

COMPARISON OF WORKERS' COMPENSATION ARRANGEMENTS IN AUSTRALIA AND NEW ZEALAND

30 JUNE 2007



Australian Government

Australian Safety and Compensation Council

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ISBN 978 0 642 32750 5

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FOREWORD

FOREWORD

This edition of the *Comparison of Workers' Compensation Arrangements* provides both a summary and detailed information on the operation of workers' compensation schemes in each of the jurisdictions in Australia and New Zealand.

This is the second year that the Australian Safety and Compensation Council has produced the Comparison, with this edition being further enhanced with three new Chapters, as well as providing clearer definitions of the key aspects of workers' compensation. The Comparison's continuous aim is to provide in-depth information for all stakeholders involved in workers' compensation, from subject matter experts to those new to the field, to help them understand arrangements in each of the workers' compensation schemes in Australia and New Zealand.

The Comparison provides a background to the evolution of workers' compensation arrangements in Australia and New Zealand, and discusses the way that each scheme deals with key aspects such as the size and nature of the schemes, coverage, benefits, return to work provisions, self-insurance, common law, dispute resolution and cross-border arrangements. The three new Chapters in the Comparison provide a brief overview of the key aspects previously listed, how minor schemes deal with workers' compensation and self-insurance arrangements in each jurisdiction.

The Comparison together with the Workplace Relations Ministers' Council's *Comparative Performance Monitoring Australian and New Zealand Occupational Health and Safety and Workers' Compensation Schemes Reports* and the *Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand* provide detailed information on the operation of the workers' compensation and occupational health and safety schemes in all jurisdictions including examples of how aspects of scheme design are applied in practice.

The information contained in this edition of the Comparison is correct as at 30 June 2007, as agreed by the jurisdictions. The change in the date from previous editions of 1 October has occurred to make the reporting timeline of data and legislative information consistent. However, because each jurisdiction may vary its arrangements from time to time, and because there may be some exceptions to the arrangements described in this edition, readers wanting up-to-the-minute information should check with the relevant authority.

The Australian Safety and Compensation Council would like to thank the representatives from each of the jurisdictions for the valuable assistance they have provided to the Office of the Australian Safety and Compensation Council in producing this edition of the Comparison.

Mr Bill Scales, AO

Chairman of the ASCC

SCHEMES AT A GLANCE

This section provides a summary of how each jurisdiction's workers' compensation scheme operates and the benefits injured workers may be entitled to receive when a workplace injury is sustained. In-depth detail on the key features of workers' compensation is examined further in the following chapters of the Comparison.

JURISDICTIONAL RESPONSIBILITY FOR WORKERS' COMPENSATION

TABLE 1.1 AGENCIES RESPONSIBLE FOR OVERSEEING WORKERS' COMPENSATION IN EACH JURISDICTION

	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
POLICY	Department of Education, Employment and Workplace Relations	Victorian WorkCover Authority	WorkCover NSW	WorkCover SA	WorkCover WA	Department of Employment and Industrial Relations	Department of Justice	Department of Employment, Education and Training	Office of Industrial Relations	Department of Labour
PREMIUM	Comcare	Victorian WorkCover Authority	WorkCover NSW	WorkCover SA	Insurers subject to WorkCover WA oversight	WorkCover Queensland	Private sector agents (licensed insurers)	Private sector agents	Private sector agents	Accident Compensation Corporation
CLAIMS	Comcare/Self-insurers	6 private sector agents	7 private sector agents	1 private sector agent	10 private sector agents	WorkCover Queensland and self insurers	8 private sector agents (licensed insurers)	4 private sector agents	8 private sector agents	Accident Compensation Corporation
CURRENT LEGISLATION	<i>Safety, Rehabilitation and Compensation Act 1988</i>	<i>Accident Compensation Act 1985 and Accident Compensation (WorkCover Insurance) Act 1993</i>	<i>Workplace Injury Management and Workers Compensation Act 1998 and Workers Compensation Act 1987</i>	<i>Workers' Rehabilitation and Compensation Act 1986 and WorkCover Corporation Act 1994</i>	<i>Workers' Compensation and Injury Management Act 1981</i>	<i>Workers' Compensation and Rehabilitation Act 2003</i>	<i>Workers' Rehabilitation and Compensation Act 1988</i>	<i>Work Health Act 1986</i>	<i>Workers' Compensation Act 1951</i>	<i>Injury Prevention, Rehabilitation, and Compensation Act 2001</i>

WORKERS' COMPENSATION – KEY FEATURES OF SCHEMES

TABLE 1.2 SYNOPSIS OF ALL OF THE JURISDICTIONS' WORKERS' COMPENSATION SCHEMES.

JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
EMPLOYEES COVERED FOR WORKERS' COMPENSATION 2005-06¹	283,130 ²	2,249,300	2,863,740	658,960	918,860	1,617,210	193,080	89,500	98,830	1,808,205 ³
NUMBER OF SERIOUS CLAIMS WITH 1 WEEK OR MORE INCAPACITY 2005-06¹	2,520	28,960	48,280	11,860	12,230	29,110	3,430	1,340	1,780 (2006/07)	24,720 (2006/07)
INCIDENCE OF SERIOUS CLAIMS PER 1000 EMPLOYEES 2005-06¹	9.7	12.9	16.9	18.0	13.3	18.0	17.7	14.9	13.9 (2006/07)	11.67 (2006/07)
COMPENSATED DEATHS PER 100 000 EMPLOYEES 2005-06^{1, 4}	2.3	1.8	2.8	2.1	1.9	3.8	3.1	3.4	2 (2006/07)	0.013 (2006/07) ⁵
NUMBER OF SELF INSURERS (AT 30 JUNE 2007)	17	38	64	74	27	25	16	5	9	154
SCHEME FUNDING	Central fund	Hybrid fund	Hybrid fund	Central fund	Privately underwritten	Central fund	Privately underwritten	Privately underwritten	Privately underwritten	Central fund

TABLE 1.2 (CONTINUED) SYNOPSIS OF ALL OF THE JURISDICTIONS' WORKERS' COMPENSATION SCHEMES.

AVERAGE PREMIUM RATE 2005-06 ^{1,6}	1.77% - 2006/07	1.62% - 2006/07	1.99% - 2006/07	3.00% - 2006/07	2.13% - 2006/07 ⁷	1.20% - 2006/07	1.95% - 2006/07 ⁸	N/A - 2006/07	3.15% - 2006/07	0.86% - 2006/07
	1.22% - 2005/06	1.76% - 2005/06	2.35% - 2005/06	3.06% - 2005/06	1.67% - 2005/06 ⁷	1.36% - 2005/06	2.32% - 2005/06 ⁸	2.17% - 2005/06	2.87% - 2005/06	0.94% - 2005/06
FUNDING RATIO	110% (Jun 07)	134% (Jun 07)	107% (June 07)	65% (Jun 07)	125% (Jun 06)	183.4% (Jun 07)	168% (2005/06)	100% (Jun 06)	Not available	186% (Jun 07)
EXCESS/ UNFUNDED ⁹ (JUNE 07)	\$115m excess	\$2.556 billion excess	\$812m excess	\$843m unfunded	Not available	\$1.47 billion excess	Not available	Nil	Not available	NZ\$1.09 billion excess
REDEMPTIONS / SETTLEMENTS ETC	Yes (limited)	Yes (limited)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
PORTION OF CLAIMS IN DISPUTE 2005-06 ¹	8.3%	14.1%	9.3%	11.7%	5.3%	3.8%	7.7%	4.7%	12.5% (2002/03)	0.4% (2006/07)

1 Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, ninth edition. These figures have inherent inaccuracies due to the comparatively high standard errors in the estimates involved.

2 This figure does not include self insurers under the Comcare scheme who are not employed by the Commonwealth, but does include ACT Public Service and Seacare employees

3 For New Zealand this figure includes self-insurers and self-employed persons who are covered by the scheme.

4 Average compensated deaths per 100 000 employees 2005-06 = 2.3.

5 Includes new claims plus ongoing payments relating to self-employment and employees.

6 Includes insured and self insured sectors.

7 The WA rate is recommended, insurers are able to discount or load the recommended rate.

8 These are actual rates not published rates.

9 Assets and liabilities for centrally funded and privately underwritten schemes are calculated differently, see 'Scheme funding ratio'.

SUMMARY OF BENEFITS

Important notes:

- > The level and degree of entitlements in the accompanying tables are maximum or minimum amounts for illustrative purposes. It is important to note that these amounts will not automatically apply to every injured employee. Similarly, not every injured employee will have his or her entitlement limited to one component.
- > Amounts of compensation, other than for lump-sum payment to dependants in the case of work related death or permanent impairment, will be based on the degree of financial loss a person has suffered as result of a work related injury, and the amount of financial loss, including lost income, is determined differently in each jurisdiction.
- > It must be noted that each component described below represents only one part of an overall entitlement to workers' compensation. The information should not be used to assess the overall level of benefits available to injured employees in each jurisdiction.
- > There are many exceptions to the benefits quoted below, so these figures should be taken to be applicable in the majority of cases.

INCAPACITY BENEFITS AND STEP DOWNS

Each scheme provides (within limits) for a period of near-full income replacement of pre-injury earnings for workers who cannot earn. Table 1.3 lists this period for each jurisdiction.

TABLE 1.3 PERIOD OF NEAR-FULL INCOME REPLACEMENT OF PRE-INJURY EARNINGS FOR WORKERS WHO CANNOT EARN										
100% REPLACEMENT	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
WEEKS	45	13 (95% replacement)	26	52	13	26 (at 85% of normal weekly earnings)	13	26	26	week 2-5: 80% of short-term calculation

Income replacement payments, also known as weekly payments, are ‘stepped down’ by a percentage or to a set amount for workers who cannot earn an income because of a work related injury. There is a range of entitlements across the jurisdictions, and Table 1.4 shows the final step-down arrangements. In almost all arrangements detailed provisions are made to further reduce the amounts of income replacement based on an injured person’s capacity to earn. Some of these provisions need to be read as either/or provisions, for example in Queensland, the maximum amount of income replacement is set as \$209,555, *or* five years.

TABLE 1.4 FINAL STEP-DOWN IN INCAPACITY PAYMENTS										
FINAL STEP DOWN	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
AFTER WEEK . . .	45	13	26	52	14	104	78	26	26	5: 80% of long-term calculation
MINIMUM AMOUNT	75%	75%	\$287.40	80%	85%	65% #	80%	75%	65%	NZ\$328
VARIATION	More for dependants, less capacity to earn	Less capacity to earn	Increases for dependent spouse and/or children	Less capacity or deemed capacity to earn	Subject to award rates	-	-	More for dependants, less capacity to earn	More for dependants, less capacity to earn	Less capacity to earn
FINANCIAL LIMIT	150% of AWOTEFA*	\$1,190 per week	-	-	-	\$209,555	-	-	-	NZ\$1,535.65
TIME LIMIT	-	2.5 years	2 years	-	-	5 years	9 years	2 years	2 years	-
AGE LIMIT	65 unless worker is over 63 years at time of injury, in which case max 2 years	65 unless worker over 62.5 years at time of injury, in which case max 2.5 years after incapacity	Retirement age + 12 months	65 unless worker is over 64.5 at time of injury, in which case max 6 months. Payments cease at 70	65 unless worker is over 64 at time of injury, in which case max 1 year	-	65 unless worker is over 64 at time of injury, in which case max 1 year	65 unless worker is over 64.5 at time of injury, in which case max 6 months.	65 unless worker is over 63 years at time of injury, in which case max 2 years	65 unless: > if a worker is between 63 and 64 years at time of injury, max 2 years > if a worker is 64 at time of injury, max 1 year All subject to an election to be entitled to compensation rather than superannuation

If the work related impairment is over 15%

* Average Weekly Ordinary Time Earnings of Full-time Adults

MEDICAL TREATMENT

Maximum amounts that a person can be compensated for the *reasonable* costs of medical treatment following a work related injury (as at 30 June 2007) are listed in Table 1.5

TABLE 1.5 MAXIMUM AMOUNTS FOR MEDICAL TREATMENT AS AT 30 JUNE 2007										
MEDICAL TREATMENT	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
\$ LIMIT	No limit	No limit	\$50,000	No limit	\$47,727	No limit	No limit	No limit	No limit	No limit
OTHER	-	Except in certain circumstances, ceases 52 weeks after weekly entitlement ceases, or after 52 weeks if compensation is payable only for medical	Any amount above \$50,000 at WorkCover's Discretion	-	Additional \$50,000 where the worker's social and financial circumstances justify it	-	Entitlements cease 10 years after the date the claim was lodged	-	Total amount must not be more than the maximum amount (agreed between employer and worker or \$569.07 CPI indexed) for each treatment	-

PERMANENT IMPAIRMENT ENTITLEMENTS

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

TABLE 1.6 PERMANENT IMPAIRMENT THRESHOLDS AND ENTITLEMENTS AS AT 30 JUNE 2007										
PERMANENT IMPAIRMENT	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
% OF IMPAIRMENT	10% WPI 5% hearing >0% fingers, toes, taste, smell	10% except for total losses compensated under different table. 30% for psychological injuries.	1%	None except hearing loss 5%	1%	1%	5% WPI >0% fingers and toes 10% psychiatric impairment	5%	1%	10%
LUMP SUM	\$141,351	\$373,420	\$231,000	\$136,000	\$159,091	\$209,555	\$208,370	\$215,030	\$170,719.51	NZ\$ 110,555.80
ADDITIONAL	\$53,007	\$462,720 (less any statutory impairment benefit paid)	\$50,000	\$91,800	-	\$191,345	-	-	-	-

DEATH BENEFITS

There are occasions where some work related injuries result in death. Each jurisdiction has a benefit structure in place that provides for lump sum payments, funeral costs and weekly payments for dependents. Some jurisdictions provide additional payments for spouses and counselling.

TABLE 1.7 DEATH BENEFITS AS AT 30 JUNE 2007

DEATH BENEFITS	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
LUMP SUM	\$212,027	\$250,000	\$325,400	\$227,800	\$218,095	\$392,525	\$208,370	\$268,788	\$170,720	Spouse: NZ\$5,333.86 Each child or other dependent: NZ\$2,666.94 s381
WEEKLY PAYMENTS / CHILD	\$70.65	% of pre injury earnings for dependent spouse and/or children to max \$1,190 per week	\$102.30	25% of deceased's notional weekly earnings	25% of deceased's notional weekly earnings if child is "orphan", or 12.5% if "dependent, non-orphaned"	10% of 'ordinary time earnings' payable weekly to each dependant family member until 16 or a student (where spouse is totally dependent)	A dependent child is entitled to 10% of the basic salary, commencing on the expiration of 13 weeks after the date of death.	\$103.38	\$56.91	Spouse: 60% of the long-term rate of weekly compensation that the earner would have received. Each child and other dependent: 20% of the weekly compensation.
FUNERAL	\$9,000	\$9,000	\$9,000	\$7,010	\$7,813	Reasonable	Reasonable cost of burial or cremation	\$5,375	\$4,553	NZ\$4,975.01
OTHER	-	Counselling for family \$1,960	Counselling for family	Weekly payments of up to 50% of notional weekly earnings for a totally dependent spouse or domestic partner, less depending on degree of dependency	-	\$10,925 paid to totally dependant spouse - reduced by the total amount of weekly payment of compensation	Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated > first 13 weeks: 100% of weekly payments > 14-78 weeks: 85% of weekly payments 78 weeks-2 years: 80% of weekly payments	-	-	Child care payments: NZ\$113.42 for a single child, NZ\$68.05 each if there are more than two children, and a total of NZ\$158.79 for 3 or more children.

