that compensation is not payable in respect of the disease known as undulant fever or brucellosis unless an accredited medical practitioner has certified in writing that he is satisfied as to the result of the pathological examination of the blood that the worker is suffering from that disease.	Brucellosis	—	—	Brucellosis diagnosed as caused by working with animals or their carcasses



	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Hepatitis viruses</b>	—	—	Hepatitis B	—	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Hepatitis A and B & C	—	—	—
<b>Human immunodeficiency virus (HIV)</b>	—	—	HIV (s31F)	—	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	HIV/A.I.D.S	—	—	—
<b>Leptospirosis</b>	Leptospirosis. (Schedule 1 of the Workers' Compensation Regulation 2016)	Leptospirosis	Leptospirosis	Leptospirosis	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible	Leptospirosis	—	—	Leptospirosis diagnosed as caused by working with animals or their carcasses
<b>Diseases caused by other biological agents at work not mentioned in the preceding terms</b>	Q fever. (Schedule 1 of the Workers' Compensation Regulation 2016)	Q fever as caused by the micro-organism <i>Coxiella burnetii</i> (also known as <i>Rickettsia burnetii</i> ), in any of its clinical manifestations [abattoirs, slaughterhouses, knackeries]. Septic poisoning or its sequelae (from meat, meat products, animal products)	Communicable diseases. Endemic typhus. Scrub typhus. Brill's disease. Swineherds disease. Plague. Mite dermatitis. Scrub itch. AIDS (s31F)	Ankylostomiasis (mining). Q fever. Septic poisoning or its sequelae (from meat, meat manufacture, meat products, animal by-products with the trade of butcher or slaughterman)	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible	Q fever, Orf, tuberculosis	Ankylostomiasis (mine). Q fever [exposure to <i>Coxiella burnetii</i> ]	Occupational infectious or parasitic diseases (health or laboratory work, veterinary work, handling of animals)	Orf diagnosed as caused by working with animals or their carcasses. Streptococcus suis diagnosed as caused by working with animals or their carcasses
<b>Asthma caused by recognised sensitizing agents or irritants inherent to the work process</b>			Occupational asthma caused by sensitizing agents or irritants inherent to the work process	Asthma or asthmatic attacks (dust of red pine, western red cedar, blackwood, flour, flour dust)	An asthmatic condition caused by fumes resulting from the primary aluminium smelting process	Occupational asthma (excluding pre-existing asthma worsened due to exposure to workplace irritants)		Occupational asthma caused by sensitizing agents or irritants	Occupational asthma diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, isocyanates, certain wood dusts, flour dusts, animal proteins, enzymes and latex

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal or sugar cane</b>	Byssinosis Bagassosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust	—	—	Byssinosis	—	Bronchopulmonary diseases caused by cotton dust (byssinosis), or flax, hemp or sisal dust	Byssinosis diagnosed as caused by working with cotton, flax, hemp, or sisal dust
<b>Bronchopulmonary diseases caused by hard-metal dust</b>	Hard metal pneumoconiosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	—	—	—	Pneumoconiosis	—	Bronchopulmonary diseases caused by hard-metal dust	—
<b>Chronic obstructive pulmonary diseases caused by inhalation of coal dust, dust from stone quarries, wood dust, dust from cereals and agricultural work, dust in animal stables, dust from textiles, and paper dust arising from work activities</b>	Coal dust pneumoconiosis Farmer's lung (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	—	—	—	coal workers' pneumoconiosis. byssinosis silicosis	—	—	Chronic obstructive pulmonary disease diagnosed as caused by coal, silica, cotton dust or grain dust
<b>Diseases of the lung caused by aluminium</b>	Aluminosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	—	—	An asthmatic condition caused by fumes resulting from the primary aluminium smelting process	Pneumoconiosis	—	—	—
<b>Extrinsic allergic alveolitis caused by the inhalation of organic dusts or microbially contaminated aerosols</b>	—	—	Extrinsic allergic alveolitis caused by the inhalation of organic dusts	—	—	Extrinsic allergic alveolitis – all work involving damp material of biological origin, such as mouldy hay, straw, grain and feathers	—	Extrinsic allergic alveolitis and its sequelae (exposure to the inhalation of organic dusts)	Extrinsic allergic alveolitis diagnosed as caused by work involving the inhalation of organic dusts

