

FOREWORD

This publication is an initiative of the Heads of Workers' Compensation Authorities (HWCA).

The HWCA comprises the Chief Executives of all the State and Territory workers' compensation schemes and those schemes for New Zealand, Commonwealth workers (Comcare) and seafarers (Seacare). It is a body whose prime purpose and role is to share information between workers' compensation jurisdictions and, where possible, promote increased national consistency in the design of Australian workers' compensation schemes.

The *Comparison of Workers Compensation Arrangements in Australian Jurisdictions* has been compiled from information supplied by the HWCA jurisdictions and is revised twice yearly in January and July. The information in this edition is current as at 1 July 2000.

The current publication can be accessed on the Internet through the HWCA web site at www.hwca.org.au and the Victorian WorkCover Authority website at www.workcover.vic.gov.au.

Should you have any comments on, or suggested improvements to, the contents, please let us know by using the feedback facility on the HWCA website or by writing to:

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I would also like to draw your attention to some recent publications which have been produced under the auspices of the Workplace Relations Ministers' Council (formerly the Labour Ministers' Council). *Comparative Performance Monitoring: Occupational Health and Safety and Workers Compensation* (April 2000) and *Comparison of Occupational Health and Safety Arrangements in Australian Jurisdictions* (May 1999)¹ will provide readers interested in Australian workers' compensation schemes and authorities with a useful and informative supplement to this publication.

George O'Farrell
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¹ Both publications can be accessed through the Department of Employment, Workplace Relations, Small Business, and on website www.dewrsb.gov.au.

CONTENTS

Basic Statistical Information	4
Scheme Details	6
Responsible organisation	
Legislation	6
Responsibility for OH&S legislation	6
Fund type	6
Funding position at 30 June 1999 & 2000	6
Employer excess	6
Number of reported claims	8
Average premium rate	8
Provision for self-insurance	8
Coverage	10
Definition of 'remuneration'	10
Number of workers covered	10
Definition of 'worker'	10
Definition of 'injury'	12
Retirement provisions	14
Cross border cooperative arrangements	16
Benefits	18
Weekly benefit rates	18
Basis for determining weekly benefits	20
Medical and hospital – limits	22
Basis for medical and like services fees	22
Lump sum payments	24
Death benefits	28
Common law rights	28
Threshold for common law	30

Statutory Responsibilities	32
Return to work provisions	32
• Employer responsibilities	32
• Worker responsibilities	32
Incentives for new employers of injured workers	36
Dispute Resolution	38
Premium Setting	40
• Industry rates comparison table	40
• Notes to industry rates comparison table	41
• Calculation of industry rates	42
Recent Developments	43
Summary of significant legislative changes	43
Other significant developments	45
Feature article – Stress	48
Further Information	58
Contacts	58
Internet addresses	58
Mailing lists form	60

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

STATISTICAL INFORMATION	AUSTRALIA	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
<i>Area (square kilometres)</i>	7,682,000	228,000	802,000	984,000
<i>Population (Dec 99)</i>	19,080,800	4,741,500	6,451,700	1,495,800
<i>Population, 15 years & over (Jul 00)</i>	15,225,700	3,816,800	5,154,300	1,205,500
<i>Labour force (Jul 00)</i>	9,727,500	2,444,600	3,233,600	739,800
<i>Unemployment rate (Jul 00)</i>	6.3%	6.2%	5.4%	7.8%
<i>Gross earnings (Mar Qtr 00)</i>	\$61,744.1M	\$16,346.2M	\$21,710.5M	\$4,067.4M
<i>Average weekly earnings (All Employees – May 00)</i>	\$636.50	\$629.60	\$673.10	\$582.20

STATISTICAL INFORMATION

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
2,525,000	1,727,000	68,000	1,346,000	2,000	268,021
1,873,800	3,359,500	469,900	194,300	311,200	3,829,000 (Mar 00)
1,488,200	2,806,800	370,900	140,400	242,800	2,953,000 (Mar 00)
984,800	1,846,400	218,600	94,900	175,700	1,885,000 (Mar 00)
6.1%	7.6%	8.7%	5.4%	5.2%	6.3% (Jun 99)
\$6,083.4M	\$10,125.7M	\$1,173.1M	\$712.4M	\$1,525.3M	
\$606.00	\$602.30	\$561.10	\$671.10	\$752.10	\$NZ671.82 (All Employees - May 2000)

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

SCHEME DETAILS	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Scheme name	Comcare Australia, Seacare	WorkCover	WorkCover NSW	WorkCover Corporation
"WorkCover" legislation	<i>Safety, Rehabilitation and Compensation Act 1988</i> <i>Defence Act 1903</i> (allows for additional compensation for the Australian Defence Force from 07/04/94) Seacare: <i>Seafarers Rehabilitation and Compensation Act 1992</i>	<i>Accident Compensation Act 1985</i> <i>Accident Compensation (WorkCover Insurance) Act 1993</i>	<i>Workplace Injury Management and Workers Compensation Act 1998;</i> <i>Workers Compensation Act 1987;</i> <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987;</i> <i>Workers' Compensation (Dust Diseases) Act 1942;</i> <i>Sporting Injuries Insurance Act 1978</i>	<i>Workers Rehabilitation and Compensation Act 1986</i>
Responsibility held for OHS legislation and related legislation	Yes <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> Seacare: <i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	Yes <i>Occupational Health and Safety Act 1985; Dangerous Goods Act 1985</i> <i>Equipment (Public Safety) Act 1994</i> <i>Road Transport (Dangerous Goods) Act 1995</i>	Yes <i>Occupational Health and Safety Act 1983;</i> <i>Construction Safety Act 1912;</i> <i>Factories, Shops & Industries Act 1962;</i> <i>Dangerous Goods Act 1975</i>	Yes <i>Occupational Health, Safety and Welfare Act 1986</i>
Fund type	Central Fund Seacare: Authorised Insurers (No set rates – a private system)	Central Fund	Managed Fund	Central Fund
Scheme's funding position at 30 June 1998 & 30 June 1999	30/06/99: Assets: \$1.16M Liabilities: \$1.17M Funding Ratio: 99.45% 30/06/98: Assets: \$1.25M Liabilities: \$1.25M Funding Ratio: 99.99% Seacare: Not applicable	30/06/99: A: \$4,013M L: \$4,309M F: 93.1% 30/06/98: A: \$3709M L: \$3859M F: 96.1%	30/06/99: Assets: \$5,920M Liabilities: \$7,550M Funding Ratio: 78% 30/06/98: A: \$5,689M L: \$7,364M FR: 77.25%	30/06/99: Assets: \$715M Liabilities: \$744M Funding Ratio: 96% NB: Due to improved funding position, levy rebate of \$25m credited to eligible employers 30/06/98: A: \$650M L: \$729M FR: 89.2%
Employer excess	No excess – scheme coverage from first day of incapacity Seacare: Employer excess varies between employers	First 10 days of incapacity, and first \$440 of medical costs Buy out option also exists (25% of premium)	Category A employers (annual premiums >\$3,000): first \$500 of weekly payments for each claim Category B employers (annual premiums <\$3,000): first \$500 or payment of excess surcharge on premiums of 3%	First two weeks of incapacity per worker per calendar year Option to "buy-out" first two weeks by paying an extra percentage of the levy rate payable. (8% in 2000/2001)

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

SCHEME DETAILS

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
WorkCover Western Australia	WorkCover Queensland	Workplace Safety Tasmania	Work Health	WorkCover	Accident Compensation Corporation
<i>Workers' Compensation and Rehabilitation Act 1981</i>	<i>WorkCover Queensland Act 1996</i>	<i>Workers Rehabilitation and Compensation Act 1988</i>	<i>Work Health Act 1986</i>	<i>Workers' Compensation Act 1951 (reprint January 1998)</i>	<i>Accident Insurance Act 1998</i>
No	No	Promotional and Advisory functions only <i>Workplace Health and Safety Act 1995</i>	Yes	Yes <i>Occupational Health and Safety Act 1989</i> <i>Dangerous Goods Act 1984</i>	No
Approved Insurers. (Essentially private insurance. Loading of 100% allowable on set premium and full discounting allowed. The Workers' Compensation and Rehabilitation Commission may approve a loading in excess of 100%)	Central Fund	Approved Insurers. (No set rates – a private system)	Approved Insurers. (No set rates – a private system)	Approved Insurers. (No set rates – a private system)	Central Fund. (between 1/7/99 and 30/6/00 approved insurers; no set rates – a private system)
Not applicable	30/06/99: Assets: \$2,411M Liabilities: \$2,111M Funding Ratio: 114.2% 30/06/98: A: \$2,201M L: \$2,158M FR: 102%	Not applicable	Not applicable	Not applicable	30/06/00 (\$NZm) Assets 1,171 Liabilities 2,634 Ratio 44% 30/06/99 30/06/98 A: 1,241 A: 546 L: 2,766 L: 3,680 R: 45% R: 15%
No excess – scheme coverage from first day of incapacity	4 days excess plus day of injury. Option to “buy-out” excess at the greater of 8.5% of premium or \$10	First 5 working days of each injury and first \$200.00 of other benefits	Day of injury only No medical costs	No excess – scheme coverage from first day of incapacity No medical costs	For work injuries, the employer is liable to cover first week after incapacity for work begins

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

SCHEME DETAILS	COMMONWEALTH*		VICTORIA		NEW SOUTH WALES		SOUTH AUSTRALIA	
Number of reported claims per financial year	1999-00: N/A		99-00: 33,175		99-00: N/A		99-00: 31,200	
	1998-99: 21,170		98-99: 33,511		98-99: 55,492		98-99: 30,720	
	1997-98: 24,532		97-98: 32,572		97-98: 58,604		97-98: 32,450	
	1996-97: 28,807		96-97: 34,468		96-97: 60,109		96-97: 34,350	
	1995-96: 32,796		95-96: 35,290		95-96: 62,469		95-96: 37,180	
	1994-95: 34,979		94-95: 34,922		94-95: 62,840		94-95: 39,630	
	NB Includes Self-Administrators & Delegated Authority				NB Revised to Conform to National Data Set, i.e. excludes claims Less than 5 days			
	Seacare:							
	1999-00: 177							
	1998-99: 219							
	1997/98: 381							
	1996-97: 519							
	1995-96: 704							
	1994-95: 593							
Average premium rate per financial year	2000-01: 0.98% ¹		00-01: 2.22%		00-01: 2.80% ¹		00-01: 2.86%	
	2000-01: 3.12% ²		99-00: 1.90%		99-00: 2.80%		99-00: 2.86%	
	1999-00: 1.03% ¹		98-99: 1.90%		98-99: 2.80%		98-99: 2.86%	
	1999-00: 2.77% ²		97-98: 1.80%		97-98: 2.80%		97-98: 2.86%	
	1998-99: 1.00% ¹		96-97: 1.80%		96-97: 2.80%		96-97: 2.86%	
	1998-99: 2.60% ²		95-96: 1.98%		95-96: 2.50%		95-96: 2.86%	
	1997-98: 1.20% ¹		94-95: 2.25%		94-95: 1.80%		94-95: 2.86%	
	1997-98: 3.00% ²				¹ Excludes New Tax System effects			
	1996-97: 1.60% ¹							
	1996-97: 5.00% ²							
	1995-96: 1.70% ¹							
	1995-96: 5.20% ²							
	1994-95: 1.60%							
	¹ Commonwealth Agencies							
	² ACT Govt Service							
	Seacare: N/A							
	NB: ALL FIGURES EXCLUDE GST							
Do provisions for self-insurance exist?	Yes	Seacare: No	Yes		Yes		Yes (known as <i>exempt status</i>)	
Number	9 self-insurers (including 7 self-administrators, four of which have outsourced claims processing) 1 delegated authority		29 self-insurers		49 self-insurers 10 group self-insurers 17 specialised insurers		60 self-insurers plus Government Departments and Authorities	
	Seacare: Not applicable							
Criteria	Prudential requirements. Claims administrators: capacity to meet prescribed conditions of licence		Prudential Requirements		≥ 1000 NSW workers Prudential requirements		≥ 200 workers Prudential requirements	
	Seacare: Not applicable							

SCHEME DETAILS

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
98-99: 25,925 97-98: 27,493 96-97: 27,931 95-96: 28,580 94-95: 28,861	99-00: 82,335 ¹ 98-99: 80,089 ¹ 97-98: 79,859 ¹ 96-97: 85,110 95-96: 93,008 94-95: 100,530	99-00: 11,745* 98-99: 12,398 97-98: 13,253 96-97: 14,822 95-96: 16,973	98-99: 4,529 97-98: 4,334 96-97: 4,272 95-96: 4,070 94-95: 3,847	98-99: 3,914 97-98: 4,297 96-97: 4,193 95-96: 4,317 94-95: 4,326	98-99: 25,142 97-98: 33,046 96-97: 43,260 95-96: 48,999 94-95: 50,722
^{NB} This data represents the number of lost time claims (one day/shift or more). ^{NB} Snapshot figure taken on 31/12/99	¹ This data represents all reported claims, including those of less than 5 days, and include self-insurer claims	* Preliminary as at 24 July 2000			^{NB} Data relates to new work injury claims for all categories of earner (employee, self-employed etc.) lodged with ACC each year, for claims that required more than minor medical fee reimbursements. Figures are from 1 April to 31 March.
00-01 2.97% 99-00 3.09% ¹ 98-99: 2.73% 97-98: 2.40% 96-97: 2.67% 95-96: 2.61% 94-95: 2.71%	00-01 1.75% 99-00 1.85% ³ 98-99: 2.145% ¹ 97-98: 2.145% ¹ 96-97: 2.023% 95-96: 1.85% ² 95-96: 1.70%	00-01 N/A 99-00 2.9% 98-99: 2.7% 97-98: 3.1% 96-97: 3.20% 95-96: 3.02% 94-95: 2.85%	99-00: N/A 98-99: 1.90% 97-98: 1.53% 96-97: 1.50% 95-96: 1.60% 94-95: 1.70%	00-01 N/A 99-00: 2.6% 98-99: 2.12% 97-98: 2.12% 96-97: 2.50% 95-96: 2.41% 94-95: 2.34%	9 mths to 31.03.01 1.16%
¹ 3.44% between 1/7/99 and 31/10/99. 3.09% between 1/11/99 and 30/6/00	¹ This is the target rate inclusive of 10% surcharge ² 10% surcharge introduced 01/01/96 ³ Surcharge removed for periods of insurance after 1/7/99 <i>NB</i> All rates are inclusive of stamp duty	<i>NB</i> Average rates calculated by scheme actuary	<i>NB</i> Figures supplied by approved insurers	<i>NB</i> There is no stamp duty payable on workers compensation premiums	<i>NB</i> An additional levy is added to ensure full funding by 30/6/2014. In 2000/01 it will be 0.40%.
Yes	Yes	Yes	Yes	Yes	Yes
19 self-insurers	22 self-insurers	16 self-insurers plus the state service	5 self-insurers	7 self-insurers	96 self-insurers at 31 July
Prudential requirements	≥ 500 full-time workers for existing self-insurers and applicants prior to 3/3/99 ≥ 2000 full-time workers for new applicants Prudential Requirements	Prudential requirements	Prudential requirements	Prudential requirements	Prudential, Systems and Procedure requirements