ADDITIONAL RIGHTS

Some jurisdictions provide for a right to sue at common law, although these are usually limited to certain cases, such as permanent impairment.

TABLE 1.8 COMMON LAW ENTITLEMENTS

COMMON LAW	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
ACCESS	Yes for 3 rd Party Limited against employer/ other employee	Limited	Limited	No	Limited	Yes	Limited	No	Unlimited	No

DISPUTE RESOLUTION

Review and appeal rights for a person who is claiming compensation and disagrees with a decision about their entitlements are listed in Table 1.9.

TABLE 1.9 DISPUTE RESOLUTION

APPEAL RIGHTS	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
INITIAL	Reconsideration	Conciliation	Arbitrator of Workers Compensation Commission	Reconsideration	Conciliation	Internal review	Worker's Rehabilitation and Compensation Tribunal - Conciliation	Mediation	Conciliation	Review and mediation, conducted by an independent reviewer or mediator
THEN	AAT, then Federal Court then High court	Courts	Presidential member of Workers Compensation Commission	Conciliation, arbitration, judicial review, Appeal to Full Bench of Tribunal	Dispute Resolution Directorate, Commissioner, District Court	Q-COMP, Industrial Magistrate	Arbitration, Appeal to Supreme Court	Work Health Court	Arbitration	A review decision can be appealed to the District Court. Appeals on questions of law can be taken to the High Court and the Court of Appeal.

DEFINITION: INJURY

The definition of what constitutes an injury and what contribution the employment must have to it differs between the jurisdictions.

TABLE 1.10 DEFINITION OF INJURY AND CONTRIBUTION OF EMPLOYMENT

	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
DEFINITION OF 'INJURY' FOR PURPOSES OF COVERAGE	'... 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 ...'	'... disability arises out of, or in the course of, employment ...'	'... 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 ... out of or in the course of employment ...'	'a physical or mental injury... includes aggravation, acceleration or recurrence of a pre-existing injury... arising out of, or in the course of, the worker's employment'	'A work-related personal injury is a personal injury that a person suffers — (a) while he or she is at any place for the purposes of his or her employment'
EMPLOYMENT CONTRIBUTION	To a significant degree (for diseases only)	A significant contributing factor for heart attack or stroke, disease, a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease.	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury	Substantial cause (for psychiatric disabilities only)	To a significant degree (for diseases only)	Significant contributing factor	Employment is the 'major or most significant factor' (for diseases only)	To a material degree (for diseases and gradual process)	A substantial contributing factor	No requirement (except for work-related gradual process, disease, or infection suffered by the person)

COVERAGE FOR INDEPENDENT CONTRACTORS AND LABOUR HIRE WORKERS

The definitions of whether independent contractors and labour hire workers are covered for workers' compensation are listed in Table 1.11.

TABLE 1.11 WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS AND LABOUR-HIRE WORKERS										
	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
ARE INDIVIDUAL CONTRACTORS COVERED UNDER LEGISLATION?	Comcare: No, if employed under contract <i>for</i> service Seacare: No, compensation only through employment of employees	No, if employed under contract <i>for</i> service; they are covered if enter into any form of contract <i>of</i> services	No, if employed under contract <i>for</i> service. The legislation also does not cover a contractor who entered into a contract <i>of</i> service where the employment is for less than 5 days	No, if employed under contract <i>for</i> service Yes, if undertake prescribed work or work of a prescribed class	No, if employed under contract <i>for</i> service	No, if employed under contract <i>for</i> service	No, if employed under contract <i>for</i> service	No, if ABN supplied, otherwise yes	No, if employed under contract <i>for</i> service. However, there are provisions for the coverage of regular contractors	Yes
ARE LABOUR HIRE WORKERS COVERED UNDER LEGISLATION?	Comcare: Yes, although definition of employer may vary Seacare: No	Yes, labour hire firm held to be employer	Yes, labour hire firm held to be employer	Yes, generally liability rests with labour hire firm	Yes, labour hire firm held to be employer	Yes, labour hire firm held to be employer	Yes, labour hire firm held to be employer	From 1 August 2007, all labour-hire firms will have to purchase workers' compensation insurance for their workers, including those let on hire.	Yes, where the individual is not an executive officer of the corporation and: > the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer > there is no contract to perform work between the individual and person for who work is to be performed > the individual does all or part of the work	Yes, labour hire firm held to be employer

JOURNEY CLAIMS

All jurisdictions provide workers' compensation coverage for journeys undertaken for work purposes, with only some jurisdictions providing coverage for journeys to and from the workplace.

TABLE 1.12 COVERAGE OF JOURNEY CLAIMS

	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
JOURNEY TO AND FROM WORK	Comcare: No (prior to 13 April 2007 journey claims: Yes) Seacare: Yes	No (journeys are covered under separate statutory no-fault transport accident scheme)	Yes (some restrictions)	Generally no. Only in very limited circumstances may be covered – most journey accidents would not be covered	No	Yes (some restrictions)	No (some exceptions)	No (some exceptions)	Yes	Yes (some restrictions)
JOURNEY UNDERTAKEN FOR WORK PURPOSES	Comcare: Yes Seacare: Yes	Yes (some restrictions)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

THE EVOLUTION OF WORKERS' COMPENSATION SCHEMES IN AUSTRALIA AND NEW ZEALAND

This section provides an historical overview of the development of workers' compensation schemes in Australia at both the national and jurisdictional level, as well as New Zealand, and it serves to explain why Australia is faced with the workers' compensation arrangements that it has today.

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

THE NATIONAL PERSPECTIVE

In Australia, there are ten workers' compensation systems. Over time, each of the eight Australian States and Territories has developed their own workers' compensation laws. There are also two Commonwealth schemes: the first is for Australian Government employees and the employees of licensed authorities under the *Safety, Rehabilitation and Compensation Act 1988*, and the second is for certain seafarers.

The origin of these Australian workers' compensation systems lies in nineteenth century British law. Before the implementation of workers' compensation arrangements, an injured worker's only means of receiving compensation was to sue their employer for negligence at common law.

However, workers rarely succeeded in these actions due to what has been described as the 'unholy trinity' of legal defences: common employment, voluntary assumption of risk, and contributory negligence.

To limit the application of those defences, the *Employment Liability Act 1880* was enacted in Britain. This Act was adopted in the Australian colonies between 1882 and 1895.

While these Acts were well intentioned, taking them up did not lead to any significant improvement in outcomes for injured workers.

New workers' compensation laws incorporating a 'no fault' principle came about after Federation in Australia. New laws were prompted by the failure of the *Employment Liability Act 1880* to improve conditions for injured workers, increasing industrialisation, the rise of the labour movement and popular support for state intervention on behalf of workers.

To be eligible for workers' compensation under the no-fault principle, workers covered by the legislation merely had to prove that their injuries were work related. It was no longer necessary to prove negligence on the part of an employer.

Nonetheless early no-fault coverage for workers' compensation was limited. Firstly, although laws provided for some benefits, the taking out of insurance by employers was not compulsory. Secondly, to be eligible for workers' compensation, an injury had to be found to have arisen out of *and* in the course of employment.

In keeping with contemporary attitudes, the first workers' compensation laws in Australia were generally known as *workmen's* compensation and did not expressly cover female workers until challenged by the women's movement of the 1970s.

Post-Federation growth in trade unionism and the rise of Labor governments led to a process of reforming those early workers' compensation arrangements, a process which, for a variety of reasons, was to continue in all jurisdictions throughout the twentieth century.

Coverage for workers' compensation gradually extended to include most workers, and lump sum payments for loss of body parts were introduced. By 1926, New South Wales had introduced compulsory insurance, which became the model for most workers' compensation schemes around Australia.

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

In the last quarter of the twentieth century, there was a shift in emphasis in the schemes to strengthen the role of occupational health and safety and to highlight the need for rehabilitation of injured workers. This shift was expected to place downward pressure on costs, but did not achieve the level of success expected. Further reform attempts focussed on cutting back benefits and making premiums more competitive.

By the mid 1990s, workers' compensation costs had fallen by 20 per cent as a percentage of total labour costs, easing pressure for reform of premiums and costs, although each jurisdiction continues to grapple with these issues.

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

THE COMMONWEALTH

In 1912, the Commonwealth introduced the *Commonwealth Workmen's Compensation Act 1912* to provide compensation for Commonwealth workers, arising from the need for an 'equitable and regular procedure for compensation'. Before then, compensation was paid to widows and orphans of deceased Commonwealth officers under the *Officer's Compensation Acts of 1908, 1909, and 1912* via determinations of Parliament.

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

However, the introduction of the *Safety, Rehabilitation and Compensation Act 1988* was the most significant reform in the Commonwealth jurisdiction, as it introduced a focus on rehabilitation, which was seen as the best way to reduce spiralling costs of compensation. It included incentives through tiered income support rates for employees, gave employers statutory powers and responsibilities for rehabilitation and was paired with more reviews and investigations of claims. It also introduced compensation for illnesses and diseases, rather than an approach based on physical injuries set out in 'maims tables'.

The *Seafarers Rehabilitation and Compensation Act 1992* set out similar provisions for those covered under the Seacare scheme.

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

VICTORIA

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

The Act has been constantly updated with major reforms legislated in:

1992

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

1993

- > introducing the premium system

1997

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

2000

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

2004

- > improving the efficiency of the claims process; and
- > facilitating early and sustainable return to work

2005

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

2006

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

2007

- > Clarifying the financial guarantee requirements on employers who exit the Victorian WorkCover scheme (or Victorian self insurer arrangements) to self insure under the federal Comcare scheme.
- > Mandating the return of the management of tail claim liabilities to the Victorian WorkCover Authority for Victorian self insurers who cease their self insurance arrangements under the Victorian scheme.
- > Restoring the original approach to the assessment of permanent impairment for injured workers who suffer spinal injuries prior to the decision of the Full Court of the Supreme Court in *Mountain Pine Furniture Pty Ltd v Taylor*.
- > Confirming that compulsory employer superannuation payments are not taken into account in the calculation of weekly benefit compensation.
- > Improving counselling benefits for the families of deceased or seriously injured workers.

NEW SOUTH WALES

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

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

From 1987 to 1991, the workers' compensation scheme performed well and in the early 1990s premium levels were reduced and there were a number of legislative amendments that expanded the range and level of benefits. However, the previous surplus of almost 1 billion quickly eroded and by mid 1996 there was a \$454 million deficit. The Grellman Inquiry of 1997 was initiated to address continuing financial problems. The Inquiry recommended structural changes including stakeholder management, accountability controls, and greater incentives for injury management. Changes in the period 2000-2005 continued to focus on greater competition and choice for employers, improved outcomes for injured workers, and reducing the scheme's deficit, which was eliminated in mid 2006. The WorkCover Scheme has continued to perform strongly, allowing the NSW Government to pass on a number of reductions in workers' compensation premium rates and improvements to workers' compensation benefits.

SOUTH AUSTRALIA

South Australia's legislation first began with the *Workmen's Compensation Act 1900*, which was consolidated in 1932 and remained essentially in that form until the introduction of the *Workers Compensation Act 1971*. The 1971 Act completely restructured the workers' compensation legislation in the State. The Act increased the amounts of compensation payable and broadened the grounds upon which a worker could gain compensation.

In June 1978, the Government established a Committee of Inquiry, chaired by D.E. Byrne, to examine and report on the most effective means of compensating those injured at work. This was followed by the release of a Report of the Tripartite Committee on the Rehabilitation and Compensation of Persons Injured at Work in September 1980, entitled 'A Workers Rehabilitation and Compensation Board for South Australia – the key to rapid rehabilitation and equitable compensation for those injured at work' otherwise known as the 'Byrne Report'. Included amongst the Committee's recommendations was that a new Act be introduced repealing the *Workers Compensation Act 1971*, that a Board be established to administer a workers' compensation scheme and that the Board be responsible for overseeing and confirming rehabilitation programs.

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

Amendments to the *Workers Rehabilitation and Compensation Act 1986* passed in State Parliament in December 1992 abolished access to common law on 3 December 1992. The abolition was brought about by two facts; that workers were not, in most cases, receiving any significant award of damages and were incurring substantial costs and secondly, that a common law award which required the worker to prove negligence on the part of an employer was inconsistent with the concept of no fault legislation such as the *Workers Rehabilitation and Compensation Act 1986*.

On 4 April 1995, the then Liberal Government introduced a *Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Bill 1995* for an Act to amend the *Workers Rehabilitation and Compensation Act 1986*. The following arrangements were included amongst its provisions:

- > The legislation repealed and replaced section 6 of the Act pertaining to territorial provisions whereby new arrangements made the Act apply only if a 'nexus' between a worker's employment and the State could be established
- > Rehabilitation and return to work plans were introduced on 17 August 1995 for injured workers in receipt of income maintenance and who were likely to be incapacitated for more than 3 months and who had some prospect of returning to work. The insertion of [s28A](#) gave statutory recognition to rehabilitation and return to work plans. It held that a plan must be prepared if the worker is (or is likely to be) incapacitated for more than three months, that consultation must occur between the worker and the relevant employer and that Plans are reviewable

- > Rehabilitation programs and plans needed to comply with the prescribed standards. Sections 28A, 28B, 28C came into effect as of 25 January 1996
- > Further amendments to Section 30A were made, expanding coverage for psychiatric disabilities to cover all psychiatric disabilities, not just 'stress' claims
- > Provisions pertaining to the compensation for medical expenses under s32 were also expanded to allow for the regulation of treatment protocols and the establishment of a scale of charges. This came into effect on 25 January 1996
- > Two year review processes under s35(2) were amended. Rather than income maintenance after two years taking into account only what a worker could earn in suitable employment, income maintenance could be adjusted based on the amount a worker had the capacity to earn in suitable employment. The onus was then on workers to prove that they are in effect unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances, irrespective of the state of the labour market
- > Other modifications included changes to discontinuance provisions relating to age and retirement, the introduction of the concept of breaches of the 'obligation of mutuality' resulting in tougher discontinuance provisions, the replacement of commutations with the ability to make a redemption of liability by a capital payment and an increase in employers' liability to pay the worker from the first week to two weeks
- > Further, s58B employer obligations were relaxed so that small employers were only required to keep a position available for 1 year only and s43 sexual incapacity lump sums were eliminated

WESTERN AUSTRALIA

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

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

QUEENSLAND

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

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

In 1996, a further inquiry was held to address financial, regulatory and operational difficulties, resulting in the *WorkCover Queensland Act 1996*. It repealed the 1990 Act, and "affected a total rewrite of the workers' compensation legislation". In turn, the *Workers' Compensation and Rehabilitation Act 2003* repealed the 1996 Act, and introduced separate delivery and regulation of the workers' compensation scheme.