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Pneumoconioses caused by fibrogenic mineral dust (silicosis, anthraco-silicosis, asbestosis)</b>	Asbestosis Silicosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	Asbestosis, with or without mesothelioma Silicosis, with or without pulmonary tuberculosis	—	Asbestosis (any work involving exposure to inhalation of asbestos fibres)	Diseases caused by occupational exposure to asbestos are covered by the <i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> from 31 Oct 2011	Asbestosis, silicosis	Asbestosis. Pneumocon-iosis (matter)	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor causing the resultant incapacity, impairment or death	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor causing the resultant incapacity or death
<b>Pneumoconioses caused by non-fibrogenic mineral dust</b>	Talcosis Berylliosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	Pneumoconiosis (mineral dusts)	Pneumonconiosis, including silicosis (any work involving mining, quarrying, cutting, crushing, grinding or pushing stone or melting, grinding or polishing metal)	—	All work exposures known to occasionally cause pneumoconiosis such as beryllium, tin, iron oxide, barium, aluminium, cobalt and tungsten	Pneumoconiosis (matter)	—	Pneumoconiosis diagnosed as caused by tin, iron oxide, barium or cobalt
<b>Silicotuberculosis</b>	Silico-tuberculosis (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	Silicosis, with or without pulmonary tuberculosis	—	—	Pneumoconioses caused by silica dust (silicosis, anthracosilicosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death from silico-tuberculosis	—	—	Silico-tuberculosis	Silico-tuberculosis
<b>Other respiratory disease not mentioned in the preceding items</b>	Asbestos related pleural diseases Asbestos induced carcinoma Mesothelioma Farmers lung (Schedule 1 of the <i>Workers' Compensation (Dust Diseases) Act 1942</i> )	—	Diffuse pleural fibrosis Mesothelioma	—	—	Mesothelioma	—	—	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Allergic contact dermatoses and contract urticaria caused by other recognised allergy-provoking agents arising from work activities not included in other items</b>	—	—	—	—	—	contact dermatitis (irritant and allergenic) – All work involving sensitising agents or irritants	—	—	Occupational allergic contact dermatitis diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, nickel and other metals, rubber additives, resins, petroleum distillates, solvents, soaps, detergents, and plant allergens
<b>Vitiligo caused by other recognised agents arising from work activities not included in other items</b>	—	—	—	—	—	Occupational vitiligo – All work involving para-tertiary-butylphenol, para-tertiary-butylcatechol, para-amylphenol, hydroquinone, or the monobenzyl or monobutyl ether of hydroquinone	—	—	Vitiligo diagnosed as caused by para-tertiary-butylphenol, para-tertiary-butylcatechol, para-amylphenol, hydroquinone, or the monobenzyl or monobutyl ether of hydroquinone
<b>Other skin diseases caused by physical, chemical or biological agents at work not included in other items</b>	—	Dermatitis venenata (contact with vegetable or mineral matter)	Any dematosis, ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn	Dermatitis (dust of blackwood)	—	—	—	Skin diseases caused by physical, chemical or biological agents at work not included under other items	—
<b>Chronic tenosynovitis of hand and wrist due to repetitive movements, forceful exertions and extreme postures of the wrist</b>	—	Tenosynovitis (inflammation of the tendon sheaths of the hand, wrists, forearm or elbow)	—	—	—	—	Tenosynovitis (hand, forearm)	—	—

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
<b>Olecranon bursitis due to prolonged pressure of the elbow region</b>	—	Subcutaneous cellulitis or acute bursitis over the elbow (mining)	—	—	—	Bursitis of elbow	—	—	—
<b>Prepatellar bursitis due to prolonged stay in kneeling position</b>	—	Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee) (mining)	—	—	—	Bursitis of knee	—	—	—

<sup>1</sup> Includes Seacare.

**Appendix Table 2: Occupational diseases as prescribed at 30 September 2016 — Occupational cancer**

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
<b>Cancer caused by the following agents</b>									
<b>Asbestos</b>	Asbestos induced carcinoma <sup>2</sup> Asbestosis <sup>2</sup> Asbestos related pleural diseases <sup>2</sup> Mesothelioma <sup>2</sup> .	Asbestosis, with or without mesothelioma	Mesothelioma Lung cancer Diffuse pleural fibrosis	Asbestosis (any work involving exposure to inhalation of asbestos fibres)	Primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or of the peritoneum  Note — Diseases caused by occupational exposure to asbestos are covered by the <i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> from 31 Oct 2011	Lung cancer, mesothelioma and Larynx, lung and ovarian cancer caused by asbestos	Asbestosis, mesothelioma	Lung cancer or mesotheliomas caused by asbestos	Lung cancer or mesothelioma diagnosed as caused by asbestos
<b>Beta-naphthylamine</b>	—	—	—	—	—	Bladder cancer (2-naphthylamine)	—	—	Bladder cancer diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N,N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons
<b>Bis chloromethyl ether (BCME)</b>	—	—	—	—	—	Lung cancer	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot
<b>Coal tars, coal tar pitches or soots</b>	—	—	—	—	—	Lung, skin and bladder cancer – All work involving polycyclic aromatic	Primary epitheliomatous cancer of the skin (exposure to or	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
						hydrocarbons	contact with tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances)		chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot
<b>Coke oven emissions</b>	—	—	—	—	—	Lung, skin and bladder cancer – All work involving polycyclic aromatic hydrocarbons	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot
<b>Nickel compounds</b>	—	—	—	—	—	—	—	—	Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot
<b>Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances</b>	Primary epitheliomatous cancer of the skin (Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances)	Primary epitheliomatous cancer of the skin (exposure to tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of these substances)	Epitheliomatous cancer or ulceration of skin or the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of those substances	Primary epitheliomatous cancer of the skin due to handling or use of tar, pitch, bitumen, mineral oil, paraffin or compounds, products, or residues of those substances	Primary squamous cell carcinoma of skin due to exposure to tar, pitch, mineral oil, anthracene or compounds, products, or residues of these substances	Lung, skin and bladder cancer – All work involving polycyclic aromatic hydrocarbons	Primary epitheliomatous cancer of the skin (exposure to tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances)	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products, or residues of these substances	Primary epitheliomatous cancer of the skin diagnosed as caused by tar, pitch, bitumen, mineral oil, anthracene or the compounds, products, or residues of these substances  Primary epitheliomatous cancer of the skin diagnosed as caused by shale oil
<b>Vinyl chloride</b>	—	—	—	—	—	Liver cancer	—	—	Angiosarcoma of the liver diagnosed as caused by vinyl chloride monomer.