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

COVERAGE	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Definition of "remuneration" for the purpose of defining premium	<p>Includes gross wages/salaries (including condition of service payments normally covered by gross wages e.g. sick leave, annual leave, maternity leave, long service leave); overtime; over-award payments; penalty rates; piece work payments; public holiday payments; statutory officers' salaries; allowances for reward of merit; holiday leave loading (if absorbed into wages/salaries); generally, any taxable allowances</p> <p>It does not include superannuation payments; workers' compensation benefits; district and remote locality allowances; any payments made on termination of employment (e.g. accrued long service/annual leave); payments for special expenses; performance pay; tool allowance; fringe benefit allowances and administration costs; holiday leave loading (if paid separately from wages/salaries); generally, any non-taxable allowances</p> <p>Seacare: Not applicable</p>	<p>Gross wages; salaries (including overtime and all pay loadings); bonuses; commissions; allowances; items included as part of employment package; any other fringe benefits and any superannuation benefits</p> <p>The following are exempt: apprentice & trainee remuneration; workers' compensation payments; shareholder dividends; partners' drawings; payments to Construction Industry Long Service Leave Board and Redundancy Payments Central Fund (only if not taxable as fringe benefits); termination payments; and exempt benefits under the <i>Fringe Benefits Tax Assessment Act 1986</i></p>	<p>Includes salary; overtime; shift and other allowances; over-award payments; bonuses; commissions; payments to working directors; payments for public and annual holidays (including loadings); sick leave payments; value of board & lodgings provided by employer for worker; any other consideration in money or money's worth given to the worker under a contract of service or apprenticeship</p> <p>It does not include: any sum that the employer has been accustomed to pay the worker because of the nature of the employment; any allowance to reimburse costs arising out of an obligation incurred under a contract; any amount expended on behalf of the worker; directors' fees; compensation under the Act; any payment for long service leave or any payment under the <i>Building and Construction Industry Long Service Payments Act 1986</i></p>	<p>As a guideline: Payments made to or for the benefit of a worker (quantified in monetary terms) but excluding workers' compensation payments; termination payments or severance payments; payments as a reimbursement for a specific expenditure by worker on behalf of employer; motor vehicle allowance for use of worker's own vehicle in the course of employment which is less than 56 cents per kilometre travelled; accommodation allowance which is less than \$127.60 per day</p>
Number of workers covered	<p>1999/00 N/A 1998/99: 362,930¹ ¹ Includes self-insurers & the delegated authority Seacare: 1999/00: 2,800</p>	<p>99/00: 1,793,600¹ ¹ Estimate based on ABS data for March quarter 2000</p>	<p>98/99: 2,400,000</p>	<p>99/00 N/A 98/99: 671,870¹ ¹ Approx 36% of all SA workers are employed by Self insurers</p>
Definition of 'worker' for purpose of coverage relationship to employment	Contract of service	Contract of service	Contract of service	Contract of service
Deemed workers	Included Seacare: Not applicable	Included	Included	Included

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

COVERAGE

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>All gross wages; salaries; remuneration; commissions; bonuses; overtime; allowances and the like; directors' fees 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</p> <p>Termination payments; retirement pay; retrenchment pay in lieu of notice; superannuation payment(s); pensions; "golden handshakes" or weekly payments of compensation do not have to be declared</p> <p>98/99: 746,741.5¹</p> <p>¹ From ABS data</p> <p>Contract of service</p> <p>Included</p>	<p>Wages; salary; other earnings by way of money or entitlements having monetary value, but does not include: allowances for travelling; car; removal; meal; education; living away from home or in the country; entertainment; clothing; tools; vehicle expenses; employer contributions to superannuation; lump sum payments on termination; an amount payable under section 70 of the <i>WorkCover Queensland Act 1996</i> - employer's liability for excess period</p> <p>Any benefits and allowances, such as additional superannuation, motor vehicle usage, etc, provided under salary sacrifice arrangements are declarable</p> <p>99/00: 1,388,800¹</p> <p>¹ based on ABS data (employed wage and salary earners, QLD) as at February 2000</p> <p>Until 1 July 2000, PAYE taxpayers under Contract of service. Personal Injury Insurance for Eligible Persons (not deemed workers). From 1 July 2000, a worker will be an individual under a "contract of service". Schedule 2 of the Act mentions persons who are and are not "workers"</p> <p>Not Included</p>	<p>Gross wages; salaries (including overtime & pay loadings); bonuses; commissions; allowances; items included as part of the salary package; voluntary superannuation contributions (salary sacrifice only); school fees (if salary sacrifice); car allowance (if part of taxable income)</p> <p>Exempt are: workers' compensation benefits; termination payments; company car or house; director's fees; ex gratia payments; entertainment allowance; other fringe benefits; long service leave and sick leave</p> <p>99/00: 160,000</p> <p>Contract of service</p> <p>Included</p>	<p>Gross wages; salaries (including overtime); bonuses; allowances; commission and all other remuneration paid; including pay in respect of holidays; sickness and long service leave</p> <p>99/00: 74,000 (approx)</p> <p>Contract of service</p> <p>Exclusion applies where ABN has been provided</p> <p>Included</p>	<p>Salary; overtime; shift and other allowances; over-award payments; bonuses; commissions; payments to working directors; public and annual holiday payments (including loadings); sick leave payments; value of board and lodging for worker; and any other money or money's worth given to the worker under a contract of service or apprenticeship.</p> <p>Also includes: payment (whether commission, fee, reward or otherwise) under a contract (whether termed a contract, agreement, arrangement or engagement) to a person deemed to be a worker</p> <p>Does not include any payments for special expenses incurred by the worker because of the nature of the employment; reimbursement allowances for costs arising from obligations incurred under a contract; amount expended on behalf of the worker; directors' fees; compensation under the <i>Workers Compensation Act 1951</i>; or payment for long service leave; a lump sum payment instead of long service leave or any payment under the <i>Long Service Leave (Building & Construction Industry) Act 1981</i></p> <p>98/99: 73,700</p> <p>NB: ACT Public Service covered under Comcare</p> <p>Contract of service</p> <p>Included</p>	<p>The Accident Insurance Act defines "earnings" according to the following three categories.</p> <p>Earnings as an employee means all gross source deduction payments (i.e. taxable wages) of the person, but does not include any social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension.</p> <p>Earning as a self-employed person is defined as their annual assessable income, after expenses are deducted, that results from personal exertions. This definition includes Private Domestic Workers.</p> <p>Earnings as a shareholder employee is defined as any earnings as an employee, and/or any further salary representing payment for services provided as an employee or director of the company.</p> <p>1,765,000 as at March 2000</p> <p>An "earner" is an employee, self-employed person, shareholder employee or private domestic worker.</p> <p>Not Applicable</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

COVERAGE	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Definition of 'Injury' for the purpose of coverage				
Relationship to employment	"...a physical or mental injury arising out of, or in the course of, the employee's employment..."	"...an injury arising out of, or in the course of any employment..."	"...personal injury arising out of, or in the course of employment..."	"...[physical or mental injury which] arises out of, or in the course of employment..."
Contribution of employment	To a material degree (for disease only)	A significant contributing factor	A substantial contributing factor	A substantial cause (for stress only)
Aggravation, acceleration, etc.	Included	Included	Included	Included
Diseases	Included	Included	Included	Included
Recess claims	On/off worksite	On/off worksite	On/off worksite	On worksite only
Journey claims – to/from work	Included	Not included	Included (with some restrictions)	Not included unless there is a real and substantial connection between the employment and the accident
Stress specific exclusion factors	Included	Included	Included	Included
Industrial deafness threshold	20%	10%	6%	5%

COVERAGE

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
"...a personal injury by accident arising out of, or in the course of the employment..."	"...a personal injury arising out of, or in the course of, employment..."	An injury, or a disease, arising out of, and in the course of employment.	"...a physical or mental injury arising...out of or in the course of employment..."	"..personal injury arising out of, or in the course of employment."	"...a personal injury that the insured suffers while he or she is at any place for the purposes of his or her employment."
To a significant degree (for disease only)	A significant contributing factor	To a substantial degree: "the major or most significant factor" (for disease only)	Included for diseases and injuries that occur gradually	Not included.	Workplace must have been a cause or a contributing factor in cases of gradual process, disease and infection injuries.
Included	Included	Not included. Aggravation treated as a new injury.	Included	Included	Included unless original claim resolved, in which case treated as a new injury
Included	Included	Included	Included	Included	Included, subject to the criteria of section 33 of the AIA
On/off worksite	On/off worksite	On worksite only	On/off worksite	On/off worksite	At a place of employment
Not included, however workers are covered for injury during journeys in the course of employment or at the direction of the employer	Included (with some restrictions)	Not included	Included (with some restrictions)	Included	Included, if transport is provided by the employer, for the purpose of transporting employees, and is driven by or at the direction of the employer; or travelling between a workplace and a place of treatment for a work related injury.
Included, however certain requirements must be met	Included	Included	Included	Included	Claims only allowed for 1. Stress caused by physical injury 2. Stress caused by sexual abuse
10% (above baseline hearing loss previously assessed)	5%. A further application may be considered only if lodged more than 3 years after the previous application and claimant has sustained a further hearing diminution of more than 1%	5%	5% whole person impairment (percentage loss of whole body)	Nil	No threshold is specified. Covered under the "gradual process" provisions.

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

COVERAGE	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Retirement provisions	<p>Section 23 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> states that compensation for incapacity is not payable to a person who reaches the age of 65 years</p> <p>However section 134 states that when former employees to whom section 131, 132 or 132A (special transitional provisions relating to former employees) applies reach 65, their amount of compensation payable per week shall be reduced by an amount determined by a formula defined in the Act</p> <p>Under the Public Employment (Consequential and Transitional) Amendment Act 1999 any employee who is employed under the Public Service Act 1999 and suffers a compensable disease or injury at any age after 63 years is entitled to receive incapacity benefits under the SRC Act for a maximum period of 2 years.</p> <p>Seacare: Under Section 38 of the <i>Seafarers Rehabilitation and Compensation Act 1992</i>, compensation for incapacity is not payable to a person who reaches the age of 65 years, except in the case of a person who is injured after the age of 64 years, in which case compensation is payable for 12 months</p> <p>All other benefits (such as medical and permanent impairment) are payable in full, irrespective of a person's age at the time of injury, without any time limits on their payment</p>	<p>Section 5 of <i>Accident Compensation Act 1985</i> defines "retirement age" as:</p> <p>(a) if there is a normal retiring age for workers in the occupation in which the worker was employed at the time of the injury – that age; or</p> <p>(b) the age of 65 years</p> <p>whichever is the earlier</p> <p>A worker is not entitled to weekly payments after attaining retirement age</p> <p>However, if a worker is injured within 52 weeks of attaining retirement age or after attaining retirement age, the worker is entitled to weekly payments for not more than the first 52 weeks (whether consecutive or not) of incapacity for work</p>	<p>Section 52 of the <i>Workers' Compensation Act 1987</i> provides that a worker's entitlement to weekly compensation benefits continues only until one year after the age at which the worker would become eligible to receive an age pension.</p> <p>If the injury occurs after this age weekly benefits will be paid for one year after the date of injury.</p> <p>Other benefits such as hospital, medical, rehabilitation costs and access to common law and lump sums are able to be claimed irrespective of age (These restrictions do not apply to injuries received before 30 June 1985.)</p>	<p>Section 35(5) and (5A) of the <i>Workers Rehabilitation and Compensation Act 1986</i> states that weekly benefits cease at normal retirement age, this is defined as either the normal retirement age for workers in employment of the kind from which the worker's disability arose, or 65 years of age, whichever is the lesser</p> <p>Workers who are within six months of retirement age, or have passed the normal retirement age for the industry and are still in employment, are entitled to weekly payments for a period of up to six months; this does not apply to working directors, or to contractors</p> <p>No weekly payments are payable after a worker reaches 70 years of age</p>

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

COVERAGE

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>Section 5 of the Act defines "notional residual entitlement"</p> <p>Section 24A – Lump sum compensation for noise induced hearing loss</p> <p>Section 56 – Entitlements to weekly payments ceasing on account of age</p> <p>Section 68 – Calculation of lump sum;</p> <p>Section 198 – Weekly payments after the age of 64</p> <p>Schedule 5 – Where a worker attains the age of 65 s/he is entitled to receive the "supplementary amount" if it can be proved the worker was going to work beyond the age of 65 (until age 70)</p> <p>Workers suffering disability after age 64 years have a period of one year for payment of weekly compensation from date of disability</p> <p>Special provisions apply to workers suffering asbestos-related diseases</p>	<p>There are no provisions in the Act that refer to retirement age</p> <p>Entitlement to benefits ceases when:</p> <p>(a) incapacity because of the injury ceases; or</p> <p>(b) worker has received weekly compensation for 5 years of incapacity; or</p> <p>(c) the statutory maximum compensation amount is reached – \$121,005 (this includes lump sum for permanent impairment and weekly compensation amounts); or</p> <p>(d) 28 days after an offer of lump sum compensation for permanent impairment is made; or</p> <p>(e) WorkCover and the worker agree on an amount that redeems WorkCover's liability to make weekly payments; or</p> <p>(e) when entitlement to weekly compensation is reviewed and the entitlement is ceased (e.g. no longer incapacitated due to injury)</p>	<p>Section 87 of the Act states that</p> <p>(1) An entitlement of a worker to weekly payments of compensation ceases:</p> <p>(a) if the injury occurs on or before the date on which the worker attains the age of 64 years, on his/her attaining the age of 65 years; or</p> <p>(b) if the injury occurs after the date on which the worker attains the age of 64 years, on the date one year after the injury occurs.</p> <p>(2) Where the terms and conditions of a workers employment are such as to permit him/her to continue in that employment beyond the age of 65 years, the worker may refer to the Tribunal for determination the question as to whether or not the provisions of subsection (1) should apply</p> <p>(3) Pursuant to subsection 2, if the Tribunal is satisfied –</p> <p>(a) that the worker's employment would have entitled him/her to continue in that employment beyond the age of 65 years, and the worker, but for the injury, intended to continue in that employment beyond that age; and</p> <p>(b) that the incapacity will continue beyond the date the worker attains the age of 65 years;</p> <p>the Tribunal may determine that weekly payments may be continued beyond the dates mentioned in subsection (1) and shall determine period for which such payments are to be continued</p>	<p>Section 65 of the Act refers to long term incapacity.</p> <p>A worker will be paid 75% of his/her loss of earning capacity until–</p> <p>(a) he/she attains the age of 65 years; or</p> <p>(b) if the normal retiring age for workers in the industry or occupation in which he/she was employed at the time of the injury is more than 65 years, he/she attains that normal retiring age</p>	<p>No provisions in the Act that relate to retirement age</p> <p>Entitlement to benefits continues while the worker is totally unfit for work or cannot find work because of an incapacity due to a work related injury.</p>	<p>Weekly compensation paid for loss of earnings normally stops when the person reaches "New Zealand Superannuation Qualifying Age (NZSQA)" i.e. retirement age. Between 1 April 1994 and 2001 the NZSQA is being raised from 60 to 65 years. At present NZSQA is 64.5 years (at 30/09/2000 the qualifying age will rise to 64.75 years , and to 65 years on 31/03/ 2001).</p> <p>If incapacitated within between 24 and 12 months prior to NZSQA, weekly compensation can be paid for 24 months from the start date, provided they elect upon reaching NZSQA to receive weekly compensation rather than superannuation. If incapacitated within 12 months prior to NZSQA, or after reaching NZSQA, weekly compensation can be paid as well as any superannuation, until the later of:</p> <ul style="list-style-type: none"> • NZSQA date • the first date of entitlement to weekly compensation <p>After that 52 weeks, they can then elect to receive either weekly compensation or national superannuation for a further year. Weekly compensation stops after that further year.</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

COVERAGE	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Cross border cooperative arrangements	<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities</p> <p>Seacare: State/Territory Compensation Schemes have no application if Seacare applies</p>	<p>As a result of agreement between the New South Wales and Victorian WorkCover Boards of Management, the following applies:</p> <p>(a) Victorian employers, who have a significant workforce in NSW (where significant is defined as the equivalent of one or more full time workers in NSW or more than 25% of the workforce in NSW) must take out policies in both States but only pay the premium on remuneration paid for work performed in that State</p> <p>(b) Victorian employers who have a workforce in NSW which does not meet the significant test (see (a)) need only obtain a Victorian policy</p> <p>(c) Employers in (b) are expected to have a relatively limited risk exposure. Where claims against those employers occur in NSW jurisdiction they will tend to be lodged in the Victorian jurisdiction</p> <p>However where an injury was incurred in the NSW jurisdiction and the claim was pursued in that jurisdiction it would be met by the NSW Uninsured Employer Fund</p> <p>The reverse would hold for NSW employers with an insignificant workforce where an injury occurs in Victoria</p>		<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities</p>

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COVERAGE

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities</p>	<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities. Section 140 of the Act applies to interstate and overseas arrangements</p> <p>This section prescribes that the principal place of employment must be in Queensland to be eligible for compensation</p>	<p>There are no formal cooperative arrangements with other jurisdictional compensation authorities</p>	<p>The Authority has an agreement to carry out accident investigations on behalf of Comcare</p> <p>There are no formal cooperative arrangements with other jurisdictional compensation authorities</p>	<p>Cross border amendment to <i>Workers Compensation Act 1951</i> commenced 13 January 1998</p> <p>This limits the liability of employers to pay compensation only in respect of injuries suffered by a Worker of the Territory.</p> <p>The amendment defines who is a worker of the Territory and provides coverage for ACT workers undertaking temporary employment in other jurisdictions, including outside Australia</p>	<p>Not applicable.</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS

Weekly benefit rates

COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
<p>≤ 45 weeks: Normal weekly earnings (NWE)</p> <p>> 45 weeks: 75% of NWE</p> <p>Maximum: \$1,173.90</p> <p>(150% of Average Week Ordinary Time Earnings for Full-time Adults as published by ABS)</p> <p>Minimum: \$294.12</p> <p>Additional for dependent spouse \$72.82 and for each dependent child \$36.39</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 – Workers entitled to receive weekly benefits as at 12/11/97 : old rates apply</p> <p>Post 12/11/97 – ≤ 13 weeks: 95% of pre-injury average weekly earnings (PIAWE) (maximum: \$899.00), less notional earnings</p> <p>> 13 weeks: If no current work capacity 75% of PIAWE; or if some work capacity either– i) 60% of PIAWE less 60% of notional earnings or (ii) \$539 less 60% of notional earnings, whichever is the lesser</p> <p>> 104 weeks: Weekly benefits cease after 104 weeks of weekly payments unless: i) worker is likely to have no current work capacity indefinitely Benefits continue while this is the case until retirement; or ii) worker has a current work capacity and has returned to work at his/her maximum capacity</p> <p>Must be working at least 15 hours per week and earning at least \$105 per week; and be employed/ self-employed</p>	<p>≤ 26 weeks: Current weekly wage rate (maximum: \$1,197.20) or, where no award, 80% of worker's Average weekly earnings (AWE), not including overtime, shiftwork or penalty rates</p> <p>> 26 weeks: 90% of AWE. (maximum: \$281.60)</p> <p>Plus:</p> <p>Dependants:</p> <ul style="list-style-type: none"> • spouse \$74.20 • 1 child \$53.00 • 2 children \$118.60 • 3 children \$196.50 • 4 children \$276.40 • For each additional dependent child in excess of 4: \$79.70 <p>>52 weeks: The maximum period for which partially incapacitated workers can receive special benefits is 52 weeks</p> <p>Special benefits are paid at the basic award rate for up to 26 weeks post-injury, after which they are paid at 80% of the basic award rate for a maximum of 52 weeks</p> <p>After 52 weeks, partially incapacitated workers are able to claim the difference between current and pre-injury capacity</p> <p>Persons receiving Section 38 benefits on or before 1 August 1998 are eligible to receive up to 104 weeks of special benefits</p> <p>>104 weeks: Payments can be discontinued at the end of 104 weeks of partial incapacity if the worker is no longer jobseeking, is unemployed mainly as a result of the labour market conditions, or has unreasonably rejected an offer of suitable employment</p>	<p>≤ 52 weeks: Worker's average weekly earnings (WAVE) to a maximum of 2 x State average weekly earnings (AWE): Maximum = \$1537.20 at 18/5/00 less actual earnings if partially incapacitated</p> <p>> 52 weeks: <i>(a) Total incapacity</i> 80% of WAVE subject to a maximum of 80% of 2 x State AWE: Maximum = \$1229.76 at 18/5/00</p> <p><i>(b) Partial Incapacity</i> 80% of difference between worker's adjusted notional weekly earnings (NWE) and earnings from employment, or potential earnings in suitable employment that the worker has a reasonable prospect of obtaining. Maximum = \$1229.76 at 18/5/00 less actual or potential earnings if partially incapacitated.</p> <p>> 104 weeks: If worker partially incapacitated and not in suitable employment, 80% of difference between NWE and what the worker is deemed capable of earning in suitable employment</p> <p>Otherwise same as for > 52 weeks</p>

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WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>Since 5 October 1999 A cap on weekly payments of \$870.10 now applies for the duration of all claims.</p> <p>Workers whose earnings are prescribed by an industrial award</p> <p>First 4 weeks of claim 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 including overtime, bonuses or allowances up to a maximum of \$870.10. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred</p> <p>5th 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, but excluding overtime, bonuses or allowances. Maximum payment is \$870.10</p> <p>Minimum rate Subject to the cap of \$870.10, the minimum rate of weekly earnings payable for the appropriate classification under the relevant award.</p> <p>Workers whose earnings are not prescribed by an industrial award</p> <p>First 4 weeks of claim Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses or allowances) averaged over the year before the disability occurred up to a maximum of \$870.10</p> <p>5th week onward Weekly payments "step down" to 85% of the worker's average weekly earnings. Maximum payment is \$870.10</p> <p>Minimum rate Subject to the cap of \$870.10, the minimum rate of weekly earnings payable under the <i>Minimum Conditions of Employment Act 1993</i>.</p>	<p>≤ 26 weeks: Workers under award or industrial agreement – the greater of: i) 85% of the worker's normal weekly earnings (NWE); or ii) amount payable under the worker's award or agreement</p> <p>Workers not under award or agreement – the greater of: i) 85% of NWE ii) 70% of QOTE</p> <p>QOTE (Queensland ordinary time earnings) is currently \$719.40</p> <p>> 26 weeks: All workers – the greater of: i) 65% of NWE ii) 60% of QOTE</p> <p>>104 weeks to 5 years: Workers with work-related impairment (WRI) of more than 15% – the greater of: i) 65% of NWE ii) 60% of QOTE</p> <p>Workers with WRI less than or equal to 15% receive an amount equal to the Department of Social Security single person pension rate</p> <p>Total amount payable for weekly benefits is \$121,005.00</p>	<p>≤ 6 weeks: Greater of normal weekly earnings (NWE) for the period of 12 months prior to period of incapacity or ordinary time rate of pay for work engaged prior to incapacity</p> <p>> 6 weeks: 95% of weekly payment</p> <p>> 25 weeks: 90% of weekly payments</p> <p>Total amount payable for weekly benefits is \$152,817.66</p> <p>(basic rate of \$414.14 per week x 369)</p>	<p>≤ 26 weeks: Normal weekly earnings (NWE) i.e. worker's normal working hours per week at hourly rate, including overtime and shift penalties where it was worked in a regular and established pattern</p> <p>> 26 weeks: Whichever is the greater of: i) 75% of NWE to a maximum of \$1,158.60; or ii) \$386.20 plus \$96.55 for a dependent spouse and \$48.28 for each dependent child; or 90% of NWE (whichever is the lesser)</p>	<p>≤ 26 weeks: Sick pay/ normal weekly earnings</p> <p>> 26 weeks: Worker: \$278.43* Spouse: \$73.27* Each dependent child: \$34.19* * Indexed in line with the CPI</p>	<p>For weeks 2–5 of incapacity, weekly compensation is paid at 80% of the short-term rate (defined on page 21). From the 5th week, weekly compensation is paid at 80% of the long-term rate (defined on page 21). Maximum weekly compensation is \$NZ1319.93. Weekly compensation is reduced by a proportion of any earnings derived during the period of incapacity.</p> <p>A minimum rate for full-time earners applies after 5 weeks of incapacity, set at 80% of \$NZ284.03, or 80% of \$NZ222.01 for people under the age of 20 years.</p> <p>Payment of weekly compensation continues until:</p> <ul style="list-style-type: none"> the person is assessed as no longer incapacitated for normal work, or has a capacity for work for which they are otherwise suited or the person returns to employment and derives earnings higher than their pre-injury earnings the upper age limit rules apply

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS

Basis for determining weekly benefits

	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
	<p>Normal weekly earnings including: allowances payable each week (excluding expenditure reimbursement or an allowance payable in respect of special expenses incurred); average of overtime worked on regular basis; income from job outside Commonwealth employment if injured in part-time Commonwealth employment</p> <p>Seacare: Normal weekly earnings as defined in Section 13 of the Act</p>	<p>Either Pre - Injury Average Weekly Earnings (PIAWE) during the 12 months preceding injury if the worker was continuously employed by the same employer for this period; or PIAWE for the period less than 12 months preceding the injury for which the worker has been continuously employed by the same employer</p> <p>PIAWE is calculated at the worker's ordinary time rate of pay for the worker's normal number of hours per week</p>	<p>Average weekly earnings during 12 months preceding injury if the worker was continuously employed by the same employer for this period or, if less than 12 months, average weekly earnings by a person in the same grade at the same work of same class of employment</p> <p>Pre-Injury Average Weekly Earnings include: reference to the ordinary weekly rate of pay applicable under industrial law; overtime; and other amounts payable under common industry or other practice</p>	<p>Average weekly earnings refers to the amount the worker could reasonably expect to earn for a week's work if not disabled and includes: wages and/or salary; overtime if regular and established, substantially uniform and continuing; non-cash entitlements (e.g. loss of use of company vehicle); eligible allowances paid in recognition of a skill (e.g. First Aid allowance).</p>

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WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>The cap on weekly payments of \$870.10 is obtained by multiplying by 1.5 the average ABS' all employees average weekly total earnings amount and will be indexed annually from 1 July 2000</p> <p>Workers whose earnings are prescribed by an industrial award</p> <p>First 4 weeks Weekly earnings payable as per the relevant industrial award, or service payment paid on a regular basis including overtime, bonus or allowances. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred.</p> <p>5th week onward Weekly earnings payable as per the relevant industrial award, plus any over award or service payment paid on a regular basis, but excluding overtime, bonuses and allowances.</p> <p>Workers whose earnings are not prescribed by an industrial award</p> <p>First 4 weeks Average weekly earnings payable (including overtime, bonus or allowances) are averaged over the year before the disability occurred</p> <p>5th week onward Weekly payments consist of 85% of the worker's average weekly earnings, which are averaged over the year before the disability occurred. Total weekly payments of compensation and lump sum compensation are normally limited to the Prescribed Amount (the maximum total amount payable in weekly payments and lump sum settlements, which amounts to \$122,139 as from 1 July 2000). In certain circumstances, at the discretion of the Conciliation and Review Directorate, an additional amount of up to \$50,000 may be granted in weekly payments.</p> <p>Transitional Weekly payments for workers injured prior to 5 October 1999 continued under the previous weekly payments until the 5th week after the date of assent when the 5th week onwards provisions applied.</p>	<p>Normal weekly earnings (NWE) of the worker from employment (continuous or intermittent) in the 12 months before the day of injury, including amounts paid immediately prior to the injury in overtime, higher duties, penalties and regular allowances</p> <p>Does not include one-off periods of overtime and further exclusions also apply as per the definition of "wages"</p> <p>The total statutory maximum compensation payable amounts to \$121,005.00</p> <p>This includes lump sum and weekly compensation benefits. The total lump sum and weekly benefits cannot be greater than the total statutory maximum compensation payable</p> <p>Additional lump sum and gratuitous care lump sums are not included in this maximum</p>	<p>Normal weekly earnings (NWE) are average weekly earnings of the worker over the period of 12 months ending at the commencement of the period of incapacity</p> <p>Where it is impracticable to compute the NWE of the worker under that employer, the NWE are to taken to be the NWE of a person employed in the same grade at the same work by the same employer</p> <p>NWE includes all payments, allowances or benefits received during the period excluding any long service benefit or entitlement, bonus or gratuity</p> <p>Generally overtime is excluded unless it was a regular and established pattern of work</p>	<p>Normal weekly earnings (NWE) are a worker's normal number of hours per week, at his/her hourly rate, including overtime and shift penalties where it was worked in a regular and established pattern</p> <p>NWE also includes: climate; district; leading hand and qualification allowances and service grants</p>	<p>In the case of a worker who is, entitled to sick leave payments: an amount equal to the sick leave payment that the worker would receive for that week being on sick leave on full pay</p> <p>In any other case: an amount equal to earnings that would, but for the injury, be payable to the worker for that week</p> <p>It does not include over time, allowances for special expenses or income from professional sporting activity</p>	<p>For a permanent employee:</p> <ul style="list-style-type: none"> the short-term calculation is based on earnings in the 4 weeks prior to incapacity divided by the number of weeks in which they were derived the long-term calculation is based on earnings, from that job, in the 52 weeks prior to incapacity divided by the weeks over which they were derived <p>For a non-permanent employee:</p> <ul style="list-style-type: none"> the short-term calculation is based on all non-permanent employee earnings in the 4 weeks prior to incapacity divided by the actual number of weeks in which they were derived the long-term calculation is based on all non-permanent employee earnings in the 52 weeks prior to incapacity divided by 52 <p>For a self-employed person, entitlement is generally based on earnings in the most recently completed tax-year. Shareholder employees have a similar assessment.</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Medical and hospital – limits	No limit – all reasonable costs	Cease 52 weeks after weekly payments cease, or, if no time lost, 52 weeks after first entitlement May continue in specified circumstances	\$50,000.00 or such greater amount as is prescribed or as directed by the WorkCover Authority or by the Compensation Court Occupational Rehabilitation Service Cost (rehabilitation review point): \$1795.20	No limit – all reasonable costs
Basis for medical and like service fees	Currently moving from practice of following the scales set by professional associations to adopting scales of fees followed by the other jurisdictions Seacare: Appropriate amount having regard to nature of treatment	Basis for payment is reasonable costs subject to any maximum amount specified in, or determined in accordance with, an Order of the Governor in Council For all services, a loading on Medicare Schedule fee to reflect market rate and other factors associated with treatment of compensable patients Other medical and like services: by annual review	On determination that the medical or related treatment is reasonably necessary, fees for the treatment are according to the customary charges for the service in the general community to persons other than workers	Rates prescribed by regulation following consultation with stakeholders and provider associations Where possible, fees are based on the average charge to private patients If the fee is not prescribed, the amount paid is a reasonable amount for the service

BENEFITS

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>\$36,641.70 (i.e. 30% of the prescribed amount)</p> <p>In certain circumstances, at the discretion of the Conciliation and Review Directorate, an additional amount of up to \$50,000.00 may be granted</p> <p>Rates are prescribed by regulation following negotiation with the relevant body</p>	<p>i) Medical and rehabilitation: no limit – all reasonable costs</p> <p>ii) Private hospitalisation cost for any one incident: \$10,000.00 limit</p> <p>In special circumstances, a further \$10,000.00 may be granted</p> <p>Medical Practitioners based on Medicare Benefits Schedule, and calculated as Scheduled Fee plus 27.5% for all consultations and procedures</p> <p>Allied Health and other services - Table of Costs developed in consultation with service providers outlines fees and conditions</p>	<p>No limit – all reasonable costs</p> <p>Service provider must not charge fee in excess of fee normally charged for that service in the general community</p> <p>The AMA schedule fee is the maximum fee for services provided by medical practitioners</p>	<p>No limit – all reasonable costs</p> <p>Reasonable fees for medical and like services</p>	<p>No limit – all reasonable costs</p> <p>Reasonable fees; AMA and other professional associations rates used as guideline only</p> <p>Medical Fees: assessed having regard to the charges customarily made for similar medical treatment in the place where that treatment is obtained</p>	<p>Full costs of public health acute services are met by ACC and Residual Insurers (see page 43) with services provided exclusively by public hospital and health services. If a treatment is other than a "public health acute service", and is one of the types of treatment set out in regulation, then the set amount is payable. If a treatment is not regulated, then the actual cost is paid. Treatment must be necessary and appropriate.</p> <ol style="list-style-type: none"> 1. Acute (Hospital) Services – Annual levy payment to the Ministry of Health 2. Primary Care Rates – Prescribed by regulation 3. Elective Services – Contract with provider 4. Services not covered by regulation or contract – Full cost paid