TASMANIA

Tasmania first introduced workers' compensation in 1910. The *Workers' Compensation Act 1927* repealed earlier Acts and introduced compulsory insurance against injury to workers. A 1986 Tasmanian Law Reform Commission report recommended sweeping changes to the system, and led to the *Workers' Rehabilitation and Compensation Act 1988*.

This Act introduced many new features to the Tasmanian workers' compensation scheme, including:

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

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

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

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

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

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

It was this last point of increasing the levels of step-downs in weekly benefits, which caused concern among individuals and community groups, with suggestions that it was causing hardship for injured workers. Responding to these concerns, the government appointed Mr Bob Rutherford to undertake a review of the workers' compensation system, with a particular focus on the step down provisions.

Mr Rutherford's report was completed in March 2004, and contained a number of recommendations for both the government and the WorkCover Tasmania Board. As a result of Mr Rutherford's report, the legislation was amended to retain the first step-down provision of 85% of normal weekly earnings but increase its duration to 78 weeks, and lift the second step-down from 70% to 80% of normal weekly earnings. To offset the additional cost to employers of this change, the maximum period of entitlement was reduced from 10 years to 9 years. The changes came into effect in June 2004.

The government also increased the time limit for employers to decide initial liability from 28 days to 12 weeks.

NORTHERN TERRITORY

In the Northern Territory, the first workers' compensation statute introduced was the *Workmen's Compensation Act 1920*. Before then, the *Employer's Liability Act 1884* applied. In 1985, the name of the Act was changed to the *Worker's Compensation Act*.

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

AUSTRALIAN CAPITAL TERRITORY

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

In 2002, further significant changes were made by the *Workers Compensation Amendment Act 2001* to focus on early reporting, early intervention and return to work, complemented by an improved benefits structure. An advisory committee to the responsible Minister was also established to look at the ongoing operation of the scheme and regulations. In 2006, further amendments were made to the *Workers Compensation Act 1951* to create a Default Insurance Fund (DIF), which superseded the previous Nominal Insurer and Supplementation Fund, and to allow certain categories of carers to be deemed as 'workers' under the Act.

During 2007 a review was conducted on the scheme and the legislation to look at how the 2002 changes were working, an overall look at how the scheme compares to others and what changes may need to be made. There were also some inconsequential amendments made to the *Workers Compensation Act 1951*.

It should be noted that workers employed by the ACT Government are covered by the Commonwealth's *Safety, Rehabilitation and Compensation Act 1988*.

NEW ZEALAND

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

In 1998 elements of private insurance competition were introduced with the *Accident Insurance Act 1998*. This was reversed in 2001 with the *Injury Prevention, Rehabilitation, and Compensation Act 2001*, which increased the emphasis on injury prevention and rehabilitation.

COMPARISON OF WORKERS' COMPENSATION SCHEMES

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

SCHEME NAMES

Employers who work in more than one state or territory must operate under the schemes in each jurisdiction in which they work.

As at 30 June 2007, workers' compensation arrangements in each jurisdiction were principally administered by the authorities listed below in Table 3.1.

TABLE 3.1 SCHEME NAMES	
JURISDICTION	SCHEME
Commonwealth	<u>Comcare</u> <u>Seacare</u>
Victoria	<u>Victorian WorkCover Authority</u> (also known as WorkSafe Victoria)
New South Wales	<u>WorkCover NSW</u>
South Australia	<u>WorkCover Corporation of South Australia</u>
Western Australia	<u>WorkCover Western Australia</u>
Queensland	<u>WorkCover Queensland</u>
Tasmania	<u>WorkCover Tasmania</u>
Northern Territory	<u>NT WorkSafe</u>
Australian Capital Territory	<u>Office of Regulatory Services which incorporates ACT WorkCover</u>
New Zealand	<u>Accident Compensation Corporation</u>

LEGISLATION

For employers who operate in more than one Australian state or territory, they must comply with all relevant laws within each of the jurisdictions in which they work.

As at 30 June 2007, workers' compensation schemes operated under separate laws in each jurisdiction, as shown in Table 3.2.

TABLE 3.2 APPLICABLE WORKERS' COMPENSATION LEGISLATION	
JURISDICTION	LEGISLATION
Commonwealth	<u><i>Safety, Rehabilitation and Compensation Act 1988</i></u> (Compilation prepared 27 April 2007)
	<u><i>Seafarers Rehabilitation and Compensation Act 1992</i></u> (Compilation prepared 22 March 2007)
Victoria	<u><i>Accident Compensation Act 1985</i></u> (Version 141 as at 11 October 2006)
	<u><i>Accident Compensation (WorkCover Insurance) Act 1993</i></u>
New South Wales	<u><i>Workers Compensation Act 1987</i></u> (version valid from 1 January 2007 to 30 June 2007)
	<u><i>Workplace Injury Management and Workers Compensation Act 1998</i></u> (version valid from 23 December 2006 to 30 June 2007)
South Australia	<u><i>Workers Rehabilitation and Compensation Act 1986</i></u> (Choose Version 1.6.2007 to 12.9.2007)
	<u><i>WorkCover Corporation Act 1994</i></u>
Western Australia	<u><i>Workers' Compensation and Injury Management Act 1981</i></u> (As at 01 February 2007, Version 07-a0-05)
Queensland	<u><i>Workers' Compensation and Rehabilitation Act 2003</i></u> (Reprint 2E, 28 May 2007)
Tasmania	<u><i>Workers Rehabilitation and Compensation Act 1988</i></u> (consolidated as at 30 June 2007)
Northern Territory	<u><i>Work Health Act 1986</i></u> (As in force at 26 April 2007)
Australian Capital Territory	<u><i>Workers Compensation Act 1951</i></u> (Republication No.32, Effective: 1 January 2007 to 10 July 2007)
New Zealand	<u><i>Injury Prevention, Rehabilitation, and Compensation Act 2001</i></u> (as at 3 September 2007)

TRANSITIONAL PROVISIONS

Not all injured workers are covered under current workers' compensation legislation because their *date of injury* (see Glossary) may have preceded the introduction of that legislation. However, most jurisdictions provide for workers' compensation payments to be made to people who would have had an entitlement to compensation under preceding legislation, or for some transitional arrangements to apply to those people.

For example, in Queensland, injuries that occurred before 1 January 1991 are covered by the *Workers' Compensation Act 1916*, injuries that occurred between 1 January 1991 and 1 February 1997 are covered by the *Workers' Compensation Act 1990* and injuries that occurred on or after 1 February 1997 and before 1 July 2003 are covered by the *WorkCover Queensland Act 1996*.

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

TABLE 3.3 TRANSITIONAL LEGISLATION PROVISIONS

JURISDICTION	LEGISLATION
Commonwealth	A person who has a date of injury under a previous Act (the 1971, 1930 or 1912 ⁺ Acts) is entitled to compensation under the 1988 Act provided compensation for that injury would have been payable under the earlier Act. A person is not entitled to compensation under the 1988 Act if compensation was not payable in respect of an injury suffered under a previous Act.
Victoria	<i>Workers Compensation Act 1958</i>
New South Wales	<i>Workers Compensation Act 1926</i> ⁺
South Australia	The <i>Workers Compensation Act 1971</i> ⁺ may still apply to injuries with a date of injury prior to 30 September 1987, the date on which the 1986 Act commenced.
Western Australia	<i>Workers' Compensation and Injury Management Act 1981</i>
Queensland	<i>Workers' Compensation Act 1916</i> ⁺
	<i>Workers' Compensation Act 1990</i>
	<i>WorkCover Queensland Act 1996</i>
Tasmania	<i>Workers Compensation Act 1927</i> ⁺
	<i>Workers' (Occupational Diseases) Relief Fund Act 1954</i> ⁺
Northern Territory	<i>Workmen's Compensation Ordinance 1949</i> ⁺
	<i>Workmen's Compensation Act 1979</i> ⁺
Australian Capital Territory	The ACT legislation is a consolidation of previous enactments.
New Zealand	<i>Accident Insurance Act 1998</i>
	<i>Accident Rehabilitation and Compensation Insurance Act 1992</i>
	<i>Accident Compensation Act 1982</i>
	<i>Accident Compensation Act 1972</i>

⁺ No hyperlink provided as legislation has been repealed.

UNIQUE PROVISIONS

A number of jurisdictions have specific workers' compensation or related legislation or other arrangements to provide for people who are injured in unique ways or at particular places or times. For example the Commonwealth has an *administrative scheme* (see Glossary) for people who may have been affected by nuclear radiation from British atomic tests in Australia, in the 1950s.

TABLE 3.4 JURISDICTIONAL SPECIFIC WORKERS' COMPENSATION LEGISLATION

JURISDICTION	LEGISLATION
Commonwealth	<i>Scheme for Payment of Special Compensation for Injury in Exceptional Circumstances</i> ⁺ (covers Commonwealth employees and their dependants for injuries or diseases which would not have occurred <i>but for</i> the employee's employment by the Commonwealth and which would not attract compensation under the SRC Act). <i>Administrative Scheme</i> - covers British nuclear tests participants who were not Commonwealth employees.
Victoria	Not applicable
New South Wales	<i>Associated General Contractors Insurance Company Limited Act 1980</i> <i>Bishopsgate Insurance Australia Limited Act 1983</i> <i>The Standard Insurance Company Act 1963</i> <i>Workers Compensation (Brucellosis) Act 1979</i> <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> <i>Workers Compensation (Dust Diseases) Act 1942</i> <i>Workmen's Compensation (Lead Poisoning – Broken Hill) Act 1922</i> <i>Workers Compensation Regulations 2003</i>
South Australia	Not applicable
Western Australia	<i>Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001</i> <i>Employers' Indemnity Supplementation Fund Act 1980</i> <i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</i> <i>Workers' Compensation (Common Law Proceedings) Act 2004</i> <i>Workers' Compensation and Injury Management Regulations 1982</i>
Queensland	<i>Motor Accident Insurance Act 1994</i> <i>The Workers' Compensation (Lead Poisoning, Mount Isa) Acts 1933 to 1961</i> ⁺
Tasmania	<i>Workers' (Occupational Diseases) Relief Fund Act 1954</i> ⁺
Northern Territory	Not applicable
Australian Capital Territory	The <i>Workers Compensation Act 1951</i> includes provisions for injured workers whose claim for compensation is unable to be covered by his/her employer or insurer as well as a temporary provision for acts of terrorism.
New Zealand	<i>Tuberculosis Act 1948</i>

* No new claims allowed.

+ No hyperlink provided as legislation has been repealed

WORKERS' COMPENSATION STATISTICAL SNAPSHOT

This section provides broad statistical information about workers' compensation schemes throughout Australia and New Zealand, which is important to any discussion and comparison of workers' compensation arrangements.

TOPICS DISCUSSED IN THIS SECTION ARE:

- > statistics specific to workers' compensation schemes
- > the operation of the schemes in each jurisdiction; and
- > the number of claims brought in each jurisdiction and their success rate

Information on jurisdiction performance can be found in the Comparative Performance Monitoring report (www.workplace.gov.au/cpm).

EMPLOYMENT

For the financial year 2006-07, the number of employed persons in Australia was approximately 10.3 million. Table 4.1 below contains estimates of the number of employed persons by state and territory.

However, workers are not necessarily covered by the workers' compensation legislation of the jurisdiction in which they work, as some may be covered under cross-border arrangements or some other arrangement. A particular arrangement is in the Australian Capital Territory where Commonwealth employees and ACT Public Sector employees are both covered under the Comcare scheme. Table 4.1 also shows the number of employed persons by workers' compensation jurisdiction.

It should be noted that only those workers classed as *employees* (see Glossary) or workers under each jurisdiction's legislation are covered for workers' compensation. Table 4.1 provides estimates of the number of employees covered by workers' compensation and the proportion of all workers covered by workers' compensation. Where an employee has more than one job, that employee is counted more than once as they would be covered by workers' compensation policies with each employer.

Therefore the percentages reported could slightly overstate the true extent of workers.

Information on jurisdiction performance can be found in the Comparative Performance Monitoring report (www.workplace.gov.au/cpm).

TABLE 4.1 TOTAL EMPLOYEES AND WORKERS' COMPENSATION COVERAGE BY JURISDICTION AS AT 30 JUNE 2007 (,000 OF EMPLOYEES)

JURISDICTION	CTH ¹	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	ALL OF AUST	NZ
EMPLOYED PERSONS ²	283,130 ³	2,434,738	3,200,174	728,199	1,043,569	1,974,711	216,707	94,454	99,650	10,064,325	1,808,205 ⁴
EMPLOYEES COVERED BY WORKERS' COMPENSATION ³	283,130 ³	2,249,300	2,863,740	658,960	918,860	1,617,210	193,080	89,500	98,830	8,972,590	1,808,205 ⁴
PROPORTION OF EMPLOYED PERSONS COVERED BY WORKERS' COMPENSATION	100% ²	92.4%	89.5%	90.5%	88.0%	81.9%	89.1%	94.8%	99.3%	89.2%	100.0%

¹ Contractors working for the Commonwealth will be recorded against their State of usual residence and hence all employed persons are recorded as being covered by workers' compensation, again in these figures there is an inherent potential degree of inaccuracy.

² Source: ABS Labour Force, Catalogue No. 6202.0.55.001, annual average of monthly figures, 2005-06, adjusted for Commonwealth employment using ABS Wage and Salary Earners, Public Sector, Catalogue No. 6248.0.55.001, Table 2.

³ Source: Comparative Performance Monitoring Report, ninth edition, includes Seacare and ACTPS employees under Commonwealth. These figures have inherent inaccuracies due to the comparatively high standard errors in the estimates involved.

⁴ For New Zealand this figure includes self-insurers and self-employed persons who are covered by the scheme.

SUBMITTED WORKERS' COMPENSATION CLAIMS

Table 4.2 gives an indication of the number of submitted workers' compensation claims in each jurisdiction in the period 1 July 2006 to 30 June 2007.

TABLE 4.2 TOTAL SUBMITTED CLAIMS FOR 2006/07										
JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
NO OF CLAIMS	11,440	28,856 ¹	June 2007 data not available	37,441 ²	40,853	97,660	9,726	3,111	4,454	25,215

¹ These are standardised claims only, excludes minor claims and self insurer claims

² Claims reported for financial year ending June 2007 by registered employers

The figures in Table 4.2 are to give the reader an indication of the number of claims submitted each financial year by all of the schemes and are subject to variation because of the effect of some claims being lodged in the year following the injury.

More comparable information, such as incidence rates, can be found in the Comparative Performance Monitoring report (www.workplace.gov.au/cpm).

SCHEME FUNDING

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

In *centrally funded schemes* (see Glossary), a single public insurer (that is a government agency) performs most, if not all, of a workers' compensation insurer's functions. Central insurers are responsible for *underwriting* (see Glossary) their scheme.