	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth1	New Zealand
Wood dust	—	—	—	Asthma or asthmatic attacks (dust of red pine, western red cedar, blackwood, flour, flour dust)	—	Cancer of nasopharynx and nasal cavity and paranasal sinuses	—	—	Sino-nasal carcinoma diagnosed as caused by working with wood dust  Hodgkin's lymphoma diagnosed as caused by wood dust
Cancer caused by other agents at work not mentioned in the preceding items	—	—	—	<a href="#">Schedule 9</a> amendment 23 of the <i>Return to Work Act 2014</i> amended section 31 of the <i>Workers Rehabilitation and Compensation Act 1986</i> to remove the qualifying periods applicable to volunteer firefighters with prescribed cancers (Schedule 2A). This amendment applies retrospectively i.e. on or after 1 July 2013	—	Nasopharynx and nasal cavity and paranasal sinuses caused by work involving formaldehyde, leather dust, nickel  Liver – hepB and C exposure  Larynx – strong inorganic acid  Lung – diesel engine exhaust, environmental tobacco smoke, radon-222, silica dust and soot  Skin – solar radiation, polychlorinated biphenols  Kidney – trichloroethylene  Bladder – benzidine, cyclophosphamide, ortho toluidine  Leukaemia – butadiene, cyclophosphamide, formaldehyde, hepC virus exposure  See return to Work Regulations, reg 5B for occupational cancers and qualifying periods for	—	s7(8) and s7(9) of the SRC 1988 provide the legal presumption that if an employee has been employed as a firefighter for a certain period before being diagnosed with one of the prescribed cancers in s7(8); and has been exposed to the hazards of a fire scene during that period, their employment has contributed to a significant degree to the contraction of the disease  The above provisions provide a separate mechanism for firefighters to access compensation under the SRC Act.	Naso-pharyngeal carcinoma diagnosed as caused by formaldehyde  Laryngeal carcinoma diagnosed as caused by sulphuric acid mists or organic solvents  Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica or soot  Bladder cancer diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N,N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons



	New South Wales	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth <sup>1</sup>	New Zealand
						firefighters			
<b>Miners' nystagmus</b>	—	—	—	—	Nystagmus (any work in or about a mine)	—	—	—	
<b>Legislation and/or instrument</b>	Workers Compensation Regulation 2016 — Schedule 1  <i>Workers' Compensation (Dust Diseases) Act 1942</i> — Schedule 12	<i>Workplace Injury Rehabilitation and Compensation Act 2013</i> — s51  Victoria Government Gazette No.92 — Friday, 30 August 1985	<i>Workers' Compensation and Injury Management Act 1981</i> — Schedule 3	<i>Return to Work Act 2014</i> — Schedule 2	<i>Workers Rehabilitation and Compensation Act 1988</i> — Schedule 4	Return to Work Regulations 2015 - Schedule 2	Workers Compensation Regulation 2003 — Schedule 1	<i>Safety, Rehabilitation and Compensation Act 1988</i> s7(1).  Safety, Rehabilitation and Compensation (Specified Diseases) Notice 2007 (1)  <i>Seafarers' Rehabilitation and Compensation Act 1992</i> s10(1).  <i>Seafarers Rehabilitation and Compensation Act 1992</i> Notice of Declarations and Specifications 25/05/1993	<i>Accident Compensation Act 2001</i> s30(3), 60 — Schedule 2

<sup>1</sup> Includes Seacare.

<sup>2</sup> Schedule 1 of the *Workers' Compensation (Dust Diseases) Act 1942* lists the following dust diseases: Aluminosis, Asbestosis, Asbestos induced carcinoma, Asbestos related pleural disease (ARPD), Bagassosis, Berylliosis, Byssinosis, Coal dust pneumoconiosis, Farmers' Lung, Hard Metal Pneumoconiosis, Mesothelioma, Silicosis, Silico-tuberculosis and Talcosis.

# Glossary

## **Administrative scheme**

A scheme put in place where no legislation applies.

## **Attendant care**

Services of a person to provide regular and essential personal care to an injured worker.

## **Benefits**

Money paid to injured workers as compensation for economic and non-economic loss arising from work related injury.

## **Category 1 employers (NSW)**

1. an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed \$50 000, if the period of insurance to which the premium relates were 12 months, or
2. an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed \$50 000, if the period of insurance to which each premium relates were 12 months, or
3. an employer who is self-insured, or
4. an employer who is insured with a specialised insurer and who employs more than 20 workers.

*Category 2 employer* means an employer who is not a Category 1 employer.

## **Centrally funded schemes**

Single public insurer (government agency) that performs most, if not all, workers' compensation functions. Central insurers underwrite their schemes.

## **Common law**

Provisions that allow, or preclude, injured workers from taking legal action through the courts to sue their employers for the costs of injury arising from negligence leading to unsafe workplaces.

## **Commutation payment**

Depending on the particular legislation of a jurisdiction, and under certain circumstances, an ongoing liability for specified workers' compensation entitlements can be commuted to a lump sum payment. Following payment of the lump sum, liability for those entitlements ceases. See also redemption payment and settlement payment.

## **Competitive fund**

Insurer functions are provided by the private sector, through approved insurance companies. This includes underwriting and claims management. The degree of regulation of competitive schemes by government varies amongst the competitive schemes.