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS	COMMONWEALTH*	VICTORIA
Lump sum payments:		The statutory scheme changed as of 12/11/97 Entitlement depends on date of injury
Maximum	<p>\$116,486.98 for permanent impairment. In addition, a maximum of \$43,682.64 for non economic loss</p> <p>For Comcare only:</p> <p>Additional compensation payable as a "Severe Injury Adjustment" under the <i>Defence Act 1903</i> to those ADF members severely injured as a consequence of an injury occurring after 07/04/94 to top up the <i>SRC Act 1988</i> benefit to \$209,960 and additional \$52,490 for each dependent child</p>	<p>Pre 12/11/97 injury \$104,990</p> <p>In addition maximum of \$56,400 for pain and suffering</p> <p>Post 12/11/97 injury \$309,100 (impairment of 80% or more)</p>
Settlement	<p>The only occasion under the <i>SRC Act</i> where a lump sum payout can be made is when:</p> <ul style="list-style-type: none"> • an employee's weekly incapacity payments are equal to or less than the indexed rate; and • Comcare is satisfied that the degree of the employee's incapacity is unlikely to change <p>The indexed rate as at 1 July 2000 is \$72.82 per week</p> <p>The redemption of the incapacity amount is calculated as per section 30(1) (or 137(1) for former employees) of the <i>SRC Act</i>. It does not affect any ongoing medical or rehabilitation entitlements under the Act</p> <p>Seacare: Section 44 of the Act requires settlement where:</p> <ul style="list-style-type: none"> • an employee is receiving weekly payments for an injury resulting in incapacity; the amount of those payments is equal to or less than \$72.82 (subject to indexation); and • the employer is satisfied that the degree of the employee's incapacity is unlikely to change <p>If these conditions are satisfied an employer must commute weekly incapacity benefits to a lump sum calculated by a formula contained in the Act</p>	<p>The <i>Accident Compensation Act 1985</i> allows for the settlement of weekly benefits in a lump sum. It does not include medical and like expenses, which continue to be paid as required.</p> <p>Settlements of future weekly benefits are allowed when the worker:</p> <ol style="list-style-type: none"> 1. Has no current work capacity indefinitely; and • Has been on benefits for 104 weeks or more; and • Is over 55 years old; or 2. Is seriously injured and requires settlement for an income-producing scheme.
Thresholds	No award below 10 % assessed impairment (exceptions for fingers, toes, taste and smell)	<p>Pre 12/11/97 injury Pain and suffering : no award if payment under Table of Maims < \$11,270; Hearing Loss – no award if loss is < 7%.</p> <p>Post 12/11/97 injury Physical injuries: 10% whole person impairment (except amputations)</p> <p>Psychiatric injuries: 30% whole person impairment</p> <p>Hearing Loss: 10% National Acoustic Laboratory Standard (NAL)</p>
Method of calculating (assessing) permanent impairment	<p>Whole person impairment assessed according to approved guides for permanent impairment and non-economic loss</p> <p>Permanent Impairment assessed under <i>Guide to the Assessment of the Degree of Permanent Impairment</i>. (Separate guides available for Comcare and Seacare)</p>	<p>Pre 12/11/97 injury Old Table of Maims applies</p> <p>Post 12/11/97 injury Assessed under American Medical Association Guides 4th edition modified to take account of Australian best practice in evaluation of psychiatric & hearing impairments – used for all new impairment benefits (2nd edition continues to be used for all other purposes.)</p> <p>If total loss injury, payment is not less than under old Table of Maims with allowance for pain & suffering.</p>

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

BENEFITS

NEW SOUTH WALES	SOUTH AUSTRALIA
<p>\$100,000 (with a maximum of \$121,000 for 2 or more permanent impairments from one injury) In addition, a maximum of \$50,000.00 for pain and suffering (NB. See section on Common Law)</p>	<p>For non economic loss \$106,800.00 If the lump sum assessment exceeds 55% of the prescribed sum (\$106,800), a supplementary benefit of up to \$72,090 is available.</p>
<p>By agreement between the parties There are no legislative requirements in NSW</p>	<p>Liability for weekly payments and/or medical expenses may be redeemed by a capital payment to the worker Redemptions require worker and Corporation collaborative agreement</p>
<p>Before being entitled to payment for pain and suffering worker must meet threshold which is 10% of maximum amount payable under Table of Disabilities</p>	<p>5% (hearing loss only)</p>
<p>Medically assessed as a percentage of a maximum amount payable under the Table of Disabilities in the <i>Workers Compensation Act 1987</i></p>	<p>Assessed under 3rd Schedule (Table of Maims) based on medical opinion or, otherwise medically assessed under American Medical Association Guides (3rd edition revised) Disability not listed in 3rd Schedule or in AMA guides not eligible for assessment No assessment for psychiatric impairment</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS

Lump Sum Payments:

Maximum

	WESTERN AUSTRALIA	QUEENSLAND
	<p>\$122,139 (less any amount paid in weekly benefits) for workers with a permanent disability</p>	<p>Total amount payable for weekly benefits and lump sum up to \$121,005 (except for payments for injuries resulting in death). After decision to accept offer of lump sum all compensation ceases</p> <p>Additional Lump Sum Payments: A worker sustaining an injury resulting in a work-related impairment (WRI) of 50% or more is entitled to an additional lump sum of \$121,005. Also entitled to a lump sum for gratuitous care if the injury results in a WRI of 50% and moderate/total level of dependency for daily care. Amount payable up to \$176,055.00</p>
Settlement	<p>Schedule 1 Lump sum payments/redemption A lump sum redemption for future loss of weekly wages as a result of an injury is available subject to the following conditions:</p> <ul style="list-style-type: none"> • the worker must have a permanent total or permanent partial incapacity; • the worker must have been in receipt of weekly payments for 6 months; • the worker and employer agree to the redemption and the amount of the lump sum; • the worker will automatically waive their common law rights; and • the Director of the Conciliation and Review Directorate is to ensure the worker is aware of the consequences of redeeming their claim. <p>Schedule 2 Lump sum payments When an injury results in the permanent loss of use of a part of the body mentioned in the Table of Compensation Payable known as Schedule 2 of the Act, an injured worker may be entitled to a lump sum if settlement of the claim is required. The maximum benefit is the remainder of the prescribed amount. For example, a worker who has a permanent total loss of use of a middle finger is entitled to 13% of the prescribed amount.</p> <p>The acceptance of a lump sum terminates any further entitlement to weekly payments and medical benefits for that particular disability</p>	<p>WorkCover's liability to make weekly payments of compensation to a worker may be discharged by a redemption payment of an amount agreed between WorkCover and the worker; for such a redemption payment to be considered, WorkCover must receive a report from the doctor stating the worker's injury is not stable and stationary for the purposes of assessing permanent impairment and:</p> <ol style="list-style-type: none"> 1. the worker has been receiving weekly payments of compensation for at least two years; or 2. the worker moves interstate permanently; or 3. the worker stops ordinarily residing in Australia (Entitlement to compensation ceases in this instance.)
Thresholds	No	No
Method of calculating (assessing) permanent impairment	Medically assessed under Schedule 2 (Table of Compensation Payable) using the <i>Assessment of Disability Guide</i> published by the WA Branch of the Australian Medical Association	Assessed in accordance with the AMA Guide (currently 4th edition): psychiatric and psychological injuries assessed by a Medical Assessment Tribunal; industrial deafness injuries by an audiologist
		If as a result of assessment a worker is entitled to lump sum compensation, the amount of the lump sum compensation is calculated as per Schedule 2 of the <i>WorkCover Queensland Regulation 1997</i> having regard to the worker's degree of permanent impairment and the Table of Injuries

BENEFITS

TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>\$117,615.76 (with a maximum of \$220,322.48 for multiple injury/loss)</p> <p>The <i>Workers Rehabilitation and Compensation Act 1988</i> allows for the settlement of medical and like claims only. The right to settle claims for weekly payments was removed in 1995. However, this change has had little impact on the scheme as most claims are settled at common law.</p> <p>No</p> <p>Medically assessed as a percentage of a maximum amount payable under the Table of Maims</p>	<p>\$160,659.20 for permanent impairment</p> <p>Under the NT legislation there is provision for lump sum payments for permanent impairment and commutation.</p> <p>Section 71 of the <i>Work Health Act</i> provides that if an injury results in a permanent impairment, the injury when stabilised is assessed as a percentage loss of whole of bodily function.</p> <p>The entitlement is calculated as a percentage of a maximum of 208 x AWE (\$160,259.20).</p> <p>Section 74 of the <i>Work Health Act</i> provides for the commuting of weekly benefits to a lump sum calculated to a maximum amount of 156 x AWE (\$120,494.40).</p> <p>This is only for a worker who is not totally incapacitated for work and where rehabilitation is complete; it does not include medical and like expenses, which continue to be paid as required.</p> <p>No award below 5% whole person impairment</p> <ul style="list-style-type: none"> ● 5-9%: 2% of maximum ● 10-14%: Sliding scale to 12% of maximum ● 15-84%: True % of maximum ● >84%: Maximum amount (Statutory maximum = 208x AWE) <p>Whole person impairment assessed according to American Medical Association's Guides (4th edition)</p>	<p>\$97,694.50*</p> <p>* Indexed in line with the CPI</p> <p>The lump sum settlement is based on the Table of Maims i.e. percentage loss or use of a body part or by agreed amounts between employers (insurers) and workers.</p> <p>No</p> <p>No assessment methodology prescribed</p> <p>Amount calculated with reference to Table of Maims</p>	<p>There is no provision in the legislation for the payment of Lump Sum Compensation. Additionally the Act prevents any "person from seeking to obtain compensatory damages for the personal injury through any proceedings in a New Zealand court" s7(2). There is a periodic independence allowance, payable every 13 weeks if a person has permanent impairment following any injury. The maximum weekly amount is \$NZ62.48, which is non-taxable.</p> <p>Not applicable</p> <p>Assessed impairment of 10%, using the AMA guides (4th edition)</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Death benefits:	<p>For both Comcare and Seacare :</p> <p>\$174,730.47</p> <p>Plus: \$58.23 per week for each dependent child</p> <p>For Comcare only:</p> <p>Additional compensation payable under the <i>Defence Act 1903</i> to top up the <i>SRC Act 1988</i> death benefit to \$209,960 and additional \$52,490 for each dependent child</p>	<p>Pre 12/11/97:</p> <p>\$134,430.00</p> <p>Plus: additional lump sum payments for dependent children</p> <p>Post 12/11/97:</p> <p>\$180,250.00</p> <p>Plus: Pre-injury earnings related pensions to dependent spouse and children</p> <p>Payable to spouse for 3 years and children until age of 16 or 21, if in full time study</p>	<p>\$253,650.00</p> <p>Plus: \$79.70 per week for each dependent child</p>	<p>\$178,890.00</p> <p>NB Lump sums available for spouse. Also available for dependent children (up to 50% of maximum)</p> <p>Minus: any amount granted for non-economic loss</p> <p>Plus: weekly benefit for dependants–</p> <ul style="list-style-type: none"> • spouse (50% of WAVE); • children (orphans, up to 25% of WAVE; non-orphans, up to 12.5%) <p>Dependent relatives may be entitled to compensation by way of a lump sum or weekly payments as determined by WorkCover Corporation</p>
Common law rights:	<p>Most common law rights abolished</p> <p>Comcare: from December 1988</p> <p>Seacare: from June 1993</p>	<p>Common law rights were available for injuries that occurred before 12/11/1997 or after 19/10/1999, in accordance with thresholds set out below.</p> <p>Between these dates only available for the death of the worker under the <i>Wrongs Act</i>.</p>	<p>Election between Table of Disabilities/pain and suffering under the Act or modified common law for injuries after 30 June 1989</p>	<p>Common law rights against employer abolished for injuries occurring on or after 3 December 1992</p>
Maximum	<p>No ceiling to third party actions or those made by dependants</p>	<p>Percuniary Loss: \$801,630</p> <p>Pain and Suffering \$351,900 Pre- 12/11/97</p> <p>\$349,010 Post- 19/10/99</p> <p><i>Wrongs Act:</i> \$528,830</p>	<p>\$244,250 (non-economic loss)</p> <p>No maximum limit for economic loss (loss of past and/or future earnings)</p>	<p>Not applicable</p>

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

BENEFITS

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>\$122,139.00 (i.e. 100% of the prescribed amount)</p> <p>Minus: amount paid as weekly payments prior to the worker's death</p> <p>Plus: \$32.10 per week for each dependent child until the age of 16 years (or 21 if a student)</p> <p>Funeral expenses of \$4,205 are also payable</p> <p>Common law rights are available in accordance with the thresholds and requirements outlined below and on page 31</p> <p>From 5 October, 1999: Unlimited for workers with a disability assessed as 30% or more.</p> <p>For workers with "significant disability" (16% or more but less than 30%), a maximum of \$256,490</p>	<p>Maximum of \$193,610.00</p> <p>Minus: amount paid for under weekly benefits or table of injuries</p> <p>Plus: lump sum payment of \$7,275.00 for dependent children and weekly payments of 7% of QOTE (currently \$50.40) until the age of 16 years (or 21 if student)</p> <p>Lump sum payment of \$13,385 payable to parents if deceased under 21 years of age with no dependants</p> <p>Unlimited</p>	<p>\$117,615.76</p> <p>(Weekly payments paid/payable prior to death are not included in the lump sum calculation)</p> <p>Plus: lump sum payment for dependent children based on age</p> <p>Unlimited (less any amount received as compensation)</p>	<p>\$120,494.40</p> <p>Plus: \$77.24 per week for each dependent child (maximum of 10)</p> <p>Common law rights against employer or fellow worker abolished for injuries occurring after 1 January 1987</p> <p>Not applicable</p>	<p>\$97,964.50</p> <p>(Death after lingering: \$9,769.45)</p> <p>Plus: \$34.19 per week for each dependent child</p> <p>Unlimited</p>	<p>The surviving spouse of an earner is entitled to receive 60% of the long term rate of weekly compensation that the earner would have received if they had lived. Each surviving child, and other dependant, is entitled to receive 20% of the weekly compensation. In cases where the total entitlement of the survivors exceeds 100% individual entitlements are reduced on a pro-rata basis</p> <p>Also payable:</p> <ul style="list-style-type: none"> • funeral grant to a maximum of \$NZ3,186.52 • survivors grant of \$NZ4,563.16 to a spouse of the deceased • survivors grant of \$NZ2,281.58, to each child or other dependant • child care payments of \$NZ100 for a single child, \$NZ60 each if there are 2 children, and a total of \$NZ140 if there are 3 or more children <p>Abolished when the scheme was introduced in 1974.</p> <p>Not Applicable</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

BENEFITS	COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
Type of loss	<p>Non-economic loss limited to \$110,000</p> <p>Seacare: \$138,570.52</p> <p>Unlimited amount for claim by dependants</p> <p>Election between statutory amounts for permanent impairment and non-economic loss</p>	Economic and non-economic	Economic and non-economic	Not applicable
Threshold for common law	Subject to state/territory legislation	<p>Impairment threshold Injury before 12/11/97</p> <p>Actions available for "seriously injured" workers deemed to be $\geq 30\%$ impaired (AMA2).</p> <p>Injuries between 12/11/97 and 19/10/99</p> <p>No common law available</p> <p>Injury after 19/10/99</p> <p>Actions available for "seriously injured" workers, whether through $\geq 30\%$ impairment or a narrative test (AMA4)</p> <p>Minimum Monetary Threshold</p> <p>Pecuniary Loss: \$35,610</p> <p>Pain and Suffering: \$34,680 if injury before 12/11/97</p> <p>\$34,390 if injury after 19/10/99</p>	<p><i>Economic loss:</i></p> <p>Awarded only for death or "serious injury" where compensation under Table of Disabilities is greater than 25% of maximum amount or entitlement under non-economic loss is greater than \$57,500</p> <p><i>Non-economic loss:</i></p> <p>No award if loss assessed at less than \$56,600</p> <p>Award is reduced where the loss is between \$43,100 and \$57,500</p>	Not applicable

BENEFITS

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
Economic and non-economic loss	Economic and non-economic	Economic and non-economic	Not applicable	Economic and non-economic	Not Applicable
<p>From 5 October 1999: Common law access available only if it is agreed or determined the worker has either:</p> <ul style="list-style-type: none"> • A degree of permanent disability of 16% or more but less than 30% (a "significant disability") and elected between statutory benefits and common law normally within 6 months from the date weekly payments commenced (statutory benefits cease as from date election is registered); or • A degree of permanent disability of 30% or more (a "serious disability"). Workers with a serious disability are entitled to statutory benefits and access to common law 	<p>A worker who sustains a permanent impairment of at least 20% or more of statutory maximum compensation is entitled to lump sum compensation and access to common law</p> <p>A worker who sustains a permanent impairment of less than 20% of statutory maximum compensation must make an irrevocable election between accepting the lump sum offered or access to common law</p>	No	Not applicable	No	Not Applicable

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

Statutory Responsibilities

Return to Work (RTW) Provisions

Employer responsibilities

	COMMONWEALTH*	VICTORIA
	<p>Employer required to provide injured worker with suitable employment within Commonwealth until the date of separation and that employment is usually worker's original position</p> <p>Seacare: Employer required to take all reasonable steps to provide worker with suitable employment</p>	<p>Employer required to keep position open for injured worker for 12 months</p> <p>Employers with more than \$1,000,000 rateable remuneration must establish rehabilitation and risk management programs</p> <p>Requirement to prepare return to work (RTW) plans and nominate RTW coordinators</p>
	<p>Benefits may be suspended if worker fails to comply with, or obstructs a rehabilitation program or medical examination</p> <p>Seacare: Benefits may be suspended if the worker is not cooperative in rehabilitation or refuses to be medically examined</p>	<p>Worker required to make 'reasonable efforts' to return to work, including:</p> <ul style="list-style-type: none"> i) participating in rehabilitation or RTW plan; ii) participating in assessments of incapacity, rehabilitation progress and employment prospects; and iii) complying with requests to provide information, including medical reports, as to current nature and extent of injury and incapacity <p>Benefits may be terminated if worker fails to comply</p>