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

Privately underwritten schemes (see Glossary) are the opposite of centrally funded schemes. In privately underwritten schemes, most, if not all, insurer functions are provided by the private sector, through approved insurance companies and self-insuring employers who meet the appropriate prudential and other prerequisites. This includes underwriting. In the Northern Territory scheme, a public insurer competes with private insurers for provision of workers' compensation. The degree of regulation of privately underwritten schemes by government varies among the privately underwritten schemes.

Table 4.3 shows which models operate in each jurisdiction (as at 30 June 2007).

TABLE 4.3 TYPE OF SCHEME

TYPE OF SCHEME	JURISDICTION
CENTRAL	Commonwealth (Comcare)
	South Australia
	Queensland
	New Zealand
HYBRID	Victoria
	New South Wales
PRIVATELY UNDERWRITTEN	Commonwealth (Comcare self insurers) and (Seacare)
	Western Australia
	Tasmania
	Northern Territory
	Australian Capital Territory

NET FUNDING RATIO

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

NET ASSETS

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

NET LIABILITIES

Net liabilities (see Glossary) in centrally funded schemes are the total current and non-current liabilities of the scheme; minus any amounts the scheme expects to retrieve at the end of the financial year. In hybrid schemes, net liabilities are claim liabilities, including the prudential margin, net of claims recoveries receivable. The liabilities in privately underwritten schemes are taken as the central estimate of outstanding claims for the scheme at the end of the financial year. Net liabilities are used in the calculation of funding ratios.

Table 4.4 will show each jurisdiction's scheme funding position as reported in their annual reports.

TABLE 4.4 SCHEMES' FUNDING POSITIONS

JURISDICTION	30 JUNE 2007	30 JUNE 2006
COMMONWEALTH	Assets: \$1,254m Liabilities: \$1,139m ^a Funding Ratio: 110.2% ^a	Assets: \$1,093m Liabilities: \$958m ^a Funding Ratio: 114.2% ^a
VICTORIA	Assets: \$10,371m Liabilities: \$7,721m Funding Ratio: 134.3%	Assets: \$9,377m Liabilities: \$7,897m Funding Ratio: 118.7%
NEW SOUTH WALES	Assets: \$12,470m Liabilities: \$11,658m Funding Ratio: 107%	Assets: \$10,707m Liabilities: \$10,621m Funding Ratio: 100.8%
SOUTH AUSTRALIA	Assets: \$1,546m Liabilities: \$2,389m Funding Ratio: 64.7%	Assets: \$1,288m Liabilities: \$1,982m Funding Ratio: 65.0%
WESTERN AUSTRALIA	Assets: N/A Liabilities: N/A Funding Ratio: N/A	Assets: \$1,326m Liabilities: \$1,217m Funding Ratio: 109%
QUEENSLAND	Assets: \$3,235m Liabilities: \$1,764m Funding Ratio: 183.4%	Assets: \$3,169m Liabilities: \$1,777m Funding Ratio: 178.3%
TASMANIA	Assets: N/A Liabilities: N/A Funding Ratio: N/A	Asset: \$218.0m ^b Liabilities: \$165.9m ^c Funding Ratio: 168%
NORTHERN TERRITORY	N/A	N/A
AUSTRALIAN CAPITAL TERRITORY	N/A	N/A
NEW ZEALAND^d	Assets: NZ\$2,357m Liabilities: NZ\$1,267m Funding Ratio: 186%	Assets: NZ\$2,016m Liabilities: NZ\$1,258m Funding Ratio: 160%

^a With prudential margin removed according to the Australian Equivalents to International Financial Reporting Standards (AEIFRS).

^b Includes insurer/self insurer case estimates as at 31 December 2006 plus Incurred But Not Reported (IBNR) / Incurred But Not Enough Reported (IBNER) held reserves as at 30 June 2006.

^c Actuarial central estimate as at 31 December 2006.

^d As of 1 April 2007, the Employer and Self-employed Accounts were merged to a single Work Account. These numbers are for the Work Account as year ending 30 June 2007.

Figures do not include Residual claims

Care should be taken when analysing the information above as the valuation of liabilities differs across jurisdictions. The Comparative Performance Monitoring report (www.workplace.gov.au/cpm) attempts to address most of the areas where differences can occur.

PREMIUMS

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

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

Premium rates are generally pooled across similar risk profile groups. This allows employers who share a common set of risks to spread the risk across their industry type. Across the schemes, there are hundreds of specified premium rates for industry types.

Employers who operate in more than one jurisdiction have to pay the relevant premium in each jurisdiction (see cross-border arrangements).

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

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

In 2004-05 the Australian standardised average premium rate was 2.25 per cent of payroll.

Table 4.5 below shows the average published premium in each jurisdiction. Caution should be taken when comparing these rates as they involve different definitions of remuneration, employer excess periods and levels of coverage. The Comparative Performance Monitoring report (www.workplace.gov.au/cpm), attempts to address these issues to provide comparable premium rate.

TABLE 4.5 AVERAGE PREMIUM RATE PER FINANCIAL YEAR

JURISDICTION	07-08	06-07	05/06	04-05	03-04	02-03	01-02	00-01	99-00	98-99	97-98	96-97	95-96
CTH: COMCARE	N/A	1.77%	1.22%*	1.16%*	1.12%*	1.13%	1.00%	0.98%	1.03%	1.00%	1.20%	1.60%	1.70%
CTH: COMCARE (ACT GOV)	N/A	3.03%	3.08%	3.07%	3.13%	3.07%	3.36%	3.12%	2.77%	2.60%	3.00%	5.00%	5.20%
CTH: SEACARE	N/A		6.05%*	6.92%*	7.93%*	5.17%	3.75%	4.12%	3.48%				
VIC	1.46%	1.62%	1.76%*	1.98%*	2.25%*	2.22%	2.22%	2.22%	1.90%	1.90%	1.80%	1.80%	1.98%
NSW	N/A	1.86% ^a	2.57% / 2.44% ^{b,c}	2.40%*	2.46%*	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.50%
SA	N/A	3.00%	3.06%*	3.04%*	3.05%*	2.46%	2.46%	2.86%	2.86%	2.86%	2.86%	2.86%	2.86%
WA^d	N/A	2.12%	1.67%*	1.72%*	1.92%*	2.47%	2.63%	2.97%	3.09% ^e	2.54%	2.40%	2.67%	2.61%
QLD^f	1.15%	1.20%	1.36%*	1.33%* ^g	1.35%*	1.55%	1.55% ^h	1.75%	1.85% ⁱ	2.145%	2.145% ⁱ	2.023%	1.85% ^k
TAS^l	1.94%	1.95%	2.19%	2.46%	2.78%	3.12%	3.16%	3.14%	3.11%	2.7%	3.1%	3.2%	3.02%
NT^m	N/A	2.4%	2.17%*	2.38%*	2.43%*	3.22%	3.10%	2.91%	2.33%	1.90%	1.53%	1.50%	1.60%
ACTⁿ	N/A	3.15%	2.87%*	2.97%*	2.88%*	3.58%	3.07%	2.53%	2.59%	2.59%	2.59%	2.50%	2.41%
NZ^{o,p}	0.78%	0.86%	0.88%*	0.91%*	0.90%*	0.90%	0.90%	1.16%	-----	-----	-----	-----	-----

Notes:

* Source: Workplace Relations Ministers' Council, Comparative Performance Monitoring Report, 9th Edition
Includes insured and self insured sectors.

a (NSW) target collection rate reduced to 1.99% for policies renewing on or after 31 December 2006.

b (NSW) Excludes New Tax System effects

c (NSW) WCA target premium rate reduced to 2.44% for policies renewing after 31 December 2005

d (WA) All rates are recommended. Insurers are able to discount or load recommended rates.

e (WA) 3.44% between 1/7/99 and 31/10/99, 3.09% between 1/11/99 and 30/6/00

f (Qld) all rates are inclusive of stamp duty

g (Qld) wage base now includes superannuation

h (Qld) excludes GST

i (Qld) surcharges removed for periods of insurance after 1/7/99

j (Qld) self insurance commenced 1997-98. From then this data represents all claims, including those less than 5 days, and includes self insurer claims

k (Qld) 10% surcharge introduced 01/01/96

l (Tas) These are actual rates not published rates

m (NT) Figures supplied by approved insurers

n (ACT) There is no stamp duty payable on workers' compensation premiums and the premium percentage are not standardised as per the Comparative Performance Monitoring (CPM) reporting process

o (NZ) Does not include the Residual Levy for work claims pre-1 July 1999

p (NZ) Excludes Goods and Services tax

INDUSTRY RATES

Premiums vary from industry to industry. Table 4.6 provides an indication of some selected premium rates.

TABLE 4.6 SELECTED INDUSTRY PREMIUM RATES AS AT 30 JUNE 2007

INDUSTRY	VIC	NSW	SA	WA	QLD	TAS	NZ (EXCLUDING RESIDUAL LEVY)
AVERAGE LEVY/ PREMIUM RATE	1.62%	1.86%	3.00%	2.12%	1.20%	2.32%	0.78%
HIGHEST (PUBLISHED) RATE	11.393%	12.517%	7.5%	11.11%	5.958%	8.2%	7.46%
HIGHEST (EXPERIENCED RATE) RATE	N/A	N/A	11.25%	N/A	11.350%	N/A	N/A
LOWEST (PUBLISHED) RATE	0.31%	0.244%	0.40%	0.40%	0.133%	0.41%	0.06%
LOWEST (EXPERIENCED RATE) RATE	N/A	N/A	0.28%	N/A	0.034%	N/A	N/A
HOUSE CONSTRUCTION	2.264%	5.743%	3.2%	1.81%	2.246%	3.73%	2.41%
NON-RESIDENTIAL CONSTRUCTION	2.891%	4.475%	3.5%	3.09%	2.246%	3.73%	2.40%
MEAT PRODUCTS	11.393%	8.196% (Abattoirs) 8.310 % (Meat packing and freezing) 7.319% (Meat processing)	7.5%	8.07% (Meat processing)	5.404% (Meat processing)	8.2% (Meat processing)	1.26% (Inspection) 4.69% (Processing) 0.94% (Wholesaling)
RUBBER PRODUCTS MANUFACTURING	2.387% - 4.402%	6.848% (Rubber tyre manufacturing) Nec 4.663% (Other rubber product manufacturing)	7.5%	3.26%	2.730%	1.04%	1.24% (Products) 1.40% (Tyre)
PLASTIC PRODUCTS	3.994%	4.094% (Plastic product manufacturing)	6.1%	3.73% (Plastic blow moulded product manufacturing)	1.940%	3.01% (plast blow moulded product manufacturing)	1.01%
BASIC IRON AND STEEL PRODUCTS	3.999%	4.760% (Basic iron and steel manufacturing)	7.5%	4.74%	2.358%	2.83%	1.41% (Manufacturing)
STEEL CASTING	4.395%	4.703% (Iron and steel casting and forging)	7.5%	4.33% (Iron and steel casting and forging)	2.358% (Iron and steel casting and forging)	2.83% (Iron and steel casting and forging)	2.29% (Iron and steel casting and forging)
STEEL PIPES AND TUBES	4.394%	4.711% (Steel pipes and tubes manufacturing)	4.7%	3.86%	2.358%	2.83%	1.41% (Manufacturing)
PULP PAPER AND PAPERBOARD	2.164%	3.411% (Pulp paper and paperboard manufacturing)	5.2%	5.44%	1.940%	1.04%	0.90% (Manufacturing)
PAINTS	2.906%	3.030% (Paint manufacturing)	3.4%	2.20%	1.521% (Paint manufacturing)	1.58% (Paint manufacturing)	0.46% (Manufacturing)
SOAP AND DETERGENTS	3.401%	3.022% (Soap and other detergent manufacturing)	2.5%	1.69%	1.448%	1.58%	0.55% (Manufacturing)
GLASS AND GLASS PRODUCTS	2.992%	4.516% (Glass and glass products manufacturing)	4.9%	5.98%	2.037%	3.37%	0.91% (Manufacturing)
CEMENT	1.751%	3.249% (Cement and lime manufacturing)	4.7%	6.02%	1.676% (Cement and lime manufacturing)	1.85% (Cement and lime manufacturing)	1.53% (Cement & Lime Manufacturing)

TABLE 4.6 (CONTINUED) SELECTED INDUSTRY PREMIUM RATES AS AT 30 JUNE 2007

CLOTHING MANUFACTURING	2.927% - 4.292%	4.110%	3.6%	4.10%	1.134%	1.94%	0.57%
BEER	1.982%	3.030% (Beer and malt manufacturing)	3.0%	2.31%	1.379%	2.12% (Beer and malt manufacturing)	0.47% (Beer & malt manufacturing)
HOTELS	1.825%	3.046%	3.0%	2.09% (Pubs, taverns and bars)	1.250%	1.58% (Pubs, taverns and bars)	0.64% (Pubs, taverns & bars)
BREAD MANUFACTURING	4.544%	3.785%	7.5%	4.85%	2.358%	2.12%	0.63%
FOOTWEAR MANUFACTURING	6.907%	4.265%	4.9%	3.67%	1.134%	1.94%	0.88%
NURSING HOMES	3.776%	5.386%	7.5%	4.39%	2.037%	3.01%	1.19% (Aged care) 1.31% (Retirement village operation)
DEPARTMENT STORES	2.832%	2.080%	2.5%	2.70%	1.029%	1.49%	0.44%
MEDICAL PRACTICE	0.453%	0.609% (General practice medical services) 0.601% (Specialist medical services)	0.60%	0.41% (General practice medical services)	0.186% (General practice medical service)	0.50% (General practice medical services)	0.06% (General practice medical services)
SECONDARY SCHOOLS – PRIVATE	0.743%	0.771% (Secondary schools)	1.3	0.94% (No distinction is made between private and government schools)	0.407%	1.94% (Secondary education)	0.18%
SECONDARY SCHOOLS - GOVERNMENT	1.298%	0.771% (Secondary schools)	1.3	0.94%	0.407%	1.94% (Secondary education)	0.18%

* Apart from Western Australia and Tasmania (i.e. NT/ACT), Industry Rates are not provided for jurisdictions with full private insurance underwriting, as each individual insurer set their own Industry Rates.

NSW - Average levy/premium rate excludes GST and additional costs arising from The New Tax System.

VIC - Industry rates are effective rates. Gazetted rates were approximately 35% lower due to transition to a new premium formula and the reduction in scheme rate.

QLD - Published rates exclude stamp-duty and GST. Average premium rates include stamp-duty and exclude GST.

WA - All published and premium rates are exclusive of GST.

SA - All listed rates are exclusive of GST. All other listed rates include GST and The New Tax System effects.

In the Comcare jurisdiction industry rates are not applicable as all employers are experience rated.

New Zealand - All published levy rates are Exclusive of GST.