## **Cross-border arrangements**

Provisions that allow workers who are injured away from their main state or territory of employment are to be covered by workers' compensation in their main state or territory of employment.

## **Current Work Capacity**

As the result of an injury, a worker is presently unable to return to pre-injury employment but is able to return to work in suitable employment (compared with partially incapacitated).

## **Date of injury**

The date a worker became injured — in the case of diseases, this may be the first time symptoms became manifest or the first time medical treatment was sought.

**Death benefits**

Compensation payable to the financial dependants (usually families) of workers who die in work-related circumstances.

**Deemed worker**

People who provide a service but may not have the status of a worker and are deemed by legislation or regulation to be covered for workers' compensation as though they were workers.

**Diseases**

Can include any physical or mental disorder, defect or morbid condition, whether of sudden or gradual development.

**Disease (DVA)**

1. any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or
2. the recurrence of such an ailment, disorder, defect or morbid condition; but does not include:
  - a. the aggravation of such an ailment, disorder, defect or morbid condition, or
  - b. a temporary departure from:
    - i. the normal physiological state, or
    - ii. the accepted ranges of physiological or biochemical measures,
    - iii. that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

**Dispute resolution**

Processes for resolving disputes between parties in the claims process.

**Employee**

A person who works for an employer on a full-time or part-time basis under a contract of service and receives remuneration in wages or salary. See also worker.

**Funeral costs**

Reimbursement for the cost of a funeral to the family of a deceased worker or to a person who buries a deceased worker.

**Home help**

Services of a person to provide domestic assistance to an injured worker.

**Home Jurisdiction**

The workers' compensation authority with responsibility in the state or territory where a workplace rehabilitation provider organisation is registered for Australian Business Number (ABN) purposes. However, where the organisation does not intend to deliver services in that state or territory, the home jurisdiction is the workers' compensation authority where they intend to deliver the majority of the services.

**Hybrid schemes**

Essentially a central fund where functions such as claims management and rehabilitation are contracted out to private sector bodies, such as insurers with specialised expertise in injury management.

**Income replacement**

Payments that enable injured workers to substantially maintain their living standards if they are unable to work due to a work related injury (also known as weekly payments).

**Injury**

Can include a full range of physical injuries, illnesses, psychological conditions and diseases, as well as aggravations, exacerbations and recurrences of existing injuries.

**Injury (DVA)**

Means any physical or mental injury (including the recurrence of a physical or mental injury) but does not include:

- a. a disease, or
- b. the aggravation of a physical or mental injury.

**Instrument of Approval**

The document issued by the workers' compensation authority that has approved the workplace rehabilitation provider. This may be called a certificate, agreement or instrument depending on the particular workers' compensation authority.

**Levy**

The term used in New Zealand for Premiums. See Premiums.

**Medical and hospital costs**

Reimbursement of medical and other treatment costs related to workplace injury which can include hospital stays, ambulance transport, pharmaceuticals, aids and appliances, and household help.

**Multi-jurisdiction employer**

An employer who conducts their business in more than one jurisdiction and has separate workers' compensation cover in each jurisdiction.

**Net assets**

For privately underwritten schemes, the balance sheet claim provisions and for centrally funded schemes, the total current and non-current assets minus the outstanding claims recoveries at the end of each financial year.

**Net funding ratio**

Ratio of assets to outstanding liabilities.

**Net liabilities**

Centrally funded schemes are the total current and non-current liabilities minus the outstanding claim recoveries at the end of each financial year, and for privately under written schemes, the central estimate of outstanding claims for the scheme at the end of each financial year.

**No current work capacity**

The injured worker is unable to perform any duties in the workplace (compared with totally incapacitated).

**Non-economic loss**

Measure of the impact of an injury on a worker's lifestyle, such as pain and suffering, disfigurement and reduced expectation of life, normally associated with permanent impairment.

**Partially incapacitated**

The worker is able to return to work and perform suitable duties, even if it is not the same job they were previously doing before the injury (compared with current work capacity).

**Permanent impairment payments**

Payment compensating for the permanent loss of a body part or function, for which there is little expectation of recovery or improvement.

**Premiums**

A percentage of the amount that an employer expects to pay to their workers in a given period paid as premium to a workers' compensation insurer.

**Privately underwritten schemes**

Schemes of workers' compensation where the underwriting function is performed by the private insurers, with varying degrees of government regulation.

**Prudential requirements**

Ensures that private insurers can operate on a fully funded basis to meet all expected compensation payments and the costs of managing claims.

**Psychological injury**

A range of conditions relating to the functioning of people's minds.

**Redemption payment**

Depending on the particular legislation of a jurisdiction and under certain circumstances, an ongoing liability for specified workers' compensation entitlements can be redeemed to a lump sum payment. Following payment of the lump sum, liability for those entitlements ceases. See also commutation payment and settlement payment.

**Rehabilitation**

The process of assisting workers to recover from work related injury and returning to work which can include medical treatment, retraining, the use of aids and appliances, alterations to workplace and home, and gradual return to full time or part time duties. See return to work.

**Remuneration**

The total amount of gross earnings of workers of an employer. See also premiums.

**Return to Work**

The process of employers or other people or organisations helping injured workers to get back to work or stay at work while they recover from an injury. See also rehabilitation.