Worker responsibilities

STATUTORY RESPONSIBILITIES

NEW SOUTH WALES	SOUTH AUSTRALIA
<p>The <i>Workplace Injury Management and Workers Compensation Act 1998</i> provides that an employer must:</p> <ul style="list-style-type: none"> • notify insurers of all significant injuries (i.e. when a worker is away from their normal duties for more than seven days) within 48 hours <p>All other injuries are to be notified within seven days</p> <ul style="list-style-type: none"> • comply with the provisions of the insurer's Injury Management Program and any Injury Management Plan established for an injured worker • if a Category 1 employer (i.e. a base tariff premium of over \$50,000), employ a Rehabilitation Coordinator who has undertaken approved training • provide suitable employment (if reasonably practicable to do so) on request from partially incapacitated workers <p>Failure to comply with the above requirements may attract an extra charge on an employer's premium</p> <p>An employer may be in breach of the Industrial Relations Act 1996 if he/she:</p> <ol style="list-style-type: none"> i) dismisses the employee due to a work-related incapacity; or ii) that the dismissal is within 6 months of the incapacity occurring <p>If the employer offers a dismissed injured employee's position to a replacement employee the employer must advise the replacement employee that the injured employee may be re-instated to that position within two years of the date of injury</p> <p>Workers must:</p> <ul style="list-style-type: none"> • notify their employers of an injury as soon as possible • participate and cooperate in the establishment of an Injury Management Plan (if significant injury) • comply with the obligations imposed by the Injury Management Plan • nominate a treating doctor who is prepared to participate in the development and arrangements under the Injury Management Plan • authorise the treating doctor to provide relevant information to the insurer and employer • make reasonable efforts to return to work with the pre-injury employer as soon as possible, having regard to the nature of the injury <p>Failure to unreasonably comply with any of the above, after being requested to do so by the insurer, can result in cessation of weekly payments</p>	<p>Employer with less than 10 employees required to keep position open for injured worker for 12 months</p> <p>Employer with 10 or more employees required to keep position open indefinitely</p> <p>If employer does not make suitable job offer, heavy penalties may apply</p> <p>Employer to provide suitable duties for which the worker is fit and qualified to perform where reasonably practicable</p> <p>Weekly benefits may be discontinued, reduced or suspended if the worker:</p> <ol style="list-style-type: none"> i) fails to submit to medical exam after written request by Work-Cover Corporation ii) fails to supply prescribed medical certificate for continuing incapacity iii) fails to submit to proper medical treatment iv) refuses to participate in, or frustrates a rehabilitation or RTW plan, or v) refuses to do suitable work or take reasonable steps to find suitable work, or unreasonably discontinues work vi) anything else that is recognised as a breach of mutuality

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

Statutory Responsibilities

Return to Work (RTW) Provisions

Employer responsibilities

	WESTERN AUSTRALIA	QUEENSLAND	TASMANIA
	<p>Employer required to keep position open if reasonably practicable for injured worker for 12 months and to take reasonable steps to rehabilitate worker</p> <p>If that job is no longer available, or worker can no longer perform it, employer must offer a similar position which worker is qualified for and capable of doing</p>	<p>Employers who employ 30 or more workers at a workplace must appoint a trained rehabilitation coordinator and have rehabilitation policy and procedures in place</p> <p>The rehabilitation coordinator and policy and procedures must be accredited by WorkCover</p> <p>Employers must take all reasonable steps to assist or provide rehabilitation and suitable duties to injured workers</p> <p>The prescribed minimum period an employer is allowed before dismissing an employee is 6 months</p> <p>(Section 93 Industrial Relations Act 1999 (QLD))</p>	<p>Employer required to keep position open for injured worker for 12 months, unless it is not practicable to do so, or reason for position no longer exists</p> <p>Employer required to prepare return to work plan where incapacity exceeds 14 days</p> <p>Employers with more than 20 workers required to prepare and display a rehabilitation policy</p>
Worker responsibilities	<p>Benefits may be suspended if:</p> <ul style="list-style-type: none"> i) worker does not undergo rehabilitation as specified by the Directorate; or ii) worker refuses to attend without reasonable excuse, or obstructs, a medical examination requested by the employer; benefits shall cease unless examination occurs within one month of the request during suspension of benefits 	<p>Worker may be required by WorkCover or self-insurer to undertake a rehabilitation program</p> <p>Failure to comply may result in entitlements being suspended</p>	<p>Benefits may be terminated or reduced if a worker fails or refuses to undertake a rehabilitation program or alternative duties recommended by employer</p> <p>Benefits may be suspended if worker refuses or obstructs medical examination or treatment</p>

STATUTORY RESPONSIBILITIES

NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>No requirement under the Act for employer to keep a position open for an injured worker</p> <p>But employer must take all reasonable steps to provide suitable employment and if unable to do so he/she must assist worker to find alternative employment</p>	<p>No requirement under the Act for employer to keep a position open for an injured worker</p> <p>An injured worker may apply to the Australian Industrial Relations Commission for arbitration of an unfair dismissal if dismissed while on workers' compensation</p> <p>Employer required to provide occupational rehabilitation at employer's expense</p> <p>Employer required to develop rehabilitation policy and to appoint a rehabilitation coordinator</p>	<p>There is no legislative requirement for an employer to hold a position open or otherwise provide rehabilitation opportunities.</p>
<p>Benefits may be terminated if there is unreasonable refusal or failure</p> <p>i) to undertake medical, surgical and rehabilitation treatment;</p> <p>ii) to undertake rehabilitation training or return to work program;</p> <p>iii) to attend medical exam. provided and paid for by the employer</p> <p>iv) to provide ongoing certification of incapacity</p>	<p>Worker, if so required by the employer, is to submit to examination by medical practitioner provided and paid for by employer</p> <p>If worker refuses, or obstructs, benefits may be suspended until examination has taken place</p> <p>Under Regulations, frequency of such examinations can be no greater than:</p> <ul style="list-style-type: none"> • 1st month – not applicable • 2nd month – once a week • 3-6th month – once a month • > 6 months – bi-monthly 	<p>A claimant must, when reasonably required to do so by ACC or a Residual Insurer:</p> <ul style="list-style-type: none"> • provide the necessary medical certificates, and any other relevant information • authorise ACC or the Residual Insurer to obtain medical and other records that are or may be relevant to the claim • undergo assessment at ACC's or the Residual Insurer's expense • cooperate with ACC or the Residual Insurer in the development and implementation of an individual rehabilitation plan, and participate in rehabilitation. <p>ACC or a Residual Insurer may suspend a statutory entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive it. ACC or a Residual Insurer may decline to provide an entitlement for as long as a claimant unreasonably refuses or unreasonably fails to:</p> <ul style="list-style-type: none"> • comply with any requirement of this Act relating to their claim; or • undergo medical or surgical treatment, to be provided by ACC or the Residual Insurer, for his or her personal injury; or • agree to, or comply with, an individual rehabilitation plan

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

STATUTORY RESPONSIBILITIES

Incentives for new employers of injured workers

COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
<p>Comcare: No direct financial subsidy scheme; the original employer subsidises any income loss</p> <p>Seacare: No direct financial subsidy scheme</p>	<p>WISE (WorkCover Incentive Scheme for Employers)</p> <p>Scheme is for new employers (other than injury employer) who employ workers ready to return to work but unable to do so with former employer</p> <p>Includes the following incentives:</p> <p>i) subsidy of up to \$14,500.00 plus \$1000 for workplace modifications to accommodate the worker</p> <p>ii) protection from premium impacts if the worker has a new injury</p> <p>iii) an exemption from costs if worker's original injury recurs and the new employment is not a contributing factor to the recurrence</p> <p>iv) up to \$1500 for occupational rehabilitation providers who arrange durable placement</p>	<p>JobCover Program.</p> <p>Program offers to new employers:</p> <p>i) up to \$300.00 training/employment allowance per week</p> <p>ii) a premium exemption for employer for first 12 months of employment on injured worker's wages</p> <p>iii) a waiver on the \$500.00 excess should injury be aggravated within 12 months</p> <p>iv) a permanent waiver on premium adjustments on costs of claims</p>	<p>RISE (Re-employment Incentive Scheme for Employers)</p> <p>Scheme offers new employers of injured workers the following:</p> <p>i) gross wage subsidy of 75% for 3 months (excluding over time.)</p> <p>ii) gross wage subsidy of 40% for the next 3 months (excluding over time)</p> <p>iii) a retention bonus of up to \$2,000 if the worker is employed for greater than 12 months</p> <p>iv) protection from employer levy penalty and the first two weeks income maintenance for that worker, if they suffer an aggravation of the pre existing condition (up to two years)</p> <p>v) an allowance of up to \$1,000 for appropriate training</p> <p>vi) reasonable workplace modification costs</p> <p>The legislation provides review rights for employers of certain decisions impacting on levy, penalty interest or fines.</p>

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

STATUTORY RESPONSIBILITIES

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>No direct financial subsidy scheme</p>	<p>No direct financial subsidy scheme</p> <p>Suitable duties program</p> <p>(a) Total incapacity – Worker returns to work on a graduated RTW program and WorkCover is responsible for wages paid for the period of the program</p> <p>(b) Partial incapacity – Worker returns to work on a graduated RTW program and employer is responsible for wages paid for the hours worked, with WorkCover paying the difference</p> <p>Exempt employer policy – Host employer of injured worker is not responsible for aggravation or exacerbation of same injury for period of 6 months</p>	<p>No direct financial subsidy scheme</p>	<p>Alternative Employer Incentive Scheme</p> <p>The scheme provides:</p> <p>i) that the new employer be indemnified by the original employer for any aggravation, acceleration or exacerbation of the injury that occurs within one year after the worker commences employment with the other employer</p> <p>ii) monetary incentives for the new employer</p>	<p>No direct financial subsidy scheme</p>	<p>No direct financial subsidy scheme. However, recovery of costs can be made from a previous insurer if the effects of a new injury are exacerbated by a previous injury.</p>

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

DISPUTE RESOLUTION

COMMONWEALTH*	VICTORIA	NEW SOUTH WALES	SOUTH AUSTRALIA
<p>Comcare: Internal review subject to referral to Administrative Appeals Tribunal (AAT)</p> <p>Seacare: Internal review by employer, assisted by Comcare officer (employer not bound by Comcare advice)</p> <p>Referral to AAT</p>	<p>Direct external review for employer levy objections and contribution by prior insurers (VCAT—see below) and premium disputes (Courts) Otherwise disputes must go to Conciliation first</p> <p>Proceed to courts only if worker has taken reasonable steps to settle and Certificate is issued to that effect by a conciliation officer:</p> <p>(a) Magistrates Court – cases involving a sum not greater than \$40,000.00 or not greater than 104 weeks arrears of weekly payments</p> <p>(b) County Court – cases involving greater than \$40,000.00 or greater than 104 weeks weekly payments</p> <p>(c) Appeal on matter of law to Supreme Court</p> <p>Medical Panels – give opinion on medical questions referred by conciliation officer or the court. Opinion of the Panel is final and binding on all parties including the courts.</p> <p>Other issues:</p> <p>Victorian Civil and Administrative Tribunal (VCAT):</p> <p>(i) contribution disputes between self-insurers and between the Authority and self-insurers</p> <p>(ii) contributing employer/self-insurer/insurer may apply to VCAT for review of a contribution assessment (in cases of pre-1985 injuries which contribute to later injury)</p> <p>Premiums: employer may apply to WorkCover for review of premium calculation</p> <p>Contractual disputes in court of competent jurisdiction</p> <p>Service Providers: VCAT may hear appeals with respect to decision by WorkCover to review, suspend, etc payments for services to workers</p>	<p>1. Disputed workers compensation claims</p> <p>Disputed workers compensation claims are handled by the Workers Compensation Resolution Service, attached to the Department of Industrial Relations.</p> <p>Compensation Court proceedings cannot commence unless the dispute has first been referred for conciliation and either:</p> <ul style="list-style-type: none"> the conciliator issues a certificate of conciliation outcome; or 35 days (for weekly benefit) or 42 days (for lump sum or medical expenses disputes) have elapsed since the dispute was first referred <p>A worker cannot refer disputes about lump sum compensation or medical expenses for conciliation until either:</p> <ul style="list-style-type: none"> 12 weeks lapses from the date the claim is duly made the insurer denies liability – whichever occurs first <p>A worker cannot refer disputes about weekly benefits for conciliation until either</p> <ul style="list-style-type: none"> 21 days (or 42 days with reasonable excuse) has elapsed from the date the claim is duly made the insurer denies liability – whichever occurs first <p>Any party to a dispute may refer the dispute to conciliation</p> <p>Medical Panels or Medical Referees may be used to assist in resolving disputes referred to conciliation</p> <p>2. Disputes about suitability of duties</p> <p>Disagreements about the suitability of duties offered to a worker can be referred to an Injury Management Consultant who is a medical practitioner approved by the Workers Compensation Advisory Council to facilitate agreement about suitability of duties</p> <p>3. Disputes about a workers condition or fitness for employment.</p> <p>Medical disputes about a worker's condition or fitness for employment may be referred to an Approved Medical Specialist for determination</p> <p>Approved Medical Specialists are senior specialists (selected by the Advisory Council for their expertise) to be final arbiters in matters referred to them. Approved Medical Specialists' findings are conclusive in those matters which the parties agreed to be bound, and prima facie evidence in any other matters referred</p>	<p>Reconsideration</p> <p>Claim determinations may be reconsidered by an officer who was not involved in the original decision. A reconsideration must be conducted within 7 days of being re-requested.</p> <p>Conciliation</p> <p>An independent conciliator may take appropriate steps to allow parties to reach agreement, but cannot force an agreement.</p> <p>Arbitration</p> <p>After a formal hearing of both sides, an arbitration officer may hand down a decision that binds both sides, subject to appeal.</p> <p>Judicial Review</p> <p>A Tribunal hearing before one Member</p> <p>Full Bench Appeal</p> <p>Appeal on a matter of law to Full Bench of the Workers Compensation Tribunal</p> <p>Appeal to the Supreme Court</p> <p>Case stated by Full Bench of Tribunal to Supreme Court on a question of law.</p> <p>Levy</p> <p>The legislation also provides review rights for employers of certain decisions impacting on penalty interest, levy or fines.</p> <p>These reviews are conducted under procedures determined by the Board of Workcover Corporation.</p>

* Unless otherwise stated, information provided applies to both Comcare and Seacare.