*PREMIUM SETTING: NOTES RELATING TO THE INDUSTRY RATES COMPARISON TABLE***1. It is difficult to make exact comparisons between states; as such the following qualifications should be noted:**

- > Industry classifications vary from jurisdiction to jurisdiction. For example, Victorian industry classifications are based on the Australian Bureau of Statistics ASIC code, and Western Australian and NSW on ANZSIC. South Australian industry classifications are based on the Australian Bureau of Statistics code and are progressively being aligned to ANZSIC, with some alterations designed specifically for SA localised conditions
- > 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 30 June 2006
- > On 30 June 2001, NSW introduced an industry classification system based on the ANZSIC system (WorkCover Industry Classification – WIC), with some alterations specifically designed for NSW. All WIC rates were reduced by 25% over the 18 months to June 2007. Current industry classes and rates were published in a NSW Gazette notice on 24 May 2006. Refer to the Insurance Premiums order on the WorkCover NSW website, [WorkCover Authority of New South Wales](#)
- > 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 to 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 proportion of workers centrally covered by these schemes is lower than in some other jurisdictions:

- > New South Wales: 44 self-insurers, 18 group self-insurers, 6 specialised (or industry specific) insurers and separate arrangements covering most public sector employers
- > South Australia: 74 self-insurers plus most of the South Australian Public Sector and Government instrumentalities
- > Victoria: 38 self-insurers
- > Queensland: 25 self-insurers;
- > Western Australia: 27 self-insurers. Self insurers are not part of the premium setting process in WA
- > Commonwealth: 17 self-insurers (as at 30 June 2007). Self insurers are not part of the premium setting process in the Commonwealth
- > New Zealand: 154 self-insurers. Self insurers are not part of the levy/premium setting process in NZ

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 the 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
- > Jurisdictions vary in their application of GST to premiums. NSW's published industry rates include 10% GST. Other jurisdictions generally exclude GST from their published industry premium rates

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 based on claims rate in a given period.

- > the bonus and penalty system in South Australia, which generally comprises a bonus of up to 30% of levy (See Glossary) and a penalty of up to 50% of levy
- > the experience rating in New South Wales and Victoria is based on the size of the employer's tariff premium
- > the extent to which insurance companies may discount or load premiums according to experience may vary. For example, amendments to Western Australia's legislation, effective from 4 January 2005, mean that recommended premium rates can be surcharged up to 75%, and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75%. There are no limitations on discounting

Figures given for highest and lowest experience-rated premium rates should be treated with some caution: those for South Australia represent actual maximums and minimums, and the lowest experience rate in Queensland represents theoretical limits that would only rarely be reached in practice.

New Zealand does not have experience rating.

CALCULATION OF INDUSTRY RATES

Each jurisdiction calculates its industry rates differently, by calculating certain claims performance elements, with some jurisdictions also including current industry premium rates.

The Northern Territory and the Australian Capital Territory do not provide industry premium rates due to the legislation giving insurers the power to set their own industry premium rates, which do not have to be gazetted.

The information below outlines how each jurisdiction calculates their industry premium rates.

Victoria

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

New South Wales

In 2005-2006, NSW had 536 industry classes. Rates are calculated by external actuaries using objective, data-based rating methodology, based on recent wages declared and claims costs. An actuarial credibility model is applied to small industry classes.

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) that weigh claims cost and claim frequency in a ratio of 3 to 1, aligned to an overall target average levy rate.

Western Australia

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

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

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 include 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.

Tasmania

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

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

New Zealand

In New Zealand, there are 554 classification units and 127 levy risk groups. For each classification unit, the levy relativities are compared by year for the last four years. As a result of this comparison (and taking into account such things as the impact of large claims, the number of years' experiences for a new classification unit, the volume of claims, and so on) the classification unit will either stay within the same levy risk group or be moved to another.

The credibility-adjusted levy rate relativity of each levy risk group is the expected ultimate cost of claims expressed as a percentage of wages for the levy risk group, compared with the expected ultimate cost of claims as a percentage of wages for all levy risk groups. The levy rate relativities are credibility-adjusted (as required) to the self-insurers, then to the levy risk groups, then to the industry groups, and finally to the aggregate rate. The absolute level of the levy rates is set so that the expected costs of the Scheme will be met.

The classification unit levy rates shown are fully-funded levy rates.

SELF-INSURANCE

All workers' compensation jurisdictions in Australia and New Zealand, except Seacare, allow employers to self-insure in certain circumstances. In order to be approved as a *self-insurer* (see Glossary), employers have to meet strict criteria relating to *prudential requirements* (see Glossary), occupational health and safety, claims management and return to work standards.

Once employers self-insure they no longer pay workers' compensation premiums. However, they are still required to pay a levy that is a fair contribution towards the overheads of administering the scheme (including occupational health and safety regulation). They are also normally required to have sufficient funds to cover any future liabilities and these are often given in the form of bank guarantees to regulating authorities.

Self-insuring employers carry out their claims management and rehabilitation for their injured workers, and have responsibility for meeting all of their claim liabilities.

As self-insurers, employers are still required to comply with the relevant legislative and regulatory provisions in their jurisdiction, and penalties apply for non-compliance. Self-insurers have to reapply to self-insure after a period of time.

Table 4.7 illustrates the number of self-insurers in each jurisdiction and what proportion of workers within the jurisdiction are covered for workers' compensation under self-insuring employers.

TABLE 4.7 EMPLOYERS COVERED BY SELF-INSURANCE AS AT 30 JUNE 2007

JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
NO. OF EMPLOYERS ^a	17	38 ^b	64, plus 6 specialised insurers	74	27	25	16	5	9	154
% OF EMPLOYERS	10% of employers. 38% of employees	0.06% ^c 200,000 employees		0.35% of employers are covered by self-insurance but the percentage of workers under self insurers is estimated to be 36.5%		0.12% (approx)	N/A	N/A	0.07%	0.042%

^a The figures in these tables aim to give the reader an indication of the number of self-insurers in each scheme. For exact details on self-insurance statistics, readers should contact the relevant jurisdictional authority.

^b In Victoria, it is the ultimate holding company – or parent – that holds the approval to be self-insured. It is effectively a group licence which allows wholly owned subsidiaries of the parent to be covered by the licence. There are in excess of 115 employers covered by the 38 self-insurance licences in Victoria.

^c Self-insurers represent 8.54% of the Victorian scheme by remuneration. Although there is a relatively small number of self-insured bodies corporate, they represent some of the largest companies in Victoria. The two biggest self-insurers, in terms of employee numbers, are Coles and Woolworths.

The laws and regulations which must be satisfied to become a self-insurer vary significantly between jurisdictions. In addition, if an employer operates in more than one jurisdiction, it must apply separately for self-insurance in each of the jurisdictions in which it operates. At as 30 June 2007, there is no mutual recognition between the jurisdictions. If an employer qualifies for self-insurance in one jurisdiction it does not automatically qualify for recognition in another jurisdiction.

Table 4.8 shows the legislative requirements which must be satisfied in each jurisdiction before an employer can self-insure.

TABLE 4.8 LEGISLATIVE REQUIREMENTS FOR SELF-INSURER ELIGIBILITY AS AT 30 JUNE 2007

JURISDICTION	PRUDENTIAL REQUIREMENTS	NUMBER OF WORKERS
COMMONWEALTH	Comcare: Part VIII Seacare: No	500 or more (Minister's section 100 guidelines) N/A
VICTORIA	Yes: – Part V	No reference
NEW SOUTH WALES	Yes: – Part 7, Div 5 (1987 Act)	500 NSW workers or more
SOUTH AUSTRALIA	Yes: – s60 & s61	200 SA workers or more – Regulation No 241 of 1999, Part 9 or be identified as a Crown sector employer
WESTERN AUSTRALIA	Yes: – s164 & s165	No reference
QUEENSLAND	Yes: – s71, s 72, s 75	2000 full-time workers for new applicants
TASMANIA	Yes: – Part IX, Div 2	No reference
NORTHERN TERRITORY	Yes: – s119 & s120	No reference
AUSTRALIAN CAPITAL TERRITORY	Yes: – Workers Compensation Regulations 2002 Part 10	No reference
NEW ZEALAND	Yes: – s185	No reference

COVERAGE AND ELIGIBILITY FOR BENEFITS

Workers' compensation coverage differs between each jurisdiction. The key aspect of workers' compensation coverage is to ensure that workers who should be covered for workers' compensation are covered. Determining whether a person is covered by workers' compensation depends on the definitions of:

- > remuneration
- > workers
- > deemed workers
- > injury; and
- > workplace

within the jurisdiction where a claim is being made. These terms as defined by each jurisdiction are shown on the following pages.

DEFINITION OF REMUNERATION FOR THE PURPOSE OF PREMIUMS

Remuneration (see Glossary) is the basis for insurers to quantify workers' compensation premiums, which are paid by employers annually. Premiums are expressed as a percentage of an employer's total payroll. It is therefore important to understand how each jurisdiction defines 'remuneration'.

TABLE 5.1 DEFINITION OF REMUNERATION AS AT 30 JUNE 2007

JURISDICTION	DEFINITION OF REMUNERATION
COMMONWEALTH	<p>Comcare: Gross wages/salaries including overtime that is regular and required (also including condition of-service payments normally covered by sick leave, holidays, long service leave) and generally any taxable allowances.</p> <p>Excludes employer superannuation contributions, one off payments and bonuses – generally, non-taxable allowances.</p> <p>Seacare: Not regulated, but generally taken to be gross wages, salaries and all other remuneration including pay in respect of holidays, sick leave and long service leave.</p>
VICTORIA	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist outlines payments further.
NEW SOUTH WALES	Total gross earnings (before tax) and some other payments as outlined in the Wages Definition Manual.
SOUTH AUSTRALIA	Payments made to or for the benefit of a worker (quantified in monetary terms). The guideline Remuneration Inclusions/Exclusions identifies what is included as remuneration.
WESTERN AUSTRALIA	All gross wages, salaries, 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.
QUEENSLAND	Total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and superannuation contributions, for deciding the amount of compensation payable to a worker under Chapter 3 or 4 , and lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and an amount payable by way of the employer's liability for the excess period.
TASMANIA	Wages are used for defining premiums. Wages include the monetary value of all payments made to a worker, whether in cash or in kind, in return for the worker's labour. Wages are defined in the Guideline of the Definition of Wages, and s96A of the Act.
NORTHERN TERRITORY	Not regulated, however, generally taken to be gross wages, salaries, overtime, bonuses, allowances, commission and all other remuneration paid; including holiday, sick and long service leave pay. No wages guidelines in place.
AUSTRALIAN CAPITAL TERRITORY	Not regulated, but generally taken to include salary, overtime, shift and other allowances, over award payments, bonuses, commissions and any other payments/sums that the employer has been accustomed to pay to the worker (see AIMS Insurers' Data Dictionary (May 2002) Edition) for a more complete definition of wages at pages 14 and 22).
NEW ZEALAND	<p>Earnings as an employee mean all gross source deduction payments (i.e. taxable wages) of the person, but does not include social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension.</p> <p>Earnings 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>

EMPLOYERS' EXCESS

Some schemes require employers to pay an excess before the workers' compensation insurer begins making compensation payments. In some cases, employers may 'buy out' their excess.

The type and amount of excess payable by employers varies between jurisdictions as Table 5.2 demonstrates.

TABLE 5.2 EMPLOYERS' EXCESS AS AT 30 JUNE 2007

JURISDICTION	EXCESS	DAYS OF INCAPACITY	COST OF BENEFITS	BUYOUT OPTION
COMMONWEALTH	No	-	-	-
VICTORIA	Yes: – s125A(3)	First 10 days	First \$531 of medical costs	Yes – 12.5% of premium for policy commencing 1/7/06
NEW SOUTH WALES	Yes: – s160 (1987 Act)	First \$500 weekly compensation payments. After 31/12/05, excess will be one week's weekly compensation	-	-
SOUTH AUSTRALIA	Yes: – s46 and s33	First 14 days per worker per calendar year –also required to pay first \$150 of transportation for initial treatment	-	Yes – first 2 weeks by paying extra percentage of the levy rate (8% in 03/04)
WESTERN AUSTRALIA	No	-	-	-
QUEENSLAND	Yes: – s65	First \$500 weekly compensation, or if the worker's weekly entitlement is less than \$500, \$1 less than the weekly entitlement (s16 Reg).	First \$500	Yes – 5% of employer's premium or \$10
TASMANIA	Yes: – s97(1A)	First weekly payment	First \$200 of other benefits	Yes – subject to the approval of the WorkCover Tasmania Board s97(1C)
NORTHERN TERRITORY	Yes: – s56	Employer has to pay first day	-	-
AUSTRALIAN CAPITAL TERRITORY	Not prescribed under legislation but may be negotiated between employer and insurer			
NEW ZEALAND	Yes: – s98	Employer has to pay for the first week		

DEFINITION OF WORKER

To be eligible for compensation a person injured in the workplace must fall within the definition of *worker* (see Glossary) in their jurisdiction. Various schemes are based on the concept that employers are responsible for injuries to their workers that arise out of or in the course of employment. Therefore it is important to understand how each jurisdiction defines ‘worker’.

TABLE 5.3 DEFINITION OF WORKER

JURISDICTION	DEFINITION OF ‘WORKER’
COMMONWEALTH	<p>Comcare: “employee” - a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship, or by a licensed corporation.</p> <p>A person who is employed by a licensed corporation if a person performs work for that corporation under a law or a contract and the person would, if the corporation were not licensed, be entitled to workers’ compensation in connection of that work: – s4 & s5</p> <p>Seacare: seafarer, trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship: – s4</p>
VICTORIA	<p>a) a person (including a domestic servant or an outworker) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is express or implied, is oral or is in writing</p> <p>b) a person who is deemed to be working under a contract of service</p> <p>c) a person deemed to be a worker</p> <p>d) a school pupil undertaking work experience or workplace training,</p> <p>e) a TAFE student undertaking practical placement: – s5(1)</p>
NEW SOUTH WALES	A person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing): – s4(1) (1998 Act)
SOUTH AUSTRALIA	<p>a) a person by whom work is done under a contract of service (whether or not as a worker)</p> <p>b) a volunteer who is a deemed worker: – s103A</p> <p>c) a self-employed worker: – s3(1) & s103; and</p> <p>d) and includes a former worker and the legal personal representative of a deceased worker</p>
WESTERN AUSTRALIA	<p>Any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing. The meaning of worker also includes:</p> <p>a) any person to whose service any industrial award or industrial agreement applies; and</p> <p>b) any person engaged by another person to work for the purpose of the other person’s trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services: – s5(1)</p>
QUEENSLAND	<p>A worker is an individual who works under a contract of service. Schedule 2 of the Act mentions persons who are or are not workers.</p> <p>In particular, any person who works for another person under a contract (regardless of whether the contract is a contract of service) is a “worker” unless the person can satisfy all three elements of a results test, or it can be shown that a personal services business determination is in effect for the person under the <i>Income Tax Assessment Act 1997</i> (Cth).</p> <p>The three elements of the results test to be satisfied are that:</p> <ul style="list-style-type: none"> > The person performing the work is paid to achieve a specified result or outcome > The person performing the work has to supply the plant and equipment or tools of trade needed to perform the work; and > The person is, or would be, liable for the cost of rectifying any defect in the work performed
TASMANIA	<ul style="list-style-type: none"> > any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing; and > any person or class taken to be a worker for the purposes of the Act: – s3(1)
NORTHERN TERRITORY	<p>Contract or agreement of any kind to perform work or a service.</p> <p>Exclusions apply for people who supply an ABN: – s3</p>
AUSTRALIAN CAPITAL TERRITORY	<p>Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written: – s8(1)</p> <p>The Act devotes an entire chapter (Chapter 3) to defining and identifying a worker in general and certain categories of workers. The Minister may additionally make a declaration to deem persons in certain occupations to be workers.</p>
NEW ZEALAND	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee s(6) (also includes employees on unpaid parental leave, self-employed persons and employees who have purchased weekly compensation and employees who ceased work in the 14 days prior to incapacity, and who had an agreement to start work within three months of the date of incapacity or within 12 months for seasonal workers).