**Self-insurer**

Employers who manage their workers' compensation arrangements themselves without having to pay annual premiums.

**Serious claims**

Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks plus all accepted claims for fatality or permanent incapacity.

**Settlement payment**

Depending on the particular legislation of a jurisdiction, and under certain circumstances, an ongoing liability for workers' compensation entitlements can be settled via a lump sum payment. Following payment of the lump sum liability for those entitlements ceases. See also commutation payment and redemption payment.

**State of connection**

The jurisdiction decided through applying the test in s5.8, when an injured worker has been working in more than one state or territory.

**Suitable Duties**

Duties for which an injured worker is suited in relation to their capacities at a particular point of time in the workplace rehabilitation service continuum.

**Suitable Work/Employment**

Employment in work for which the worker is suited in relation to the worker's capacities, age, education, skills, work experience and place of residence.

**Threshold test**

A level of impairment an injured worker must reach.

**Totally incapacitated**

The injured worker is unable to perform any duties in the workplace (compared with no current work capacity).

**Types of damages**

Damages that may be suffered by an injured worker and which can include general damages (compensation for pain and suffering), economic loss (compensation for loss of past earnings or future earning capacity), legal costs and medical and hospital costs.

**Underwriting**

The process of writing and signing a policy of insurance.

**Worker**

A person who is covered for workers' compensation benefits.

**Workers' compensation**

Financial support to workers who are injured in the course of employment and suffer a consequent loss.

**Workplace Rehabilitation**

A managed process involving timely intervention with appropriate and adequate services based on assessed need, aimed at maintaining injured or ill employees in, or returning them to, suitable employment.

**Workplace Rehabilitation Consultant**

Suitably qualified health/behavioural science professional employed by a workplace rehabilitation provider to provide workplace rehabilitations services.

**Workplace Rehabilitation Services**

The types of services referred to in the Workplace Rehabilitation Model that may assist a worker return to work with the same (pre-injury) employer or with a new employer.

**Workplace Rehabilitation Provider**

An organisation that has been approved by a workers' compensation authority to provide workplace rehabilitation services to assist injured workers return to work following a workplace injury. Where appropriate within the context of workplace rehabilitation service provision, a reference to a workplace rehabilitation provider also includes a reference to a workplace rehabilitation consultant.

**Workers' Compensation Authority/Workers' Compensation Authorities**

The body responsible for workers' compensation legislation and policy covering designated employers and their employees within their area of legal authority.

## Acronyms and abbreviations

AAT	Administrative Appeals Tribunal (Cth)
ABS	Australian Bureau of Statistics
ACA	Accident Compensation Act (Vic)
ACC	Accident Compensation Corporation (NZ)
ACTPS	ACT Public Sector
ADF	Australian Defence Force
AE	Accredited Employer (NZ)
AIMS	ACT WorkCover Information Management System
AMA	American Medical Association
AMS	Approved Medical Specialists (NSW)
ANZSIC	Australia and New Zealand Standard Industry Classification
ASIC	Australian Standard Industry Classification
AWE	Average Weekly Earnings (SA*, NT, ACT)
AWOTEFA	Average Weekly Ordinary Time Earnings of Full-time Adults (Cth)
BHI	Binaural Hearing Impairment (Tas)
CPI	Consumer Price Index
CPM	Comparative Performance Monitoring
DPI	Degree of Permanent Impairment (Qld)
DVA	Department of Veterans' Affairs
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme

HWCA	Heads of Workers' Compensation Authorities
IPRC Act	Injury Prevention, Rehabilitation and Compensation Act (NZ)
IPs	Impairment Points
JAS-ANZ	Joint Accreditation System of Australia and New Zealand
MAT	Medical Assessment Tribunal
MRCA	Military Rehabilitation and Compensation Act (Cth)
MRCC	Military Rehabilitation and Compensation Commission
NTPS	Northern Territory Public Service
NWE	Normal Weekly Earnings (Qld, Tas, NT, Cth)
NWE	Notional Weekly Earnings (SA)
OHS	Occupational Health and Safety
PIAWE	Pre-injury Average Weekly Earnings
PIP	Personal Injury Plan (ACT)
QOTE	Queensland Ordinary Time Earnings
RISE	Re-employment Incentive Scheme for Employers (SA)
RTW	Return to work
SIRA	State Insurance Regulatory Authority (NSW)
SRC Act	Safety, Rehabilitation and Compensation Act (Cth)
SRCC	Safety, Rehabilitation and Compensation Commission
TAFE	Technical and Further Education
TMF	Treasury Managed Fund (NSW)
TRMF	Tasmanian Risk Management Fund (Tas)



VEA	Veterans' Entitlement Act (Cth)
VWA	Victorian WorkCover Authority
WAVE	Workers Average Weekly Earnings (SA)
WCIM Act	Workers Compensation and Injury Management Act (WA)
WIC	WorkCover Industry Classification (NSW, Qld)
WISE	WorkCover Incentive Scheme for Employers (Vic)
WPI	Whole Person Impairment (NSW, Vic, WA, Tas, NT, Cth)
WRC Act	Workers' Rehabilitation and Compensation Act (SA)
WSV	WorkSafe Victoria