DISPUTES

WESTERN AUSTRALIA	QUEENSLAND	TASMANIA	NORTHERN TERRITORY	A.C.T	NEW ZEALAND
<p>Conciliation and Review Directorate</p> <p>Up to 4 stages:</p> <ol style="list-style-type: none"> i) Conciliation ii) Review iii) Compensation Magistrate's Court iv) Supreme Court <p>Questions on medical issues such as when there is conflicting opinion between the worker's doctor(s) and the employer's doctor(s) can be referred to a Medical Assessment Panel. The Panel also has the ability to determine the nature and extent and the degree of permanency of any disability under Schedule 2</p>	<p>Steps are:</p> <ul style="list-style-type: none"> • Internal review by WorkCover or the self-insurer • Formal review by Review Unit that is separate from WorkCover's commercial insurance business • Appeal to industrial magistrate • Appeal to industrial court <p>Medical Issues – referral to Medical Assessment Tribunal (MAT)</p> <p>No appeal against a decision by MAT unless fresh medical evidence is submitted within 12 months of the MAT decision</p>	<p>Workers' Rehabilitation and Compensation Tribunal</p> <p>Up to three stages:</p> <ol style="list-style-type: none"> i) Conciliation conference before Registrar ii) Hearings before Commissioner iii) Appeals to Supreme Court on points of law 	<p>Steps are :</p> <ol style="list-style-type: none"> i) Mediation ii) Work Health Court <p>(Conciliation and directions conferences before Registrar; hearing by Magistrate if dispute unresolved.)</p> <p>Before making an application to the Work Health Court the worker must first apply for and complete the mediation process</p>	<p>ACT Magistrates Court</p> <p>Internal Resolution - A senior officer of an insurer will re-examine any claim by an injured worker upon request of the worker</p>	<p>The steps are:</p> <ul style="list-style-type: none"> • review by an independent review official engaged by ACC or the Residual Insurer • appeal to the District Court • appeal to the High Court, if leave is granted by the District Court to do so

PREMIUM SETTING

Industry rates comparison table¹

Industry rates as at 1 July 2000	Vic %	NSW ² %	SA %	WA %	QLD ³ %	NZ %
Average levy/premium rate	2.18	2.80%	2.86	2.97	1.75	1.16
Highest (published) rate	8.4	17.26	7.5	12.20	12.448	7.97
Highest (experience rated) rate	Unlimited	36.0 (est)	11.25	N/A	18	N/A
Lowest (published) rate	0.33	0.58	0.4	0.04	0.228	0.25
Lowest (experience rated) rate	0.033	0.2 (est)	0.28	N/A	0.034	N/A
House construction	4.78 - 5.78	10.52	3.9	2.26	3.676	3.73
Non-residential construction	4.78	10.52	4.5	4.82	3.676	3.73
Meat products	8.4	15.02/8.27	7.5	11.18-12.20	8.847	3.20
Rubber products manufacturing	4.78-5.78	9.4	7.5	5.66-9.65	3.676	2.42
Plastic products	3.95-4.78	5.44	5.4	4.93-5.74	2.880	1.31
Basic iron and steel products	5.78	9.4	7.5	7.23	4.053	1.42
Steel casting	5.78	11.64	7.5	7.00	4.053	3.82
Steel pipes and tubes	5.78	7.19	4.7	5.40	4.053	1.42
Pulp paper and paperboard	3.26	4.11	4.6	6.43	2.163	1.19
Paints	2.23	2.71	3.2	3.98	1.857	0.87
Soap and detergents	2.70	5.44	2.1	3.79	1.949	0.87
Glass and glass products	5.78	4.73	5.3	7.43	2.743	0.98
Cement	7.00	6.62	4.4	6.55	2.370	2.95
Clothing manufacturing	3.26-3.95	5.44	3.3	3.87-4.31	1.527	1.48
Beer	4.78	5.44	2.7	2.03	2.149	0.82
Hotels	2.70	3.57	2.8	3.41	1.527	1.11
Bread manufacturing	3.95	6.26	6.6	6.12	2.488	3.21
Footwear manufacturing	4.78	6.26	4.4	4.46	1.527	1.48
Nursing homes	4.78	7.19	6.6	6.79	3.501	2.45
Department stores	1.84	3.57	1.7	2.91	1.385	0.46
Medical practice	0.33	1.02	0.4	0.44	0.264	0.51
Secondary schools – private	0.86	1.55	1.0	1.25	0.497	0.25
Secondary schools – Govt	1.26	n/a	1.0	1.25	0.619	0.25

Notes

- ¹ Rates applicable to policies issued or renewed on or after 30/06/00
- ² NSW Rates include GST, average premium rate excludes effects of the New Tax System. All other jurisdictions exclusive of GST
- ³ Qld - Published rates exclude stamp duty
Average premium rates include stamp duty
- ⁴ Tas/NT/ACT - Apart from WA, Industry Rates not provided for States with full private insurance underwriting

PREMIUM SETTING

Notes to the industry rates comparison table

1. It is difficult to make exact comparisons between the States. The following qualifications should be noted:
 - Industry classifications vary from jurisdiction to jurisdiction. For example, both Victorian and South Australian industry classifications are based on the Australian Bureau of Statistics ASIC code and Western Australian on ANZSIC, while New South Wales has classifications which are distinctive to that State.
 - On 1 July 1997, Queensland introduced an industry classification system based on the ANZSIC system with some alterations specifically designed for Queensland. The classifications have been named the WorkCover Industry Classifications. Current rates were published in an Industrial Gazette notice on 28 May 1999.
 - Levy/Premium category comparisons are done on a “best match” basis and should not be regarded as exact equivalents.
 - The number of self-insurers – those companies which fund their own liability for workers’ compensation claims separately from the central system – varies across the different jurisdictions. Both South Australia and New South Wales have large numbers of self-insurers, which means that the coverage of these schemes is smaller than in some other jurisdictions (New South Wales: 49 self-insurers plus 27 group and specialised self-insurers; South Australia: 60 self-insurers plus most Government public service and Government instrumentalities). Victoria has 29 self-insurers, while Queensland has 22 self-insurers.

In some jurisdictions particular industries have traditionally been excluded from the central system; for example, in New South Wales the coal industry is excluded.
 - Charges in addition to workers’ compensation premium may be levied in some jurisdictions. An example is the Dust Diseases surcharge in New South Wales which is levied from time to time as funding requirements for these diseases warrant. An occupational health and safety loading on assessed premium is applicable in South Australia.

2. 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 (i.e. based on claims rate in a given period), viz:
 - the bonus and penalty system in South Australia generally comprises a bonus of up to 30% of levy and a penalty of up to 50% of levy
 - experience rating in New South Wales and Victoria is based on the size of the employer
 - the extent to which insurance companies may discount or load premiums according to experience may vary (amendments to Western Australia’s legislation effective from 5 October 1999 provide that recommended premium rates can be surcharged by a maximum of 100% without prior approval by the Commission; however, 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 and New South Wales represent actual maximums and minimums; those for Victoria, and the lowest experience rate in Queensland, represent theoretical limits which would only rarely be reached in practice.

Calculation of industry rates

Victoria

Each industry's True Risk Rate is calculated based on the ratio of the industry's costs (payments made over the last three years, outstanding liabilities and a proportion of the Authority's operating expenses) to remuneration over the last three years. The final industry rate is the point on a predetermined scale which most closely matches the true risk rate.

New South Wales

In NSW there are 105 industry groups (with the exception of 5 per capita classes) and 28 premium pools. For each industry group, the premium and experience relativities are compared by individual year as well as a 5 year weighted average. The premium relativity is the ultimate cost of claims expressed as a percentage of wages for the industry, compared with the ultimate cost of claims for all industries.

As a result of this comparison (and taking into account such things as the impact of large claims, the number of years experiences for a new tariff, the volume of claims, etc.) the industry rate will either stay in the same premium pool or be moved up or down a pool so that the expected costs of the Scheme will be met.

South Australia

Each class of industry levy rate is calculated on rate relativities taking account of an employer's individual experience over a 30 month period to produce rates (within a rate scale between 0.4% and 7.5% increasing in increments of 0.10 percentage points) which weigh claims cost and claim frequency in a ratio of 3 to 1.

Western Australia

Recommended premium rates are generally 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:

- calculation of relative premium rates
- examination of the adequacy of the declared outstanding claims reserves
- the 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 expected cost of claims
- a calculation of the implied uniform percentage variation in the relative premium rates to generate the required premium income

The objectives of the actuarial assessment are to provide broad equity across industry classes, to provide relative stability in the rating structure and to minimise the cross subsidy of rates.

Queensland

The industry rates are published in an Industrial Gazette as WorkCover Industry Classification (WIC) Rates. These rates are actuarially calculated taking the industry aggregate claims performance into account, and also includes a provision for outstanding claims liabilities. The average rate paid by all employers in a particular industry is used as a base rate for new employers.

New Zealand

In New Zealand there are 540 industry groups and 118 premium pools. For each industry group, the premium and experience relativities are compared by individual year as well as a 5 year weighted average. As a result of this comparison (and taking into account such things as the impact of large claims, the number of years experiences for a new industry group, the volume of claims, etc.) the industry rate will either stay in the same premium pool or be moved up or down a pool.

The premium relativity of each premium pool is the expected ultimate cost of claims expressed as a percentage of wages for the industry, compared with the expected ultimate cost of claims for all industries. The absolute level of the premium rates is set so that the expected costs of the Scheme will be met.

The premium rates shown are the fully funded premium rates, together with a 0.05% Occupational Safety and Health Levy.

RECENT DEVELOPMENTS - JULY 2000

Legislative

Australian Capital Territory

The last financial year saw insurers move from using the "Category of Worker" basis for calculating premiums to the Industry Rates (ANZIC Code) method. Indications are this method will result in lower average premiums for employers in the ACT.

New South Wales

- Amendment of Workplace Injury Management and Workers Compensation Act 1998 and related legislation to defer the commencement of private underwriting of workers compensation insurance from 1 October 2000 to a date to be determined.
- Amendment of Workplace Injury Management and Workers Compensation Act 1998 and related legislation, and related amendment of regulations and premiums order, to revise workers compensation insurance arrangements so as to take account of Commonwealth GST legislation.

New Zealand

Prior to 1 July 1999, workers' compensation in New Zealand was covered by the Employers' Account administered by the Accident Rehabilitation and Compensation Insurance Corporation (commonly referred to as ACC), a crown entity. This account also covered the work injuries of self-employed people and shareholder employees.

On 1 July 1999, the Accident Insurance Act 1998 came into effect. Under this Act, employers were required to purchase workers' compensation cover from private insurers, or from @Work Insurance, a new state owned enterprise. Employers could not continue to purchase workers compensation insurance from ACC. Self-employed people could either continue to be covered by ACC, or purchase work and non-work cover privately.

Premium setting was not regulated.

ACC continued to manage the ongoing rehabilitation and provision of entitlements to existing claimants (that is, accidents that occurred before 1 July 1999). Employers are required to fund these costs according to premiums set on an industry basis.

ACC also continued to be the sole provider of accident insurance cover in all non-work contexts. This included cover for earners' non-work injuries, motor vehicle injuries and non-earners injuries.

A change of Government in November 1999 resulted in amendments to the Accident Insurance Act, which removed competition from the workers' compensation market. From 1 July 2000 cover for all accidents (work, non-work and motor vehicle) again became the responsibility of ACC. The private insurers who entered the market on 1 July 1999 continue to manage their existing work injury claims as residual insurers (see page 23).

Officials are currently preparing a new piece of accident compensation legislation which is due to be introduced into Parliament in November 2000. It is proposed that the new bill will come into force on 1 October 2001, and will reintroduce lump sums for permanent incapacity to the scheme.

South Australia

The Workers Rehabilitation and Compensation (Self Managed Employer Scheme) Amendment Act 1998 was proclaimed on the 13th April 2000.

Self Managed Employer Scheme

The Amendment Act has introduced amendments to the Workers Rehabilitation and Compensation Act 1986 and the WorkCover Corporation Act 1994, to formalise the self-managed employer scheme within South Australia. The self-managed employer scheme, which has formerly been operating in South Australia as a pilot scheme, provides for employers, or a group of employers to manage claims made by their workers. Responsibility for claims liability remains with WorkCover Corporation.

A sunset provision effects the expiry of relevant legislative provisions, 4 years from the commencement of the Amendment Act.

Workers Right of Access to Claims Files

The Amendment Act also introduced Section 107B of the Workers Rehabilitation and Compensation Act 1986, which enables a worker (or a representative) the ability to obtain copies of documentary material or inspect non-documentary material relevant to their claim. Material exempted from this provision includes:

- material relevant to the investigation of suspected dishonesty in relation to a claim; and
- material protected by legal professional privilege.

Victoria

On 30 May 2000, the Accident Compensation (Common Law and Benefits) Act 2000 received the Royal Assent. Among its key provisions were:

Common Law

The right of seriously injured workers to sue negligent employers for common law damages has been restored to workers injured on or after 20 October 1999. To access common law workers will have to satisfy one of two gateways to the Serious Injury Test.

To satisfy the main gateway the injured worker must have a whole person impairment of at least 30 per cent as assessed under the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th Edition). The whole person impairment is determined by a medical practitioner. Where a dispute arises over the level of impairment, the outcome will be determined by a Medical Panel.

Under the second gateway, known as the narrative, the injured worker must have:

- a serious permanent impairment or loss of bodily function; or
- a permanent serious disfigurement; or
- a severe permanent mental disorder of severe long term behavioural disturbance; or
- loss of a foetus.

The test for the narrative will be determined by the courts, taking into account the consequences of the injury in terms of pain and suffering and economic loss. To pass the serious injury test the consequences must be "very considerable".

Where the consequences of the injury result in "very considerable" pain and suffering only, the worker will be entitled to claim common law damages for pain and suffering but not economic loss.

To claim damages for economic loss the injured worker must show a loss of gross income of 40 per cent or more that will continue permanently. In this area the court will look at what the injured worker was earning in the three years up to the date of the injury. The court will also look at what the injured worker's earning capacity was likely to have been for the three years after the injury, if the injury had not occurred.

In making its decision the court will consider what opportunities exist for rehabilitation, retraining and alternative suitable employment.

Statutory Non-Economic Loss Benefits

An injured worker with a whole person impairment level (WPI) of at least 10 per cent may apply for a lump sum compensation payment known as a Statutory Non-Economic Loss Benefit.

These lump sum benefits will increase for injuries occurring on or after 1 July 2000.

From that date, the minimum lump sum payment (for workers with an impairment level of 10 per cent) will increase from \$5,040 to \$10,300.

Between 10 per cent and 30 per cent the lump sum benefit will increase by \$2,060 for each percentage point of WPI.

The maximum available benefit (for WPI of over 80%) is \$309,100.

Improvements to Weekly Benefits

For claims submitted on or after 1 September 2000, weekly benefits for injured workers will include regular overtime and shift allowances for the first 26 weeks. This will apply where there has been a substantially uniform, regular and established pattern of shift work and overtime.

It must be shown that the pattern of overtime and shiftwork would have continued after the date of injury. This will mean that for workers who regularly work overtime and shiftwork, weekly benefits will more clearly reflect the injured worker's actual pre-injury earnings.

About 85 per cent of all injured workers return to work before reaching 26 weeks of weekly compensation.

The change will also mean WorkCover will meet a larger share of the costs for those employers who pay accident make-up pay.

Legal Changes

Precedents, established by the Full Court of Victoria and then adopted by the Court of Appeal, have meant that in the past an employer required "leave to appeal" before he or she could start an appeal against a serious injury application decision. At the same time the worker did not require "leave to appeal".

The Government considered this to be unfair and has changed the law to ensure that neither party will require "leave" to take a matter to the Court of Appeal.

RECENT DEVELOPMENTS

The legal costs of the WorkCover scheme are around \$70 million a year or 6.5 per cent of the total scheme costs. To ensure that the maximum amount of WorkCover's financial resources go to injured workers, the Government has reduced the level of legal fees paid for WorkCover actions.

Under the changes, the legal fees for originating motions and common law trials will be set at the relevant court scale fees less 20 per cent. They are currently set at the court scale less 10 per cent.

Medical Panels

Medical Panels are responsible for providing opinions on a range of medical questions in relation to statutory benefits. The role of Medical Panels will be extended by:

- amending the Minister's power to issue guidelines to make it clear that one of the purposes of the guidelines is to ensure the Panels accord procedural fairness to persons affected by the opinions;
- requiring the person referring the matter to the Panel to provide more information than currently is required, such as a summary of agreed facts and the facts that are in dispute;
- removing the restrictions on courts as to the form they use in referring matters to the Medical Panel;
- establishing the position of Deputy Convenor of Medical Panels; and
- providing consultants who give advice to the Panels the same protection from legal action and compulsion to give evidence that is currently afforded to Panel members.

WorkCover and self-insurers will also be given the right to refer cases to the Medical Panels as part of the claims management process. Currently referrals can only be done to resolve disputes.

Western Australia

Workers' Compensation and Rehabilitation Amendment Bill 2000

In the Autumn 2000 Session of Parliament, the Government introduced the Workers' Compensation and Rehabilitation Amendment Bill 2000 to clarify Parliament's original intention concerning the 1999 amendments by ensuring that even if there is a delay in the processing of a question, properly referred, regarding the degree of disability, the worker will always have 14 days, after the question is agreed or determined, in which to make an election.

Other

Australian Capital Territory

The ACT Workers' Compensation Act 1951 is currently undergoing a review.

Northern Territory

With the introduction of a new federal taxation system on 1 July 2000 the new Pay as You Go (PAYG) taxation arrangements replaced eleven existing systems, including the PAYE tax system. This change made the Northern Territory pre 1 July worker definition defunct.

From 1 July, the new definition for workers' compensation purposes provides that a worker is a person who provides work or service for another person and does not provide that other person with an Australian Business Number (ABN) in writing.

The new definition is designed to ensure coverage that is as close as practicable to that of the previous definition, yet remains clear and concise. The new definition no longer has any relationship to the type of taxation paid.

South Australia

workcover.com

WorkCover Corporation SA has undertaken a significant three year investment to transform its existing business to an e-business basis. This involves re-engineering of the Corporation's business to fit the e-business model. In achieving the e-business conversion, technology will be a principle lever, but not the only means to the end. The business transformation will embrace new ways of business to enable the changing needs of customers to be met.