DEFINITIONS OF DEEMED WORKERS

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

Over time there has been a decline of employment under traditional arrangements. As new working arrangements have emerged, jurisdictions have modified the definitions of 'workers' to ensure that workers under these arrangements are properly covered by workers' compensation.

Table 5.4 provides the definition of deemed worker in each jurisdiction.

TABLE 5.4 DEFINITION OF DEEMED WORKER	
JURISDICTION	DEFINITION OF DEEMED WORKER
COMMONWEALTH	<p>Comcare: The following persons are deemed to be employees of the Commonwealth, provided they perform certain duties:</p> <ul style="list-style-type: none"> (i) the Commissioner of the Australian Federal Police (AFP), Deputy Commissioner of the AFP or an AFP worker; (ii) a member of the Defence Force in certain circumstances; or (iii) a person who is the holder of or is acting in: <ul style="list-style-type: none"> a) an office established by a law of the Commonwealth; or b) an office that is established by a law of a Territory (other than an ACT enactment or a law of the Northern Territory) and is declared by the Minister to be an office to which the SRC Act applies: – s5(2) <p>The SRC Act deems certain categories of persons to be employees of the Commonwealth and the Minister may declare persons who engage in activities or perform acts at the request of the Commonwealth or a licensee as employees: – s5(6)</p> <p>At the request of the Chief Minister of the Australian Capital Territory (ACT), the Minister may make a written declaration that persons may be taken to be employees of the ACT government when engaging in certain activities: – s5(15)</p> <p>Seacare: The Act does not include any category of 'deemed' worker.</p>
VICTORIA	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Contractors: – s8 (ii) Subcontractors: – s9 (iii) Subcontractors and their workers: – s10 (iv) Sharefarmers: – s11 (v) Persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers): – s15 (vi) Timber contractors: – s6(1) (vii) Drivers of passenger vehicles: – s7 (viii) Jockeys and track riders: – s16(4) (ix) Sailors: – s81(2) (x) Workers participating in deemed training programs: – s5(4A) - s(4E) (xi) Other types of deemed workers: – s5

TABLE 5.4 (CONTINUED) DEFINITION OF DEEMED WORKER

JURISDICTION	DEFINITION OF DEEMED WORKER
NEW SOUTH WALES	<p><u>Schedule 1</u> of the 1998 Act lists the twenty-one specific circumstances in which persons are deemed to be workers:</p> <ul style="list-style-type: none"> (i) Workers lent or on hire (ii) Outworkers (iii) Other contractors (iv) Contractors with labour hire services arrangements (v) Rural work (vi) Timbergetters (vii) Salespersons, canvassers, collectors and others (viii) Tributurs (ix) Mine workers (x) Mine rescue personnel (xi) Jockeys and harness racing drivers (xii) Drivers of hire-vehicles or hire-vessels –contract of bailment (xiii) Caddies and others employed through club (xiv) Shearers' cooks and others (xv) Fire fighters in fire district (xvi) Workers at place of pick-up (xvii) Boxers, wrestlers, referees and entertainers (xviii) Voluntary ambulance workers (xix) Ministers of religion (xx) Ministers of religion covered by policies (xxi) Participants in training programs
SOUTH AUSTRALIA	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Worker performing prescribed work or work of a prescribed class for another: – <u>s3(1)(b)</u> – see definition of “contract of service”. The following are deemed workers under the Act: <ul style="list-style-type: none"> > Building work other than wall or floor tiling > Cleaning work > Driving to transport goods or materials > Taxi or hire car work > Performing or entertaining > Jockeys in prescribed circumstances (ii) Self-employed workers: – <u>s103</u> (to date cover not extended) (iii) Voluntary workers: – <u>s103A</u> (iv) Contractors and specified classes of workers: – <u>s3(6)</u> and <u>Reg 4-5</u>
WESTERN AUSTRALIA	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Workers lent or let on hire: – <u>s5(1)</u> (ii) Contract in substance for personal manual labour or service: – <u>s5(1)</u> (iii) Workers under an industrial award or agreement: – <u>s5(1)</u> (iv) Deceased worker: – <u>s5(1)</u> (v) Police officer: – <u>s5(1)</u> (Who suffers an injury and dies as a result of that injury) (vi) Clergy: – <u>s8</u>, <u>s9</u> and <u>s10</u> (vii) Tributurs: – <u>s7</u> (viii) Jockey: – <u>s11A</u> (ix) Crown workers: – <u>s14(2)</u> (x) Certain persons deemed workers: – <u>s175AA</u> (xi) Working directors: – <u>s10A</u>

TABLE 5.4 (CONTINUED) DEFINITION OF DEEMED WORKER

JURISDICTION	DEFINITION OF DEEMED WORKER
QUEENSLAND	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Workers lent or on hire (including labour hire firms and holding companies): – Schedule 2 (1.6) (ii) Sharefarmers: – Schedule 2 (1.3) (iii) Salespersons: – Schedule 2 (1.4) (iv) Labour workers: – Schedule 2 (1.1) (v) Contractors and workers of contractors: – Schedule 2 (1.5)
TASMANIA	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Contractors: – s4B (ii) Services of workers lent or on hire: – s4A (iii) Police volunteers: – s6A (iv) Volunteers performing fire-fighting operations and fire prevention operations: – s5 (v) Ambulance services and prescribed volunteers: – s6 (vi) Port and harbour persons engaged at places of pickup: – s25(4) (vii) Salespersons: – s4C (viii) Taxi drivers: – s4DB (ix) Specified clergymen: – s3(4) (x) Participants in training programs: – s4D (xi) Persons in prescribed relationship: – s4E (xii) Prescribed classes of volunteers (none are prescribed for the purpose of 6B): – s6B
NORTHERN TERRITORY	<p>Circumstances under the Act and Regulations where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Subcontracting: – s127 (ii) Workers of householders: – s3(5) (iii) Working directors: – s3(3) (iv) Jockeys: – Reg 3A(1)(b) (v) Taxi drivers: – Reg 3A(1)(c) (vi) Community work and volunteers: – s3(4) (vii) Workers lent or let or hire – Reg s3A(3) - s3A(4) (viii) Persons specifically prescribed by the Regulations
AUSTRALIAN CAPITAL TERRITORY	<p>Circumstances under the Act where a person may be deemed to be a worker:</p> <ul style="list-style-type: none"> (i) Casuals (in certain instances): – s10 (ii) Regular contractors: – s11(1) (iii) Subcontracting: – s13 (iv) Trainees: – s14 (v) Outworkers: – s15 (vi) Timber contractors: – s16 (vii) Family day care carers: – s16A (viii) Religious workers: – s17 (ix) Volunteers: – s17A (x) Commercial voluntary workers: – s18 (xi) Public interest voluntary workers: – s19
NEW ZEALAND	<p>An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee: – s6</p>

DEFINITION OF INJURY

Workers' compensation schemes generally provide that a worker is entitled to workers' compensation if they have suffered an *injury* (see Glossary) which arises out of or in the course of employment. It is therefore essential for workers to establish that they have suffered an injury as defined in the relevant legislation. Although the everyday ordinary meaning of injury is any harm caused to a person's body as the result of any form of trauma, each jurisdiction places limits on the term injury and defines it differently. To determine whether an incident falls within the definition of injury the following factors need to be considered:

- | | | |
|--------------------------------|-----------------------|--|
| > relationship to employment | > diseases | > retirement provisions |
| > contribution of employment | > industrial deafness | > exclusionary provisions (general); and |
| > aggravation and acceleration | > definition of work | > exclusionary provisions (psychological injuries) |

Most schemes cover acknowledged industrial illnesses, in specified circumstances, for which a reverse onus of proof applies. These are usually specified in Acts or regulations and examples include:

- > poisoning by various chemicals
- > pathological manifestations due to radium and other radioactive substances
- > zoonotic diseases such as Q-fever (contracted in any work done at abattoirs, slaughterhouses and knackeries involving contact directly or indirectly with animals or tissues of animals)
- > tenosynovitis (contracted in any process or occupation connected with the preparation, preserving, canning or bottling of jams, sauces, fruits, pickles or other similar foods for human consumption); and
- > primary epitheliomatous cancer of the skin

RELATIONSHIP TO EMPLOYMENT

Where an incident has occurred in the workplace, it needs to be determined that there is a relationship between a worker and employment before the worker can claim workers' compensation.

Legislation in each jurisdiction dictates the relationships that must exist and the table below outlines the relationship required. Due to the breadth of coverage in New Zealand for a person to access personal benefits, a work relatedness test is not a critical issue.

TABLE 5.5 DEFINITION OF INJURY AND RELATIONSHIP TO EMPLOYMENT

JURISDICTION	DEFINITION OF INJURY AND RELATIONSHIP TO EMPLOYMENT
COMMONWEALTH	"... a physical or mental injury <i>arising out of, or in the course of</i> , the worker's employment...": s5A Comcare , s3 Seacare
VICTORIA	"... an injury <i>arising out of, or in the course of any employment</i> ...": – s82(1)
NEW SOUTH WALES	"... personal injury <i>arising out of, or in the course of employment</i> ...": – s4 (1998 Act)
SOUTH AUSTRALIA	"... disability <i>arises out of, or in the course of employment</i> ...": – s30
WESTERN AUSTRALIA	"... a personal injury by accident <i>arising out of or in the course of</i> the employment...": – s5
QUEENSLAND	"... a personal injury <i>arising out of, or in the course of</i> , employment...": – s32(1)
TASMANIA	"An injury, or a disease, <i>arising out of, and in the course of employment</i> ": – s25
NORTHERN TERRITORY	"... a physical or mental injury... <i>out of or in the course of employment</i> ...": – s3 & s4
AUSTRALIAN CAPITAL TERRITORY	"a physical or mental injury (including stress)... includes aggravation, acceleration or recurrence of a pre-existing injury... <i>arising out of, or in the course of, the worker's employment</i> ...": – s4 & s31
NEW ZEALAND	A work-related personal injury is a personal injury that a person suffers — (a) while he or she is at any place for the purposes of his or her employment: – s28(1a)

CONTRIBUTION OF EMPLOYMENT

A worker's employment has to contribute to a certain extent to injury before a worker is entitled to workers' compensation. The extent of contribution varies among the jurisdictions.

Table 5.6 outlines how employment has to contribute to an injury in each jurisdiction before a worker is entitled to workers' compensation.

TABLE 5.6 CONTRIBUTION OF EMPLOYMENT TO INJURY

JURISDICTION	CONTRIBUTION OF EMPLOYMENT
COMMONWEALTH	To a significant degree (for diseases only): – s5B Comcare , s10(1) Seacare
VICTORIA	Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury – a) a heart attack or stroke injury; b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment); c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease: – s82(2B) & s82(2C)
NEW SOUTH WALES	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury: – s9A (1) (1987 Act)
SOUTH AUSTRALIA	A substantial cause (for psychiatric disabilities only): – s30A(a)
WESTERN AUSTRALIA	To a significant degree (for diseases only): – s5
QUEENSLAND	A significant contributing factor: – s32(1)
TASMANIA	To a substantial degree, that is, employment is the 'major or most significant factor' (for diseases only): – s3(2A)
NORTHERN TERRITORY	To a material degree, (for diseases: – s4(6) and gradual process: – s4(5))
AUSTRALIAN CAPITAL TERRITORY	A substantial contributing factor: – s31(2)
NEW ZEALAND	Not required, except for work-related gradual process, disease, or infection suffered by the person: – s20(2)(e)

AGGRAVATION AND ACCELERATION

Sometimes employment is not the cause of an original injury; however work can aggravate or accelerate a pre-existing injury. That is, it can worsen or speed up the effect of an injury that a worker may have already had.

Is aggravation or acceleration of an injury covered by workers' compensation? As at 30 June 2007, in all jurisdictions, aggravation and acceleration are covered.

DISEASES

Diseases (see Glossary) are classed differently from physical injuries. Diseases include any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development. As the definition of 'disease' is interpreted differently in each jurisdiction, most jurisdictions have in their legislation tables of diseases which are deemed to be caused through work.

Are diseases covered by workers' compensation? As at 30 June, in all jurisdictions, diseases are covered.

INDUSTRIAL DEAFNESS

Industrial deafness is generally examined separately from other forms of injuries, as it is:

- > a unique injury
- > an easily identifiable injury; and
- > manageable, while not treatable.

All jurisdictions have an impairment threshold in place for industrial deafness, which means that an injured worker is not entitled to lump sum compensation until they reach the threshold level.

Table 5.7 illustrates the industrial deafness provisions in each jurisdiction.

TABLE 5.7 INDUSTRIAL DEAFNESS PROVISIONS	
JURISDICTION	INDUSTRIAL DEAFNESS PROVISIONS
COMMONWEALTH	Comcare: binaural hearing loss of 5%: – s24(7A) Seacare: 10% hearing loss: – s39(7)
VICTORIA	No specific level of hearing loss required to claim compensation (e.g. medical expenses) 10% hearing loss and further hearing loss required for lump sum impairment benefit: – s89, s91, s98C
NEW SOUTH WALES	6% total hearing loss: – s69A (1987 Act)
SOUTH AUSTRALIA	Hearing loss exceeds 5%: – Schedule 3
WESTERN AUSTRALIA	At least 10% hearing loss for first election: – s24A Further 5% for subsequent elections: – s24A
QUEENSLAND	Not for the first 5%: – s125
TASMANIA	5% binaural hearing impairment: – s73(7)
NORTHERN TERRITORY	Impairments no less than 5%: – s70
AUSTRALIAN CAPITAL TERRITORY	6% hearing loss (boilermakers deafness or similar deafness): – s64(1)
NEW ZEALAND	No threshold in legislation.

DEFINITION OF 'WORK'

An entitlement to workers' compensation is reliant on the relationship of a worker's injury to work. The definition of work is therefore very important, as each jurisdiction deals differently with the concept of 'work'. Injuries which occur on work premises during working hours are easily identifiable as occurring at work; however, it is not always simple to determine whether or not a person was at work when injured. There is variation among the jurisdictions regarding whether they provide workers' compensation coverage for people who are injured on:

- > journeys to and from work
- > work related travel
- > breaks spent at the work premises; and
- > breaks spent out of the work premises.

Table 5.8 outlines how each jurisdiction defines the concept of work.