\*state-based  
statistics

# Index

## A

abbreviations, 271  
accommodation, 44, 96, 103, 243  
Administrative scheme, defined, 266  
Agencies responsible, 16, 19  
Aggravation and acceleration, 67  
ailments see diseases.  
American Medical Association, 74, 79, 233, 271  
Asbestos related Diseases, 215  
Asbestos Related Diseases, 13, 71, 213, 215, 240, 259, 262  
Attendant care, defined, 266  
Australian Capital Territory  
    agency responsible, 19  
    contacts, 18  
    for details of coverage and entitlements see specific subject headings.  
    scheme key features, 21  
    schemes history and evolution, 246  
    summary of coverage of workers, 24  
    summary of entitlements, 31–33

## B

bank guarantees, 182, 185, 195  
benefits, 93–94  
    common law access, 94, 110, 230  
    death entitlements, 33, 93, 113–14  
    defined, 266  
    dependants/spouse definitions for death benefits, 115–21  
    entitlements summary, 31–33  
    income replacement, 93, 95–102  
    medical, hospital and other costs, 93, 103–9  
    permanent impairment payments, 93, 268  
    permenent impairment payments, 110–12  
    settlement of future incapacity benefits, 94  
    suspension and cessation of benefits, 94, 125–27  
biological agents and infectious or parasitic diseases, 256–61

breaks, injuries during, 27, 67, 69–70  
British nuclear tests, 216

## C

cancer  
    lung cancer (WA), 213  
    occupational cancer (table of diseases and cancer-causing agents), 262–65  
case management outsourcing, 188  
Category 1 employers (NSW), 150, 163, 266  
Category 2 employers (NSW), 163  
centrally funded schemes, 219, 266  
chemical agents, 251–56  
claim submission prescribed time periods, 36–38  
coal industry (NSW), 210, 226  
Comcare  
    agencies responsible, 19  
    contacts, 18  
    recent developments, 14  
    scheme key features, 21  
    summary of coverage of workers, 24  
    summary of entitlements, 31–33  
common law access, 94  
Commonwealth of Australia  
    schemes history and evolution, 246–48  
    see also Comcare; Department of Veterans' Affairs.  
commutation payment, defined (see also settlement of future incapacity benefits, 266  
commuting see journeys to and from work.  
company structure restraints (self-insurers), 174, 187  
competitive fund, defined, 266  
compressed or decompressed air, diseases caused by work in, 256  
contacts, 17  
contractors, coverage of, 23–25  
    recent developments (QLD), 11  
coverage of workers  
    definition of injury and relationship to employment, 28–29, 71–73

- government employers, 64–65
- guidelines and information sources, 26
- journeys and breaks, 27, 67, 69
- leave while on workers' compensation, 16, 48–49
- remuneration (definition for the purpose of premium calculation), 44
- retirement provisions, 30
- summary, 22–25
- superannuation and workers' compensation, 51
- uninsured employers, 46–47, 236
- coverage of workers (type of worker), 22–25, 53
  - contractors/labour hire workers, 22–25, 54, 56
  - deemed workers, 57–59
  - eligibility, 53
  - judges and members of parliament, 53, 66
  - sportspersons and sporting injuries, 62–63
  - volunteers, 53
  - worker (definition), 53, 28–29, 270
- cross-border provisions, 91
  - defined, 266
  - in the Northern Territory, 242
- current work capacity
  - defined, 266
  - no current work capacity, defined, 268

## D

- damages, types of (defined), 270
- date of injury, defined, 266
- deafness, 67
- death entitlements, 33, 93, 113–14
- deemed workers, 57–59
- definitions, 266–70
- denial of workers compensation see exclusionary provisions.
- Department of Veterans' Affairs
  - agencies responsible for overseeing workers' compensation, 19
  - contacts, 18
  - for details of coverage and entitlements see specific subject headings.
  - schemes history and evolution, 247
  - summary of coverage, 24
  - summary of entitlements, 31–33
- dependants definitions for death benefits, 115–21

- diseases
  - biological agents and infectious or parasitic diseases, 256–61
  - chemical agents, 251–56
  - deemed to be caused by work, 251–61
  - defined, 67, 267
  - see also asbestos-related diseases; cancer, 280
  - occupational cancer (table of diseases and cancer-causing agents), 262–65
  - occupational diseases caused by agents arising from work activities, 251–56
  - physical agents, 256
- dispute resolution, 41–43, 267
- dust diseases, 28, 34, 210, 226, 231, 258–60
  - see also asbestos-related diseases.
- duties on return to work (suitable duties), 145–49, 269

## E

- emergency service workers
  - New South Wales, 210
  - Victoria, 212
- employees see workers.
- employer excess, 45
- employers
  - Category 1 employers (NSW), 150, 163, 266
  - Category 2 employers (NSW), 163
  - government employers, 64–65
  - multi-jurisdictional, 268
  - responsibilities in return to work, 157–61
  - self-insured, see self-insurer arrangements.
  - uninsured employers, 16, 46–47, 236
- employment as a contributing factor to injury, 28–29, 71–73
- entitlements (summary) see also specific entitlements and benefits, 31–33
- excess of loss requirements, 185–86
- exclusionary provisions
  - general, 84, 85–86
  - psychological injuries, 84, 87–89
- experience-rated premium rates, 226–28

## F

- firefighters, 13, 53, 69, 95, 235, 240, 243, 250, 264
- Footwear manufacturing industry premium rates, 224

funding see schemes funding arrangements.  
funeral expenses, 9, 33, 113, 114, 231, 241