The Corporation's aim is to think and act differently to keep pace with, or be in front of, the environment within which we operate and to create a business that is unique in the global market.

Injury Management

WorkCover Corporation has reached an in principle agreement with the University of Adelaide to develop, as part of the medical degree course, a workers compensation component. The component is planned for introduction in conjunction with a new curriculum in 2001.

Exempt Employers

A revised code of conduct for exempt employers in the South Australian workers Compensation Scheme has been developed. The June 2000 edition of the "Code for the Conduct of Exempt Employers under the WorkCover Scheme" may be accessed through WorkCover Corporation's website on www.workcover.com

Investigations

A new Investigation Unit was formed in January 2000 to replace the former Fraud Investigation Unit within WorkCover Corporation SA. While the Unit still receives referrals for action, intelligence programs involving analysis of data are contributing to more targeted investigations. Investigations are generally conducted by external investigators and are overseen by the Corporation.

Victoria

Intensive Case Review Program

To assist those workers seriously injured between 12 November 1997 (when common law access was abolished) and 20 October 1999 (when it was restored) an Intensive Case Review Program (ICRP) has been established.

The program is aimed at ensuring these workers are receiving the maximum assistance to which they are entitled. The program will also assist these workers to access appropriate lump sum settlements.

The ICRP will assess each of the cases involved to ensure that:

- they are receiving the maximum financial help available, including weekly benefits, statutory non-economic loss benefits and medical and like expenses;
- where appropriate, eligible workers with a whole person impairment of 30% or more who have been on benefits for more than 104 weeks may apply for a lump sum settlement of future weekly benefits;
- the claims management of each claim is meeting the needs of both the injured worker and his or her immediate family;
- the eligibility for any additional entitlements, such as through the Sentencing Act, are fully explored; and
- the seriously injured worker is getting the appropriate assistance in returning to work

The ICRP will be monitored on a quarterly basis over the next five years to ensure it remains effective in helping these seriously injured workers.

Premium

To ensure the WorkCover scheme returns to a fully funded position and to meet the costs of legislative change, including restoring common law access to injured workers, the average premium rate in Victoria will increase for the 2000/2001 year.

WorkCover premium will also be subject to the Goods and Services Tax. All or part of the GST payments on the premium can be claimed by employers with an Australian Business Number as an Input Tax Credit.

However, the GST which WorkCover pays on certain goods and services, such as some medical and legal services, cannot be recovered and must be met by WorkCover.

In view of the above, the underlying average premium in Victoria for the 2000/2001 year will be a rate of 2.18 per cent of remuneration. If the effect of the GST on the premium is included, the total average premium rate for the year will be 2.44 per cent of remuneration.

Western Australia

Review of Insurance Arrangements

As a consequence of the Pearson Review recommendations, a review of the workers' compensation insurance arrangements in WA was undertaken. The terms of reference for the Review were:

1. Assess the appropriateness of establishing an independent regulatory body to coordinate all regulatory aspects of the insurance industry including insurance brokers and self insurers.
2. Provide options to Government on an appropriate means of evaluating and monitoring performance, including the merits of elements of a Code of Performance for insurers particularly as it relates to interaction with employers, injured workers, treatment providers and the regulatory authority.
3. Review whether existing insurance management practices provide for administrative efficiency, exemplary performance and consistency of services to employers and workers, and whether a privately underwritten scheme is the most appropriate structure to achieve these requirements.
4. Evaluate the merits of providing greater scope, flexibility and choice of workers' compensation policy terms to employers or groups of employers and the impact of this on the integrity and cost of the workers' compensation system.
5. Assess the impact and viability of extending self insurance to groups of small employers including an evaluation of the effect on the integrity of costs and the long term stability within the system.
6. Examine the role of brokers within the system, including the relationship with employers and insurers, the cost benefits of the service and the need for licensing arrangements.

Review of Medical and Associated Costs

Also in line with the Pearson Review recommendations, a review of medical costs was undertaken to address the continuing escalation in the cost of medical services provided to workers.

The terms of reference for the Review were:

1. To examine the role of the medical practitioner and other treatment providers within the workers' compensation system, including that of the medical practitioner as gatekeeper, and the process of determining the work relatedness of injury and disease.
2. To examine the fee structures for medical and other treatment providers and its application having regard to treatment provided, costs, outcomes, applicable competencies and the broader interface between the medical practitioner and the requirements of the workers' compensation system.
3. To assess the extent to which current medical and other treatment protocols and practices provide a positive benefit for injury management.
4. To examine the extent to which the nature and requirements of the workers' compensation system contributes to increased treatment costs.
5. To provide options to Government to ensure that efficient and effective medical and other treatment services can be identified and their use supported within the injury management process.

The Minister for Labour Relations has established an Implementation Group for each Review to progress the recommendations. The Report of each Review is available at www.workcover.wa.gov.au

A Small Business Guide to Injury Management and Workers' Compensation

In consultation with appropriate stakeholders, WorkCover WA coordinated the development of an injury management guide for small business. The Guide includes strategies specific to small business operators to assist them manage work-related injuries and disease.

The Guide was written as a quick reference document for use when a workers' compensation claim was identified and contains step by step procedures to manage injuries at the workplace. The Guide may be accessed through the Internet at www.workcover.wa.gov.au

Stress

July 2000

Why target stress?

According to the latest Australian Workplace and Industrial Relations Survey (1995), stress (formally known as mental disorders in many jurisdictions) was the second largest cause of workplace related injuries and illnesses, with 26% of all cases surveyed. Only strains and sprains were responsible for a higher proportion of injuries and illnesses, with 43% of all cases surveyed. The same figures showed that females suffered a higher proportion of stress injuries than males (31% of all injuries as opposed to 23%).

In Britain, it has been estimated that stress-related illness results in 9.1 million working days being lost each year at a total cost to British industry of 3.7 billion pounds in lost production. A survey by Industrial Society of 699 human resources professionals in Britain found that whilst 83% of the respondents felt that their organisation had a problem with stress, just 7% felt that stress was considered a valid reason for taking time off work.

However, stress at work is important not just because of the days lost through sickness and workers' compensation claims. At an individual level, stress can sap productivity while at work. In a workplace environment, stress can lead to increased labour turnover, low morale and poor workplace relations.

What constitutes occupational stress.

Potential causes of stress

Some of the potential causes of work-related stress given by the various jurisdictions include:

- bullying/unfair treatment/harassment/discrimination
- violent incidents
- organisational change/re-structuring
- lack of job security
- lack of control in workplaces (poor communication and consultation),
- excessive workload (including long hours)
- insufficient deadlines
- lack of adequate reward for effort or lack of recognition
- conflicts of conscience
- fatigue
- boredom/monotony
- exposure to critical incidents (post traumatic stress)
- potential for violence (verbal or physical)
- physical environmental conditions (eg. noise, fear of injury, temperature)
- inappropriate management practices or style
- high intensity work accompanied by low autonomy
- low social support- poorly clarified goals or roles
- poor relationships at work

South Australian data published in WorkCover Corporation's 1998/1999 Statistical Report indicates that the four main causes of stress are:

- work-related pressures such as excessive workloads and unreasonable time frames (30%);
- harassment and victimisation (26.3%);
- armed hold-ups and assaults (23.1%); and
- non-violent conflict (16.3%).

Effects of stress on the individual

Some positive effects of stress include enhanced motivation and job satisfaction. On the other hand, negative symptoms resulting from stress can include:

- headaches,
- disturbed sleep,
- depression,
- coronary heart disease and/or high blood pressure,
- migraines,
- gastro-intestinal problems (eg ulcers),
- increased dependence on drugs such as alcohol or cigarettes,
- tiredness,
- musculoskeletal disorders including back or neck pain
- eczema,
- shingles,
- muscle twitches,
- blackouts,
- cramps,
- mental illness and symptoms other than depression (excessive anger, feeling distrustful, nervous breakdowns, memory loss)

Not all of these symptoms always result from stress alone. For some symptoms, stress may simply be one of the factors contributing to the symptom (this is particularly so for musculoskeletal disorders and coronary heart disease/high blood pressure) or it may be the sole contributing factor. Furthermore, stress will rarely result in all of these symptoms. While it is known that stress can lead to ill health, the specific illness outcome is difficult to predict.

Stress compensation claims may not accurately represent occupational stress for a variety of reasons. Firstly, some negative symptoms will more naturally fall into other 'Nature of Injury/Disease' codes. These symptoms include musculoskeletal disorders, coronary heart disease and/or high blood pressure, shingles, eczema and ulcers. Secondly, negative symptoms in some individuals may take a long time to become apparent, meaning that claims may not truly represent the risks within the current workplace (or industry) or may not be successfully made by affected individuals. Thirdly, some people who are exposed to stress-related problems will not claim compensation given the stigma that can be attached to 'stress'. Such people may take their accrued sick leave or simply attend work with reduced effective capacity (or in a destructive capacity). Conversely, there may be people who claim for stress but are not actually suffering its negative effects (ie. fraudulent claimants). Furthermore, some claimants may assert that the workplace is a significant contributing factor to their stress when that stress may be caused primarily by non-workplace factors.

Effects of stress on the workplace:

The effects of stress on the workplace can include:

- decreased productivity of the afflicted individual when still at work
- decreased productivity of other workers through poor morale;
- absenteeism where no claim is made or a claim falls below the threshold;
- medical costs for claims which fall below the threshold;
- high turnover where staff simply leave or claim prolonged sick leave;
- increased injury incidents.

In addition there are considerable costs to society which may not be readily recognised by employers. Many stressed individuals, who leave their workplace because of stress, both claimants and non-claimants, may end up receiving Commonwealth disability or unemployment benefits. Others may end up retiring early and being dependent on pensions earlier than would normally be the case. The other cost is that of 'emotionally disabled' people who were once emotionally fit existing in society. This problem will not depend on the people being out of the workforce, as many stressed workers will take their emotional problems to their home and into their social life causing distress to others.

How stress is dealt with in each jurisdiction

Comcare

Claim Numbers

In 1998-1999 occupational stress claims represented 4% of accepted claims and 18% of total claims costs for Comcare.

Legislation

In general, stress claims are disease claims and are considered under the provisions of the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) relating to disease claims. In short, to be accepted claims for stress must be materially contributed to by a claimant's employment. The Federal Court has found that the stress condition must be one which is 'outside the bounds of normal mental functioning'. The Court found that it is not enough to have an altered emotional state, for example anger or disappointment. The SRC Act provides that claims for compensation are excluded where the condition arose as a result of reasonable disciplinary action or failure to obtain a promotion, transfer or other benefit in connection with employment. The SRC Act also precludes compensation where a condition is intentionally self-inflicted or is caused by serious or wilful misconduct.

Initiatives

In 1995, in response to the increasing costs of stress claims, Comcare established a Stress Claims Management Centre (SCMC). The role of the SCMC was to implement improved operational processes in support of better outcomes relating to occupational stress claims. The main processes adopted by the SCMC were: consistency in decision making; effective use of resources on initial decision making; active management of internal review; and effective communication with stakeholders – providers, customer agencies and injured employees. In recent years Comcare has incorporated these processes into all claims management processes and stress claims are now managed within general claims teams.

In 1997 Comcare and the Australian National Audit Office developed a joint publication for Senior Managers in the Commonwealth on managing occupational stress. At the same time Comcare also developed a publication which gives assistance to Commonwealth agencies on implementing a prevention program for occupational stress. In February 2000 Comcare and Centrelink published the joint publication *Applying Best Practices Principles to the Prevention and Management of Customer Aggression*. The publication provides advice on assessing the risk of customer aggression, assessing the adequacy of risk response strategies and auditing the adequacy of the physical environment in preventing customer aggression.

Seacare

The Australian Maritime Safety Authority, which provides the occupational health and safety inspectorate function pursuant to the Occupational Health and Safety (Maritime Industry) Act 1993 has advised that it has undertaken, and is continuing with, research on fatigue among seafarers. At this stage, no detailed data is available.

Victoria

Claims

Approximately 5% of total claims were for stress in 1997/98. This represents 1585 stress claims reported (and 4249 stress claims incurred). This percentage for total stress claims out of total claims has remained fairly steady since 1994/95.

Payments for stress claims have increased since 1993/94. The biggest jump was between 1994/95 and 1995/96 but there has been a general increasing trend since then. By 1998/99, stress claims cost the Victorian WorkCover Authority over \$50m. While the cost of stress claims have increased, its percentage of all claims' costs has remained fairly static in the last ten years at between 4.6% and 5.5%. In 1998/99 it was 4.7%.

The average payment per claim was much higher for stress claims than for the overall average claim in both 1996/97 and 1997/98. Circulatory disease claims are higher and back injuries represent a similar expense per claim to stress. Otherwise, stress claims represent the highest average payment per claim. This difference between the average stress claim and the average claim is far more marked for males than females.

Stress was also claimed as the significant cause of 86 deaths (the great majority were males) since 1985 including 15 suicides.

Legislation

Included among the amendments of 1 December 1992, which replaced the WorkCare system with the current WorkCover system, were two provisions which directly affected the lodgement of stress claims. Section 82 (1) was amended and 82 (2A), specifically governing stress claims, was added to the Act. These sections now read as follows:

'82(1) If there is caused to a worker an injury arising out of or in the course of any employment and if the worker's employment was a significant contributing factor the worker shall be entitled to compensation in accordance with this Act.'

'82 (2A) Compensation is not payable in respect of an injury consisting of an illness or disorder of the mind caused by stress unless the stress did not arise wholly or predominantly from -

- a) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, redeploy, retrench or dismiss the worker; or
- b) a decision of the employer, on reasonable grounds, not to award or to provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with the employment, to the worker; or
- c) an expectation of the taking of such action or making of such a decision.'

These legislative changes were intended to significantly tighten the criteria for acceptance of stress claims. For any claim to be accepted, including a stress claim, the worker's employment now had to be a significant contributing factor to the injury and certain types of stress claims were explicitly excluded.

There have been no subsequent amendments to these provisions.

Initiatives

The Victorian WorkCover Authority has undertaken a number of activities with regard to stress in Victorian workplaces. These include having:

- raised the awareness of violent harassment (bullying) of young people;
- prosecuted 2 companies for harassment and abuse of an apprentice;
- funded the Healthy Schools Program and contracted VicHealth to design, implement, manage and evaluate the Program as a pilot project; and
- contributed to a Victorian Employers' Chamber of Commerce and Industry and JobWatch video addressing violence of work experience students.
- produced a publication on workplace violence

The Authority provides general advice to its clients regarding stress which is to identify, assess and control the stress hazard and risk. This is standard advice and applies to any workplace hazard.

Internally, the Authority has a Critical Incident Stress Management program which is compulsory for field staff who are exposed to critical incidents. It also provides anonymous psychological services to any staff who require it for work related and non-work related personal problems. In addition, new Operations staff receive a day with psychologists receiving training on relaxation and on how to deal with aggressive and abusive people.

New South Wales

Claims

In 1997/98 there were a total of 1,908 new major mental stress claims. This amounted to 19% of all occupational disease claims for that year.

The total gross incurred cost mental stress claims was \$37.3 million, which amounted to an average cost of \$19,527 per claim. However 50% of claims cost \$6,880 or less.

The 1,874 temporary disability claims resulted in a total of 42,392 weeks off work. Although this meant an average time lost of 23 weeks per claim half of these claims resulted in less than 7 weeks off work.

The majority of persons making claims for mental stress were females (54%).

Nearly one third of females making mental stress claims were aged between 35 and 44 years (33%). Those between 45 and 54 years of age accounted for a further 26%. For males, the age group most affected was again those between 35 and 44 years (32%). However, the next most vulnerable age group was between 25 to 34 years (28%).

Just fourteen industries were responsible for 85% of WorkCover mental stress claims. The two largest categories were education (16.9%) and health services (10.7%).

A better measure is the incidence rate, which shows the number of claims per 1000 wage and salary earners. On this basis, the industry most affected by stress was rail transport with 8.6 mental stress claims per 1,000 wage and salary earners. The next largest group was finance, with 2.0 claims per 1000 wage and salary earners. This compared to an average 0.8 claims for mental stress per 1,000 wage and salary earners.

13 occupations accounted for over 75% of mental stress claims in 1997/98. The largest groups were clerks (12.6%), school teachers (11.5%) and salespersons other than tellers and cashiers (10.8%). The classification system used is the Australian Standard Classification of Occupations, First Edition.