TABLE 5.8 SELECTED CONCEPTS OF WORK				
JURISDICTION	JOURNEYS TO AND FROM WORK	WORK RELATED TRAVEL	BREAKS – ONSITE	BREAKS – OFFSITE
COMMONWEALTH	Comcare: No: – s6(1C) Seacare: Yes: – s6(b)	Yes: – s6(1)(d) Yes: – s6(b)	Yes: – s6(1)(b) Yes: – s6(b)	No Yes: – s6(b)
VICTORIA	No: – s83	Yes, some restrictions: – s83	Yes: – s83	Yes: – s83
NEW SOUTH WALES	Yes some restrictions: – s10 (1987 Act)	Yes: – s10 (1987 Act)	Yes: – s11 (1987 Act)	Yes: – s11 (1987 Act)
SOUTH AUSTRALIA	Generally no. Only in very limited circumstances may be covered – most journey accidents would not be covered: – s30	Yes: – s30	Yes: – if the break is authorised: – s30(3)	No
WESTERN AUSTRALIA	No: – s19(2)	Yes: – s19(1)	Yes	Yes
QUEENSLAND	Yes, some restrictions: – s35	Yes: – s34	Yes: – s34(1)(c)	Yes: – s34(1)(c)
TASMANIA	No, some exceptions: – s25(6)	Yes: – s25(6)	Yes: – s25(6)	No, some exceptions: – s25(6)
NORTHERN TERRITORY	Yes some restrictions: – s4	Yes: – s4	Yes: – s4	Yes: – s4
AUSTRALIAN CAPITAL TERRITORY	Yes: – s36	Yes: – s36	No reference	No reference
NEW ZEALAND	Yes, some restrictions: – s28(1)(b)	Yes: – s28(1)(b)	Yes: – s28(1)(b)	Yes, some restrictions

RETIREMENT PROVISIONS

Most jurisdictions have retirement provisions which restrict access to workers' compensation, in particular income replacement payments, when a worker reaches the age of 65. Once an injured worker reaches the retirement age of 65 and has access to their superannuation or other forms of income support such as the age pension become available, there is a commensurate decrease in compensation payments.

Table 5.9 outlines each jurisdiction's retirement provisions.

TABLE 5.9 RETIREMENT PROVISIONS	
JURISDICTION	RETIREMENT PROVISIONS (AS AT 30 JUNE 2007)
COMMONWEALTH	<p>Comcare: Compensation is not payable to an employee who has reached 65, however if an employee who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks: – s23</p> <p>Seacare: If an employee suffers an injury before 64, compensation is not payable for the injury after 65. If an employee suffers an injury after 64, compensation is payable for 12 months after date of injury: – s38</p>
VICTORIA	<p>Normally, the earlier of age 65 or normal retirement age for the worker's occupation except in the following circumstances:– s93F</p> <p>If injured within the period of 130 weeks before attaining retirement age or at any time after attaining, that age, the worker is entitled to weekly payments for no more than the first 130 weeks of incapacity for work: – s93E</p> <p>If worker's incapacity after reaching retirement age relates to an injury suffered within the preceding 10 years and if the incapacity is due to inpatient treatment, the worker is entitled to weekly compensation for a limited period of up to 13 weeks – s93EA</p>
NEW SOUTH WALES	<p>If injury occurs before retiring age: – weekly compensation made until first anniversary of the date on which worker reaches retirement age. If the injury occurs on or after retirement age: – weekly payments made for the first 12 months of injury. Eligibility for other benefits is ongoing: – s52 (1987 Act)</p>
SOUTH AUSTRALIA	<p>Weekly compensation payments are not payable after the worker reaches retirement age, which is defined as the lesser of either the age of 65 years, or if there is a normal retirement age for workers in employment of the kind from which the worker's disability arose, that age of retirement: – s35(5). However, workers injured within 6 months of retirement age or above retirement age that become incapacitated for work while still in employment are entitled to weekly payments for a period of 6 months after the commencement of incapacity. Entitlements to weekly payments cease entirely at age 70: – s35(5a)</p>
WESTERN AUSTRALIA	<p>If injury occurs on or before 64, compensation ceases at 65. If injury occurs after 64, compensation ceases a year after date of injury: – s56</p>
QUEENSLAND	<p>No retirement provision referred to in the Act.</p>
TASMANIA	<p>If injury occurs on or before 64, compensation ceases at 65. If injury occurs after 64, compensation ceases one year after injury occurs. The Tribunal may allow payments to continue where the worker would have continued to work beyond age 65: – s87</p>
NORTHERN TERRITORY	<p>Weekly compensation generally stops when the person reaches the retirement age of 65. If the normal retiring age for workers in the industry at the time of injury is more than 65 – until the worker attains that normal retiring age: – s65. If injury occurs after age 65, then 26 weeks at 100% normal weekly earnings:– s64.</p>
AUSTRALIAN CAPITAL TERRITORY	<p>If injury occurs before 63 – compensation is payable until the worker reaches 65. If injury occurs after 63 – for two years after incapacity date: – s39(3b) and s40(4).</p>
NEW ZEALAND	<p>Weekly compensation generally stops when the person reaches retirement age of 65. If injury occurs between 24 and 12 months prior to 65, weekly compensation can be paid for 24 months from the start date.</p> <p>If incapacitated within 12 months prior to 65, or after reaching 65, weekly compensation can be paid as well as superannuation until the later of:</p> <ul style="list-style-type: none"> > 65 date > the first date of entitlement to weekly compensation. <p>After that 52 weeks, they can choose either weekly compensation or national superannuation for a further year. Weekly compensation stops after that further year: – Schedule 1, Part 2, 52</p>

EXCLUSIONARY PROVISIONS - GENERAL

In most jurisdictions, workers' compensation legislation contains exclusionary provisions. These provisions set out certain circumstances in which workers' compensation will be denied.

Exclusionary provisions apply to ensure that people who exhibit reckless or wilful behaviour in the workplace are excluded from receiving workers' compensation benefits. If an injury is caused by the serious and wilful misconduct of a worker, but results in death or serious and permanent impairment, workers' compensation will usually be payable.

Table 5.10 shows the general exclusionary provisions in each jurisdiction.

TABLE 5.10 EXCLUSIONARY PROVISIONS (GENERAL)	
JURISDICTION	EXCLUSIONARY PROVISIONS
COMMONWEALTH	<p>Comcare: Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> > any period during which the worker is imprisoned: – s23(2) > any injury, disease or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment: – s5A(1): – reasonable administrative action defined in s5A(2) > a disease, if the employee, for the purposes connected with his/her employment or proposed employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease: – s7(7) > an injury that is intentionally self-inflicted: – s14(2) > an injury that is caused by the serious and wilful misconduct of the worker but is not intentionally self inflicted, unless the injury results in death, or serious and permanent impairment: – s14(2) & s14(3) > an injury sustained when travelling between a place of residence and work: – s6(1C), or > if the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury: – s6(3) <p>Seacare: Compensation is not payable in respect of:</p> <ul style="list-style-type: none"> > a worker within the meaning of the <i>Safety, Rehabilitation and Compensation Act 1988</i> > an injury that is intentionally self-inflicted > an injury caused by the serious and wilful misconduct of the worker, unless the injury results in death, or serious and permanent impairment > where a worker made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease: – s12
VICTORIA	<p>If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted, compensation is not payable in respect of that injury: – s82(3)</p> <p>If it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including being under the influence of intoxicating liquor, or a drug) compensation shall not be payable in respect of that injury, unless the injury results in death or serious and permanent disablement: – s82(4) & s82(5)</p> <p>If it is proved that before commencing employment an employer in writing requested for the worker to disclose all pre-existing injuries and diseases, and the worker did not disclose the information, compensation is not payable for any recurrence, aggravation, acceleration, exacerbation or deterioration: – s82(7)</p>
NEW SOUTH WALES	<p>If it is proved that an injury to a worker is solely attributable to the serious and wilful misconduct of the worker, compensation is not payable in respect of that injury, unless the injury results in death or serious and permanent disablement: – s14(2) (1987 Act)</p> <p>Compensation is not payable:</p> <ul style="list-style-type: none"> > if the employment concerned was not a substantial contributing factor to the injury: – s9A(1) (1987 Act) > in respect of any injury to or death of a worker caused by an intentional self-inflicted injury: – s14(3) (1987 Act) > to a member of the Police Service who is a contributor to the Police Superannuation Fund under the <i>Police Regulation (Superannuation) Act 1906</i>: – s4 (1998 Act) > to a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business: – s4 (1998 Act) > to an officer of a religious or other voluntary association, if remuneration is less than \$700 per year: – s4 (1998 Act) > except as provided by Schedule 1 (1998 Act), a registered participant of a sporting organisation (within the meaning of the <i>Sporting Injuries Insurance Act 1978</i>) while: <ul style="list-style-type: none"> (i) participating in an authorised activity (within the meaning of that Act) of that organisation, or (ii) engaged in training or preparing himself or herself with a view to so participating, or (iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged <p>if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things: – s4 (1998 Act)</p>

TABLE 5.10 (CONTINUED) EXCLUSIONARY PROVISIONS (GENERAL)

JURISDICTION	EXCLUSIONARY PROVISIONS
SOUTH AUSTRALIA	<p>Effect of misconduct etc: – s30B</p> <ol style="list-style-type: none"> 1. A worker who is acting in connection with, and for the purposes of, the employer's trade or business is presumed to be acting in the course of employment despite the fact that <ol style="list-style-type: none"> a) the worker is acting in contravention of a statutory or other regulation applicable to the employment; or b) the worker is acting without, or in contravention of, instructions from the employer 2. However <ol style="list-style-type: none"> a) a worker will not be presumed to be acting in the course of employment if the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under section 30(3); and b) a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to <ol style="list-style-type: none"> (i) serious and wilful misconduct on the part of the worker; or (ii) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker) 3. Subsection (2)(a) does not apply in a case of death or permanent total incapacity for work and subsection (2)(b) does not apply in a case of death or serious and permanent disability: – s30B(3) <p>Also, compensation is suspended whilst a worker is in prison – s116, or may be suspended under s38(6) if a worker fails to comply with a requirement under s38(5) – submit to medical examination or furnish evidence of earnings, or during the period of absence of a worker from Australia – s41(2).</p>
WESTERN AUSTRALIA	<p>If it is proved that the injury of a worker is attributable to their–</p> <ol style="list-style-type: none"> a) voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of their faculties; b) failure, without reasonable excuse, proof of which is on them, to use protective equipment, clothing or accessories provided by their employer for the worker's use; or c) other serious and wilful misconduct any compensation claimed in respect of that injury shall be disallowed unless the injury has serious and permanent effects or results in death: – s22 <p>Compensation is not payable:</p> <ul style="list-style-type: none"> > to a person while participating as a contestant, engaged in training or preparation for participating, or engaged in promotional activities or engaged in regular journeys in any sporting activity: – s11 > for an injury or death of a person before operation of Section 3 of the <i>Workers Compensation Act Amendment Act (No. 2) 1977</i>[*] <p>Compensation is not payable:</p> <ul style="list-style-type: none"> > for an injury sustained by a worker if the injury is intentionally self-inflicted: – s129 > for an injury caused by the serious and wilful misconduct of the worker, unless it results in death or injury and/or could result in a WRI* of 50% or more: – s130(1) > if the injury, caused by misconduct, could result in WRI of 50% or more arising from a psychiatric or psychological injury or combining a psychiatric or psychological injury and another injury: – s130(2)
QUEENSLAND	<p>Insurer may suspend compensation if worker:</p> <ul style="list-style-type: none"> > is serving a term of imprisonment: – s137 > fails to participate in an independent medical examination: – s135 > fails to participate in rehabilitation: – s232 > fails to participate in an examination by the medical assessment tribunal: – s510 <p>If compensation payments are suspended, no compensation is payable for the period of suspension: – s138</p> <p>* WRI: – Work related impairment</p>

TABLE 5.10 (CONTINUED) EXCLUSIONARY PROVISIONS (GENERAL)

JURISDICTION	EXCLUSIONARY PROVISIONS
TASMANIA	<p>A person is deemed not to be a worker within the meaning of the Act while he or she is pursuant to a contract –</p> <ul style="list-style-type: none"> a) participating as a contestant in any sporting or athletic activity b) engaged in training or preparation with a view to participating, or c) travelling in connection with participating or being so engaged – <p>if, under that contract, he or she is not entitled to any remuneration other than remuneration for the doing of those things: – s7</p> <p>Compensation is not payable:</p> <ul style="list-style-type: none"> > if the injury is attributable to the serious and wilful misconduct of the worker, unless it results in death or serious and permanent incapacity; or > if the injury is an intentional self-inflicted injury; or > if the worker has the disease known as undulant fever or brucellosis, or any other disease where the worker has wilfully and falsely represented themselves in writing as not having suffered from the disease: – s25(2) <p>The Act does not apply to any person –</p> <ul style="list-style-type: none"> a) whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business; or b) who is an outworker; or c) who is a domestic servant in a private family, and has not completed 48 hours' employment with the same employer at the time when he suffers injury; or d) who is a member of the crew of a fishing boat, and is remunerated wholly or mainly by a share in the profits or gross earnings of that boat; or e) notwithstanding section s4D, who is participating in an approved program of work for unemployment payment under the <i>Social Security Act 1991</i> of the Commonwealth – <p>> and no such person shall be deemed to be a worker within the meaning of this Act: – s4(5)</p>
NORTHERN TERRITORY	<p>Compensation is not payable in respect of an injury to a worker that was deliberately self-inflicted or attributable to his or her serious and wilful misconduct, unless the injury results in his or her death or permanent or long term incapacity: – s57(1)</p> <p>Compensation is not payable unless any 2 of the following apply:</p> <ul style="list-style-type: none"> a) the worker to or in relation to whom it is payable was a resident of the Territory at the time the relevant incident occurred b) his or her employer was a resident of or carrying on business in the Territory at the time the relevant incident occurred; or c) the relevant incident occurred in the Territory: – s57(2) <p>A worker is not entitled to compensation in respect of an injury sustained whilst driving a motor vehicle, after consuming alcoholic liquor which materially contributed to the accident and injury, or while under the influence of a drug. Where concentration of alcohol at the time of the accident was equal to 80 milligrams or more of alcohol per 100 milligrams of blood, the consumption of the alcoholic liquor shall be presumed to have materially contributed to the accident and injury, unless proven otherwise. This does not affect the entitlement to compensation if the injury results in death, or medical, surgical or rehabilitation treatment: – s60</p> <p>Employees of 'approved' labour hire firms are not seen as workers: – Reg 3A</p>
AUSTRALIAN CAPITAL TERRITORY	<p>Compensation is not payable if the injury to, or death of, the worker is caused by:</p> <ul style="list-style-type: none"> > an intentionally self-inflicted injury: – s82(2) > the worker's serious and wilful misconduct, unless the injury results in the death or serious and permanent disablement: – s82(3) > the worker being imprisoned: – s83 > his or her engagement in professional sporting activity: – s84
NEW ZEALAND	<p>Compensation is not payable</p> <ul style="list-style-type: none"> > if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury or suicide unless it is the result of mental injury: – s119 > where they become entitled to it because of the death of another person and they have been convicted in New Zealand or another country of the murder of the person: – s121 <p>While a person is in prison, and on release ACC can apply to the courts to have any entitlements denied: – s122</p>

+ No hyperlink provided as legislation has been repealed.