## G

glossary, 266–70  
government employers, 64–65  
guidance material for return to work, 132–34  
guidelines and information sources on worker coverage, 26  
Guides to the Evaluation of Permanent Impairment (American Medical Association), 79, 80

## H

hearing impairment, 68, 79, 80, 82  
history of workers compensation schemes see schemes history and evolution.  
home help, defined, 267  
home jurisdiction, defined, 267  
hospital entitlement limits see medical, hospital and other costs.  
hybrid schemes, 219, 221, 267

## I

impairment  
    impairment threshold for psychological injury see psychological injuries. ,  
incapacity  
    benefits settlements, 129  
    entitlements summary, 31–33  
    partially incapacitated, defined, 268  
    totally incapacitated, defined, 270  
income replacement, 93, 95–102  
industrial deafness, 67, 238  
industry classifications, 226  
industry premium rates, 223–25, 227  
    premiums defined, 268  
infectious or parasitic diseases, 256–61  
injured workers  
    date of injury, defined, 266  
    placement incentives see also return to work, 157–61  
injury  
    aggravation and acceleration of existing injuries, 67  
    definition, 268

definition of injury and relationship to employment, 28–29, 67  
prescribed time periods for notification, 35  
sporting injuries, 62–63

Inquiry into the Operation of Queensland's Workers' Compensation Scheme, 235

instrument of approval, defined, 268

Insurance Assistance Fund (South Australia), 214

ionizing radiations, 255

## J

journeys to and from work, 27, 67, 69, 245  
judges, 53, 66, 216  
jurisdictions  
    contact, 17  
    cross-border provisions, 91, 242, 266  
    responsible agencies, 19

## K

Key features of schemes, 21

## L

labour hire workers, 22–25, 54, 56  
leave while on workers' compensation, 48–49  
legislation, 206–9  
    applicable workers compensation legislation, 206–7  
    compliance with (self-insurers), 189–92  
    prescribed occupational diseases, 251–61, 262–65  
    sections of Acts and guidance material, 132–34  
    transitional provisions, 205  
legislative reviews  
    Western Australia, 11  
levies  
    definition (NZ) see also premiums, 268  
    licence surrender and penalties for exiting (self-insurance), 182, 201–3  
    licences (self-insurance) approval processes, costs and licence, 179–81  
    other ongoing licence requirements, 189–92  
lump sum payments, 31–33, 266, 269  
lung cancer, 262–65  
    WA, 213

## M

medical, hospital and other costs

benefits, 93, 103–9

defined, 268

entitlement limits, 32

members of parliament, 53, 66

mesothelioma

(Commonwealth) see also asbestos-related diseases, 216, 262

mesothelioma (WA), 213, 262

micro employers (NSW), 157

Military Rehabilitation and Compensation Commission, 19, 169, 247, 272

Mine Safety Fund, 226

mining industry (NSW), 210, 226

minor schemes, 210–18

multi-jurisdictional employer, defined, 268

## N

National Cross-Border Model, 90

New South Wales

agency responsible, 19

contacts, 17

recent developments, 9–10

scheme history and evolution, 230–32

scheme key features, 21

summary of coverage of worker, 23

summary of entitlements, 31–33

New Zealand

agency responsible, 20

contacts, 18

recent developments, 14, 249

scheme history and evolution, 249

scheme key features, 21

summary of coverage of workers, 25

summary of entitlements, 31–33

no current work capacity, defined, 268

noise see also hearing impairment, 255

non-economic loss, defined, 268

Northern Territory

agency responsible, 19

contacts, 17

for details of coverage and entitlements see specific subject headings, 274

recent developments, 12, 246

scheme key features, 21

schemes history and evolution, 241–46

summary of coverage of workers, 24

summary of entitlements, 31–33

## O

outsourcing of case management, 188

## P

parasitic diseases, 256–61

partially incapacitated, defined, 268

payments

commutation payment, defined, 266

lump sum payments, 16, 80, 82, 97, 111, 229, 241

permanent impairment payments, 93, 110–12, 268

prescribed time periods for payments, 16, 39–40

redemption payments, defined, 269

see also settlement of future incapacity benefits.

settlement payment, defined, 269

peacekeeping service, 216

permanent impairment

definitions, 74

penalties for exiting a scheme (self-insurance), 182

permanent impairment

definitions, 75–77, 268

guidelines, 74, 78–80

payments, 93, 110–12

summary of entitlements, 31–33

pre-injury weekly earnings, 31–32

premium rates

calculation of industry rates, 227

selected industries, 223–25

standardised average premium rates, 222

premiums

calculation (remuneration definitions), 44

calculation (superannuation inclusion), 51

defined, 268

prior conditions, discounting of, 82–83

privately underwritten schemes, 219, 221, 268

provisional liability, availability, 38

prudential requirements (self-insurers), 176–78, 269

psychological injuries

exclusionary provisions, 84, 87–89

## Q

Queensland

agency responsible, 19

contacts, 17

for details of coverage and entitlements see  
specific subject headings.

recent developments, 11

scheme key features, 21

schemes history and evolution, 235

summary of coverage of workers, 23

summary of entitlements, 31–33

## R

radiation exposure, 205, 216

recent developments see schemes recent  
developments.