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIAN JURISDICTIONS

Legislation

In New South Wales, Section 11A of the Workers Compensation Act 1987 relates to psychological or psychiatric injury. According to this provision "No compensation is payable ... [for psychological or psychiatric injuries] 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".

A claim for weekly benefits in respect of incapacity for work resulting from psychological injury must be accompanied by a medical certificate, which uses accepted medical terminology and not terminology such as "stress" or "stress condition". If a claim is deficient because this requirement has not been complied with, the insurer must notify the worker in writing of the deficiency and what to do to comply as soon as practicable after receiving the claim. Until this requirement is complied with the claim is not "duly made", nor can court proceedings commence.

Initiatives

WorkCover NSW has identified mental stress as a strategic issue. In addition to dealing with the issues leading to mental stress through its usual enforcement activities, WorkCover NSW has initiated various projects and programs for dealing with these issues. As in the majority of instances mental stress is a direct result of workplace violence, most of these projects address the issues of abuse, harassment, bullying and other forms of violence including physical violence in the workplace. Following are some of the projects under taken:

- Internally WorkCover has addressed the issue of workplace violence by developing policies and procedures (as described in a booklet *Managing workplace violence, a guide for WorkCover inspectors*) and initiating a training program on handling violence and aggression in the workplace.
- WorkCover was also the leading participant in a project which involved thirteen government agencies, identified on the basis of relative risk, for the purpose of developing a whole of government approach to workplace violence management. WorkCover audited each agency's capacity for dealing with workplace violence. The audit provided WorkCover with information needed to assist the agencies to improve their capacity for dealing with violence.
- WorkCover has been approached by the Ombudsman's office to work on procedures that would shorten the time involved in carrying out official inquires (for instance, leading from disciplinary action, fraud and charges of sexual misconduct) in order to cut down the number of stress claims that result from such delays.
- WorkCover has addressed the issue of workplace bullying specifically for young workers through a grant to the National Children and Youth Law Centre. The aim of this project is to reduce the incidence of workplace bullying of young people by raising the awareness of employers of the existence of workplace bullying and providing them with effective and practical strategies to reduce the likelihood of bullying occurring in their workplace.
- WorkCover has given a grant to the Baptist Community Services to examine the prevention and management of aggressive incidents by residents in nursing homes. The project has developed guidance material and resources for the aged care nursing home industry, which focuses on the management and rehabilitation of staff involved in aggressive incidents with residents.

South Australia

WorkCover Corporation Advisory Committee on Occupational Stress identified the following organisational and work related issues as the main contributors to the development of a work-related condition:

Organisational/workplace change, excessive workload, harassment and bullying, lack of control, inappropriate management practices, workplace violence and trauma, lack of support from management or peers and adverse physical environment.

The employer should address most of these risk factors **before** the worker makes a Mental Disorder ("stress") claim. Employers can also assist the worker to better recognise symptoms of stress and to utilise stress management strategies to cope better or change inappropriate health behaviours. WorkCover training programs for employers provide support for these preventative strategies.

Claims

The number of stress related claims for mental/psychiatric disabilities has declined to 162 claims in 1998/99 or about half of the 1991 figure. The reduction in the number of such claims occurred prior to legislative amendments in 1995. Occupational "stress" related claims (Mental Disorder Claims) accounted for 2% of all injuries and 3.5% of all income maintenance costs in 1998/99. Stress claims are approximately three times more expensive than other claims.

Work related pressures such as excessive workloads and unreasonable time frames were identified as causes of 30% of all Mental Disorder claims in 1998/99 with additional 26% arising from harassment or victimisation. Trauma in the workplace (violence, hold-ups) caused 23% of all stress claims. The majority of trauma claims (ie: 60%) were directed at "elementary clerical sales and service workers". This group includes banking and service station employees.

Work pressures accounted for the most significant number of claims by managers, administrators and professional workers (or 40-50% of their stress related claims.) Claims by intermediate clerical staff identified harassment as the most significant contributor.

Legislation

Legislative amendment in 1995 saw the introduction of Section 30A of the Workers Rehabilitation & Compensation Act 1986. This section covers psychiatric disabilities:

"A disability consisting of an illness or disorder of the mind is compensable if and only if-

- a) the employment was a substantial cause of the disability; and
- b) the disability did not arise wholly or predominantly from –
 - i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or
 - ii) a decision of the employer, based upon reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the workers employment; or
 - iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
 - iv) reasonable action taken in a reasonable manner under this Act affecting the worker."

The above section outlines the test for compensability relating to psychiatric disabilities and is much more detailed than for other disabilities.

Any mental disorder listed in either the:

- *Diagnostic and Statistical Manual of Mental Disorders – 4th edition (Revised),*
- *American Psychiatric Association (DSM IV) or the*
- *International Classification of Diseases; Classification of Mental and Behavioural Disorders – 10th edition, Geneva World Health Organization 1992 (ICD10)*

is considered an "illness or disorder of the mind" covered by Section 30(A).

However, it must be noted that "stress" is not a condition or a diagnosis and therefore a diagnosis of stress on a Prescribed Medical Certificate is not accepted for a workers compensation claim. A correct diagnosis consistent with DSM IV or ICD 10 classifications is required.

Claims managers may undertake further medical or other investigations as required to determine claim eligibility in accordance with section 30(A).

Claims managers may also provide rehabilitation services prior to claim determination if required (eg critical incident debriefing in the case of a violent incident).

Initiatives

The development of the Guidelines for the Management of Occupational Stress in 1993.

This strategy arose in response to a rising level of professional, industrial, legal and financial concerns over the increasing number of occupational stress related claims. The "Stress Guidelines" were developed by an advisory committee convened by WorkCover Corporation and the Australian Medical Association. The guidelines were agreed to by all key parties involved in the management of "stress related claims" and since 1994, have formed a framework for the management and treatment of stress related claims in SA.

The Guidelines identified a number of key principles in managing these claims, which included:

- Comprehensive assessment of the medical, psychological, social and workplace factors. Diagnosis should be undertaken by treating practitioners (GPs, Psychologists or Psychiatrists) using clinically accepted classification systems (DSM IV – ICD 10).
- Treating practitioners are encouraged to communicate with the workplace and the claims manager to assist in the early return to work. In more complex cases the Claims Manager would appoint an Occupational Stress Consultant to assist in the return to work process.

Use of Occupational Stress Consultants.

Their current role is as follows:

- problem solving, negotiation and/or mediation and conciliation to enable a safe and durable return to work for stress related claims;
- assistance in the development and implementation of appropriate return to work strategies
- recommendations for injury management;
- the provision of information to employers to prevent aggravation of an injury, or further claims in the workplace

Education

The Corporation has conducted formal education sessions (relating to the management of occupational stress and anxiety disorders) for medical practitioners, psychologists, employers, case managers, rehabilitation consultants and occupational stress consultants. The Corporation also provides educational information regarding the management of occupational stress, anxiety disorder and workplace bullying in bulletins, newsletters and other forums.

Research

WorkCover Corporation has also provided research and education grant funds to the Working Women's Centre SA for the development and trial of practical strategies to address bullying in the workplace.

Western Australia

Claims

Overall, there were 27,470 lost-time workers' compensation claims lodged in 1997/98, and of these claims, 601 claims were for work-related stress. This represented 2.2% of all lost-time claims in Western Australia. However, work-related stress claims accounted for a disproportionate amount of claim costs. In 1996/97 the average work-related stress estimated claim cost was \$23,399, compared to \$10,421 for the average lost-time claim. In addition, there has been an increase of 34.5% in the number of work-related stress claims from 1996/97 to 1997/98, and since 1994/95 the number of work-related stress claims has increased on average by 20% each year.

Legislation

Section 5(1) of The Workers' Compensation and Rehabilitation Act 1981 states that "disability" means -

- a) a personal injury by accident arising out of or in the course of employment, or whilst the worker is acting under the employer's instructions;
- b) a disabling disease to which Part III Division 3 applies (specified industrial diseases);
- c) 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;
- d) the recurrence, aggravation, or acceleration of any such pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a significant degree; or
- e) a disabling loss of function to which Part III Division 4 applies (schedule 4),

but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in Section 5(4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable or harsh on the part of the employer;

(4) For purposes of the definition of "disability", the matters are as follows -

- (a) the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment;
- (b) the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment; and
- (c) the worker's expectation of -
 - (i) a matter; or
 - (ii) a decision by the employer in relation to a matter, referred to in paragraph (a) or (b).

Initiatives

A research project by the Royal Australian College of General Practitioners, in conjunction with WorkCover WA, entitled "Stress, Compensation and the General Practitioner" is currently being finalised. The aim of the project is to develop recommendations for strategies that will optimise the management of work-related stress claims at a general practice level.

A research project by the Centre for Human Services, Griffith University, and WorkCover WA is currently underway. This project is entitled "Containing economic and human costs in occupational stress cases: a new approach to identifying, defining, preventing and effectively managing lowered psychological functioning arising from stress in the workplace".

WorkCover WA has produced a statistical report: "Work Related Stress: 1995/96 to 1998/99". The report is the second in a series of annual statistical reports on work-related stress claims in the workers' compensation system and complements WorkCover WA's annual statistical report on the workers' compensation system. The report identifies trends in work related stress claims by gender, claim duration, claim cost and nature of injury, amongst other characteristics.

Queensland

Claims

Stress claims, although representing a relatively small number of all claims, are generally more costly and of longer duration than claims for other injuries.

In Queensland the highest incidence of stress claims is evident in the government, health and community services, education, manufacturing, retail and wholesale trade and transport and storage industries. In recent years the accommodation, cafe and restaurant, finance and insurance and property and business industries have begun to demonstrate an increase in the number of stress claims being lodged.

Legislation

The meaning of 'injury' is prescribed in s.34 of the WorkCover Queensland Act 1996 and includes:

34. (1) An "injury" is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

(5) Despite subsection (1) and (3), "injury" does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—

- (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
- (b) the worker's expectation or perception of reasonable management action being taken against the worker;
- (c) action by WorkCover or a self-insurer in connection with the worker's application for compensation.

Examples of actions that may be reasonable management actions taken in a reasonable way—

- 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 Stress

Initiatives

In late 1994, the Queensland Government directed the implementation of several initiatives to address the growing number and cost of occupational stress claims in both the public and private sectors. Two Occupation Stress Policy and Advisory Units were established to separately assist the public and private sectors to identify and develop strategies to address the problem of occupational stress injuries and minimise the costs of these claims to injured workers, employers and the scheme.

Many initiatives resulted from these Units including the publication of a Claims Management Guide for Psychological and Psychiatric Injury Claims for both the public and private sector. Guidance was also given for the development of occupational stress management plans.

The impetus and focus on occupational stress claims has continued through the Office of Public Service Commissioner, the Division of Workplace Health and Safety and WorkCover Queensland.

Claims Management

WorkCover Queensland utilises the services of a number of clinical psychologists in private practice who have received basic training in legislation and claims procedures.

These psychologists undertake a clinical assessment of the claimant and gather information from the workplace, relevant witnesses and treatment providers. This is followed by a psychiatric assessment. This information is used by the assessors to assist the determination process, but also assists with pro-active case management as there is more information available when management of the claim commences.

WorkCover Queensland is currently undertaking further training of claims decision-makers and case managers regarding psychological aspects of stress, evaluating a variety of strategies to facilitate continuous improvement in assessment and management of stress claims and planning employer education sessions for high incidence employer groups.

Tasmania

Legislation

- Section 25(1A) of the Workers Rehabilitation and Compensation Act 1988 imposes a limitation on entitlement to compensation in respect of a disease (including but not limited to stress related conditions).
- Compensation is not payable under this Act in respect of a disease which arises substantially from -
 - (a) 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; or
 - (b) 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; or
 - (c) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment; or
 - (d) the failure of an employer to take action of a type referred to in paragraph (a), (b) or (c) in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action; or
 - (e) reasonable action under this Act taken in a reasonable manner affecting the worker.
- To be compensable a disease must arise out of and in the course of employment and the worker's employment must be the major or most significant contributing factor.
- No lump sum is payable under the Table of Maims unless the disease causes -

"Total and incurable loss of intellectual capacity resulting from damage to the brain"

There are no specific strategies for handling stress-related illnesses.

Northern Territory

Legislation

Under the Work Health Act (Section 29) the employer is ultimately responsible for ensuring that a safe workplace and safe systems of work are in place and maintained. The implementation of a safety management system in the workplace is intended to assist in ensuring the employer's responsibilities are met.

Under the Act (Section 31) workers also have a "duty of care" to take reasonable care of their own health and safety and not to endanger the health and safety of their fellow workers.

Initiatives

Work Health, as part of their prevention program have developed and implemented a comprehensive education program. This includes a program of continuing education seminars as well as the provision of information bulletins and booklets.

In regard to stress in the workplace the Northern Territory has produced a publication called 'Managing Stress in the Workplace'. This booklet is specifically aimed at employers. It provides information on the nature of stress, identifies common workplace stressors and in particular focuses on the development and implementation of an occupational stress management program.

Work Health recommends that the implementation of a stress management program should form part of an overall safety management program.

In addition to the prevention program Work Health also encourages workers compensation insurers to provide for early rehabilitation for stress claims by way of supporting rehabilitation on a without prejudice basis.

Australian Capital Territory

Legislation

The ACT Workers' Compensation Act 1951 provides that:

"where a worker suffers personal injury arising out of or in the course of the workers' employment, the employer is liable to pay compensation in accordance with schedule 1."

The Act also provides that:

"in the definition of injury a reference to mental injury or stress shall not be taken to include a mental injury or stress wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of an employer with respect to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker."

Initiatives

The Act is under review. Meetings and consultation has been undertaken with stakeholders of the scheme and they have been invited to provide comments on what they see as improvements to the present Act particularly in the area of claims for stress as a work related injury.

New Zealand

Legislation

The Accident Insurance Act 1998 specifically provides cover for mental injury in two circumstances:

- 1) mental injury suffered by an injured person because of physical injuries suffered by the injured person. s29(1)(c)
- 2) mental injury suffered by an injured person caused by certain criminal acts (sexual abuse), as defined in Sch 3 of the Accident Insurance Act 1998. s29(1)(d), s40.

These claims, if work related, can be deemed as non-work related.

All other work-related stress related claims are excluded.

Mental injury is defined as "clinically significant behavioural, cognitive, or psychological dysfunction." s30.

Further Information

The table below is a list of contact people in each Jurisdiction who can be contacted for clarification or further information on the details included in this report.

Jurisdiction	Contact	Position	Phone Number
ACT	Ron Kirk ron.kirk@act.gov.au	Manager, Labour Regulations	(02) 6205 0317
Comcare	Helen Bull bull.helen@comcare.gov.au	Group Manager, Policy and Co-ordination	(02) 6275 0600
NSW	WorkCover Information Centre		13 10 50 or (02) 9370 5301
New Zealand	Bronwyn Donaldson donaldsb@acc.co.nz	Manager, Strategic Policy	+64 4 918 7866
NT	Guna Rice guna.rice@nt.gov.au	Senior Rehabilitation and Compensation Officer	(08) 8999 5015
Qld	Deb Duncan debra.duncan@workcover.qld.gov.au	Manager, Policy and Support Branch	(07) 3235 9650
SA	Emma Hosking ehosking@workcover.com	Manager, Policy	(08) 8233 2544
Seacare	Rod Pickette seacare@dewrsb.gov.au	Secretariat	(02) 6121 7189
Tas	Rod Lethborg rod.lethborg@dier.tas.gov.au	Principal Policy Adviser, (Workers Compensation)	(03) 6233 3182
Vic	<i>For general enquiries:</i> <i>For specific policy questions:</i> Michael Harold michael_harold@workcover.vic.gov.au	WorkCover Advisory Service	1800 136 089
		Principal Policy Officer	(03) 9641 1427
WA	Donna Haney donna@workcover.wa.gov.au	Acting Manager, Scheme Development	(08) 9388 5569

Scheme Web Addresses

Jurisdiction	Address
Australian Capital Territory	www.dpa.act.gov.au
Comcare	www.comcare.gov.au
New South Wales	www.workcover.nsw.gov.au
New Zealand	www.acc.co.nz
Northern Territory	www.nt.gov.au/wha
Queensland	www.workcover.qld.gov.au
South Australia	www.workcover.com
Seacare	www.seacare.gov.au
Tasmania	www.wsa.tas.gov.au
Victoria	www.workcover.vic.gov.au
Western Australia	www.workcover.wa.gov.au

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