redemption payment, defined see also settlement of  
future incapacity benefits, 269

rehabilitation

defined, 269

workplace rehabilitation, defined, 270

reinsurance, 177–78

remuneration

definition, 269

definition for the purpose of premium calculation,  
44

reporting requirements for self-insurers, 182, 193–  
200

rescue workers

New South Wales, 210

Victoria, 212

respiratory diseases see also dust diseases, 259,  
262–65

retirement provisions, 30

return to work, 131–72

authority or insurer responsibilities, 160–61

defined, 269

employer responsibilities, 150–51

employer responsibilities, 145–49

guidance material, 132–34

rehabilitation definitions, 270

rehabilitation, definitions, 269

suitable duties, 145–49, 269

worker responsibilities, 152–56

workplace rehabilitation coordinators, 162–66

workplace rehabilitation providers, 167–69

return to work plans

individual return to work plans, 140–44

recent developments (South Australia), 236

return to work programs

injured worker placement incentives, 157–61

recent developments (NSW), 9

requirements, 135–39

## S

scheme administrative arrangements, 205

applicable legislation, 206–9

minor schemes, 210–18

transitional provisions, 205

schemes funding arrangements, 21, 219

industry premium rates (% or payroll), 223–25

net assets, 219, 268

net funding ratio, 219, 268

net liabilities, 219, 268

schemes funding positions, 220

schemes history and evolution, 229–49

Australian Capital Territory, 246

Commonwealth, 246–48

national perspective, 229–30

New South Wales, 230–32

New Zealand, 249

Northern Territory, 241–46

Queensland, 235

South Australia, 236–37

Tasmania, 237–41

Victoria, 232–34

Western Australia, 235

schemes key features, 21

schemes recent developments

Comcare, 14

New South Wales, 9–10

New Zealand, 14

Northern Territory, 12

Queensland, 11

South Australia, 12

- Tasmania, 12
- Victoria, 10
- Western Australia, 11
- school or student volunteers, 212
- Seacare
  - agencies responsible, 19
  - contacts, 18
  - for details of coverage and entitlements see specific subject headings.
  - scheme history and evolution, 248
  - summary of coverage, 24
  - summary of entitlements, 31–33
- self-insurer arrangements, 174
  - approval process, costs and licence, 179–81
  - criteria, 176–78
  - ongoing requirements see self-insurer arrangements standards and performance.
  - recent developments (Queensland), 11
  - self-insurer defined, 269
  - workers' compensation and self-insurance coverage, 175
- self-insurer arrangements standards and
  - company structure, 187, 198
  - compliance with legislation, 189–92
  - other ongoing licence requirements, 189–92
  - prudential requirements, 176–78, 269
  - reporting requirements, 182, 193–200
  - requirements for surrendering licence and penalties for exiting, 182
- self-insurer arrangements standards and performance, 182
  - case management outsourcing, 188
- serious claims, defined, 269
- settlement of future incapacity benefits, 94, 266, 269
- settlement payment, defined, 269
- silicosis, 226, 258, 259
- skin diseases, 260
- small employers (NSW), 157
- South Australia
  - agency responsible, 19
  - contacts, 17
  - for details of coverage and entitlements see specific subject headings, 280
  - recent developments, 12

- scheme key features, 21
- summary of coverage of workers, 23
- summary of entitlements, 31–33
- special compensation scheme, 210
  - (Commonwealth), 216
- sporting injuries, 62–63
- sportspersons, 53, 62–63
- spouse definitions for death benefits, 115–21
- standardised average premium rates, 222
- state of connection, defined, 269
- statutory reserve fund (South Australia), 214
- suitable duties (return to work), 145–49, 269
- suitable work/employment, 269
- superannuation
  - contribution and entitlement benefits, 44
  - included in wages for premium calculations, 51
  - included with income replacement payments, 51
- suspension and cessation of benefits, 94, 125–27

## T

- Tasmania
  - agency responsible, 19
  - contacts, 17
  - for details of coverage and entitlements see specific subject headings.
  - recent developments, 12
  - scheme key features, 21
  - schemes history and evolution, 237–41
  - summary of coverage of workers, 24
  - summary of entitlements, 31–33
- Terrorism, 197
- Threshold test, defined, 269
- Totally incapacitated, defined, 270
- travel, work related (see also journeys to and from work).
- Treasury Managed Fund (NSW), 64, 66, 175, 210, 272
- tuberculosis, 218, 257, 259, 265

## U

- Underwriting, defined, 270
- uninsured employers, 16, 46

## V

vibration, disorders caused by, 255

### Victoria

agency responsible, 19

contacts, 17

for details of coverage and entitlementssee  
specific subject headings.

recent developments, 10

scheme key features, 21

schemes history and evolution, 232–34

summary of coverage of workers, 23

summary of entitlements, 31–33

volunteers, coverage of, 53, 60–61, 210, 212

## W

water front workers (WA), 213

weekly earnings, 31–32, 34

### Western Australia

agency responsible, 19

contacts, 17

recent developments, 11

scheme key features, 21

schemes history and evolution, 235

summary of coverage of workers, 23

summary of entitlements, 31–33

work health and safety requirements and auditing,  
183–84, 183–84

responsibilities in return to work, 152–56

see also coverage of workers.

workers definitions, 28–29, 267, 270

workers, definitions, 53

### workers (types of workers)

contractors/labour hire workers, 22–25, 28–29,  
56

deemed workers, 56

judges and members of parliament, 66

sportspersons, 53, 62–63

volunteers, 60–61

workplace rehabilitation coordinators, 162–66

workplace rehabilitation providers, 167–69

work-related travel, 27, 67, 70