EXCLUSIONARY PROVISIONS –PSYCHOLOGICAL INJURIES

Psychological injuries (see Glossary) are generally included in the definition of diseases. However, each jurisdiction excludes certain circumstances and incidents from coverage by workers' compensation.

Table 5.11 shows the exclusionary provisions in each of the jurisdictions.

TABLE 5.11 EXCLUSIONARY PROVISIONS (PSYCHOLOGICAL INJURIES)	
JURISDICTION	PSYCHOLOGICAL INJURIES – EXCLUSIONARY PROVISIONS (AS AT 30 JUNE 2007)
COMMONWEALTH	<p>Comcare: Compensation is not payable in respect of an injury (being a disease) if the injury is:</p> <ul style="list-style-type: none"> > due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment <u>s5A(1)</u>: – reasonable administrative action defined in <u>s5A(2)</u>: > due to failure to obtain a promotion, transfer or benefit: – <u>s5A</u> > intentionally self-inflicted: – <u>s14(2)</u> > due to the worker making a false representation, connected with their employment: – <u>s7(7)</u> <p>Seacare: Compensation is not payable in respect of a worker's psychological condition, being a 'disease', if the injury is a result of reasonable disciplinary action taken against the worker, failure by worker to obtain a promotion, transfer or benefit in connection with his or her employment: – <u>s3</u></p>
VICTORIA	<p>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 predominately from:</p> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, redeploy, retrench or dismiss the worker (ii) a decision of the employer, on reasonable grounds, not to award or to provide promotion, reclassification or transfer, or leave of absence or benefit in connection with the employment, to the worker; or (iii) an expectation of the taking of such action or making of such a decision: – <u>s82(2A)</u>
NEW SOUTH WALES	<p>No compensation is payable under the Act in respect of an injury that is a psychological injury unless:</p> <ul style="list-style-type: none"> a) the employment concerned was a substantial cause of the injury; and b) the injury was not 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: – <u>s11A</u> (1987 Act)
SOUTH AUSTRALIA	<p>A disability consisting of an illness or disorder of the mind is compensable if and only if</p> <ul style="list-style-type: none"> a) the employment was a substantial cause of the disability; and b) the disability did not arise wholly or predominantly from— <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment (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 workers: – <u>s30A</u>
WESTERN AUSTRALIA	<p>Compensation is not payable for diseases caused by stress. If the stress wholly or predominately arises from the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment, or the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to employment or a worker's expectation of a matter or decision as previously stated: – <u>s5(4)</u></p>
QUEENSLAND	<p>An injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances:</p> <ul style="list-style-type: none"> 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 the Authority or an insurer in connection with the worker's application for compensation <p>Reasonable management actions include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker, a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment: – <u>s32(5)</u></p>

TABLE 5.11 (CONTINUED) EXCLUSIONARY PROVISIONS (PSYCHOLOGICAL INJURIES)

JURISDICTION	PSYCHOLOGICAL INJURIES – EXCLUSIONARY PROVISIONS (AS AT 30 JUNE 2007)
TASMANIA	<p>Compensation is not payable in respect of a disease which is an illness of the mind or a disorder of the mind and which arises substantially from:</p> <ul style="list-style-type: none"> (i) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about the cessation of a worker's employment (ii) a decision of an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with a worker's employment (iii) reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment (iv) the failure of an employer to take action of a type referred to above in relation to a worker in connection with the worker's employment if there are reasonable grounds for not taking that action; or (v) reasonable action taken by an employer under this Act in a reasonable manner affecting a worker: – s25(1A)
NORTHERN TERRITORY	<p>Compensation is not payable if the injury is:</p> <ul style="list-style-type: none"> > due to reasonable disciplinary action > due to failure to obtain promotion, transfer or benefit; or > caused as a result of reasonable administrative action taken in connection with the worker's employment: – s3(1)
AUSTRALIAN CAPITAL TERRITORY	<p>A Mental Injury (including stress) does not include a mental injury (including stress) that is completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker: – s4(2)</p>
NEW ZEALAND	<p>Cover does not exist for mental injuries if the mental injury is not caused by physical injuries: – s26(1)(c), or as a consequence of certain criminal acts: – s21</p>

BENEFITS

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

- > income replacement payments
- > costs of medical and hospital treatment
- > permanent impairment benefits
- > death benefits; and
- > other benefits

INCOME REPLACEMENT PAYMENTS

Income replacement payments (see Glossary) (generally known as weekly payments) are periodic payments which an injured worker receives. They are usually calculated on the basis of the worker's pre-injury earnings.

While income replacement payments aim to substitute fairly the lost earnings of an injured worker, there are limits to entitlements depending on whether the injured worker is *totally incapacitated* or has *no current work capacity* (see Glossary) and unable to return to work, or *partially incapacitated* or has *current work capacity* (see Glossary) where the injured worker can perform certain duties, and the degree of incapacity. Schemes have various arrangements whereby the amounts of entitlements change (generally decreasing) over time.

Income replacement payments are 'stepped down' by a percentage or to a set amount for workers who cannot earn an income because of a work related injury. Step downs in payments are also an incentive for workers to return to work.

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

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

Income replacement arrangements differ across all of the workers' compensation jurisdictions.

Table 6.1 shows the income replacement arrangements in each jurisdiction.

TABLE 6.1 INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)		
JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
COMMONWEALTH	<p>< 45 weeks: 100% Normal weekly earnings (NWE) with no maximum cap applied s19(2)</p> <p>> 45 weeks: s19(3)</p> <p>(a) if not working:- 75% of NWE</p> <p>Minimum: 356.90</p> <p>Additional for prescribed person \$88.37 and for each dependent child \$44.16. Compensation payments for ex-workers were increased by reference to the ABS Wage Cost Index by 4.2% from 1 July 2006: – Part II, Div 3</p> <p>(a) if working >0% - <=25% of pre injury hours:- 80% of NWE less Able to Earn</p> <p>(b) if working >25% - <=50% of pre injury hours:- 85% of NWE less Able to Earn</p> <p>(c) if working >50% - <=75% of pre injury hours:- 90% of NWE less Able to Earn</p> <p>(d) if working >75% - <100% of pre injury hours:- 95% of NWE less Able to Earn</p> <p>(e) if working 100% of pre injury hours:- 100% of NWE less Able to Earn</p> <p>Maximum: \$1,605.60 from 17 May 2007 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics)</p>	<p>Redemptions of weekly benefits are only available in some circumstances and are calculated per s30(1) (or s137(1) for "former workers") under the SRC Act and s44 of the Seafarers Act. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than an indexed amount (\$88.37 per week (1 July 2006)) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula.</p>

TABLE 6.1 (CONTINUED) INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
VICTORIA	<p>Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement Pre 12/11/97: Workers entitled to receive weekly benefits; old rates apply</p> <p>Post 12/11/97: First 13 weeks: 95% of pre-injury average weekly earnings (PIA WE) (maximum: \$1,190), less notional earnings: – s93CA</p> <p>> 13 weeks: If no current work capacity 75% of PIA WE; or if some work capacity either: (a) 75% of PIA WE less 75% of notional earnings, or (b) \$1,190 less 75% of notional earning, whichever is the lesser: – s93CB</p> <p>> 26 weeks: No further entitlement to compensation for overtime or shift allowance components of PIA WE: – s5A(1A), s5A(1B)</p> <p>> 130 weeks: Weekly benefits cease after 130 weeks of weekly payments unless: (a) worker is likely to have no current work capacity indefinitely, benefits continue while this is the case until retirement age: – s93CC; or (b) worker has a current work capacity and has returned to work at his/her maximum capacity and is working at least 15 hours per week and earning at least \$139 per week: – s93CD</p>	<p>A settlement of weekly benefits in a lump sum is allowable in some circumstances. There are 3 separate subdivisions for voluntary settlements each with its own specific eligibility criteria: – Part IV, Div 3A. The settlement does not include reasonable medical and like expenses which continue to be paid</p>
NEW SOUTH WALES	<p>Part 3, Div 2 (1987 Act) Total Incapacity:</p> <p><26 weeks: 100% of worker's Current Weekly Wage Rate, or where no award/enterprise agreement, 80% of average weekly earnings, excluding overtime and allowances (maximum weekly rate: \$1,535.90).</p> <p>>26 weeks: the lesser of 90% of average weekly earnings or the statutory rate of \$361.30, plus the following additional amount for spouse and/or dependent children:</p> <ul style="list-style-type: none"> > spouse: \$95.20 > 1 child: \$68.00 > 2 children: \$152.20 > 3 children: \$252.10 > 4 children: \$354.60 > For each additional dependant child in excess of 4: \$102.30 <p>Partial Incapacity:</p> <p><26 weeks with worker not suitably employed (s38): payment as per the total incapacity rate</p> <p>26-52 weeks with worker not suitably employed (s38): 80% of current weekly wage rate or the amount that would be payable for total incapacity (whichever is greater)</p> <p>> 52 weeks: The maximum period for which partially incapacitated workers whose employers cannot provide suitable duties can receive special benefits is 52 weeks</p> <p>Partial incapacity (all other circumstances): difference between the amount worker would probably have been earning was it not for the injury and the amount currently earning (or able to earn). However, cannot exceed:</p> <p><26 weeks: maximum weekly benefit payment of \$1,535.90</p> <p>>26 weeks: the lesser of the statutory rate or 90% of average weekly earnings</p> <p>> 104 weeks: Payments can be discontinued at the end of 104 weeks of partial incapacity if the worker is no longer job seeking, is unemployed mainly as a result of the labour market conditions, or has unreasonably rejected an offer of suitable employment.</p> <p>Benefits are indexed on 1 April and 1 October each year.</p>	<p>Settlements of future entitlements to weekly benefits (commutations) are allowed by agreement between worker and insurer. Commutation is only available if the injured worker has a permanent impairment that is at least a 15% whole person impairment, compensation for that permanent impairment and pain and suffering has been paid, the worker is currently eligible for ongoing weekly benefits and must have received weekly benefits regularly and periodically during previous 6 months, more than two years since worker first received compensation, injury management and return to work opportunities have been exhausted, weekly benefits have not been stopped or reduced, worker has received independent legal advice and the legal practitioner has certified in writing that the worker has been fully advised of and understands the implications and consequences of accepting a commutation, insurer and worker agree with the commutation, WorkCover agrees with the commutation, all agreements must be registered with the Workers' Compensation Commission: – Part 3, Div 9 (1987 Act)</p>

TABLE 6.1 (CONTINUED) INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
SOUTH AUSTRALIA	<p>< 52 weeks:</p> <p>Worker's Average Weekly Earnings (WAVE) to a maximum of 2 x State average weekly earnings (AWE). Maximum: \$2,119.60 at 16/8/07 less actual earnings if partially incapacitated.</p> <p>> 52 weeks:</p> <p>(a) Total incapacity: 80% of WAVE subject to a maximum of 80% of 2 x State AWE. Maximum: \$1,695.68 at 16/8/07</p> <p>(b) Partial incapacity: 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: \$1,695.68 at 16/8/07 less actual or potential earnings if partially incapacitated</p> <p>> 104 weeks:</p> <p>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. Otherwise same as for > 52 weeks: – Part 4, Div 4</p>	<p>Where the worker suffers a permanent disability that is compensable under the Act, a lump sum is payable for non economic loss. (subject to Regulations concerning aggravation of prior disabilities, and accumulation of previous injuries): – s43</p> <p>Redemptions are negotiated and agreed between the worker and WorkCover. Any such agreed figure is in addition to a s43 lump sum entitlement</p>
WESTERN AUSTRALIA	<p>A cap on weekly payments of \$1,609.90 applies for the duration of claims. This amount is indexed annually (every 1 July).</p> <p>Workers whose earnings are prescribed by an industrial award <i>First 13 weeks of claim:</i> Weekly payments will consist of the rate of the worker's average weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, including overtime, bonuses or allowances up to a maximum of \$1,609.90. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred: – Schedule 1, clause 11(3)(a)</p> <p><i>14th week onward:</i> Weekly payments consist of the rate of weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked but excluding overtime, bonuses or allowances. Maximum payment is \$1,609.90. Minimum rate: Subject to the cap of \$1,609.90, the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant award: – Schedule 1, clause 11(3)(b)</p> <p>Workers whose earnings are not prescribed by an industrial award <i>First 13 weeks of claim:</i> Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses and allowances) averaged over the year before the disability occurred, up to a maximum of \$1,609.90: – Schedule 1, clause 11(4)(a)</p> <p><i>14th week onward:</i> Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is \$1,609.90. Minimum rate: Subject to the cap of \$1,609.90, the minimum rate of weekly earnings payable under the <i>Minimum Conditions of Employment Act 1993</i>: – Schedule 1, clause 11(4)(b)</p>	<p>Lump sum redemption payment for loss of future wages as a result of a permanent total or partial incapacity, worker received weekly payments for not less than 6 months, worker and employer agree to redemption and the lump sum amount, the worker will automatically waive their common law rights and the Director of the Dispute Resolution Directorate is satisfied the worker is aware of the consequences of redeeming their claim: – s67</p> <p>Compensation for permanent impairment is also available under Schedule 2 of the Act which lists specific compensable injuries against which a percentage of the prescribed amount is listed</p>

TABLE 6.1 (CONTINUED) INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
QUEENSLAND	<p>For the first 26 weeks: Workers under an industrial instrument s150(1)(a) – the greater of:</p> <p>(a) 85% of the worker's normal weekly earnings (NWE); or</p> <p>(b) amount payable under the worker's industrial instrument</p> <p>Workers not under an award or agreement s151(1)(b): – the greater of:</p> <p>(a) 85% of NWE</p> <p>(b) 80% of QOTE</p> <p>Queensland Ordinary Time Earnings (QOTE) is currently \$969.50</p> <p>Workers on contract (s152(1)(a):- the greater of</p> <p>(a) 85% NWE</p> <p>(b) the amount payable under the worker's contract of service</p> <p>From the end of the first 26 weeks to the end of the first 52 weeks, whether or not worker is under an industrial instrument or contract s150(1)(b), s151(1)(b) and 152(1)(b) - the greater of:</p> <p>(a) 75% of the worker's NWE</p> <p>(b) 70% of QOTE</p> <p>From the end of the first 52 weeks to the end of the first 2 years, whether or not worker is under an industrial instrument or contract <u>s150(1)(c)</u>, <u>s151(1)(c)</u> and <u>152(1)(c)</u> - the greater of 65% NWE and 60% QOTE</p> <p>From the end of first 2 years to the end of the first 5 years: where a worker demonstrates that the injury could result in a work-related impairment (WRI) of more than 15% <u>s150(1)(d)</u>, <u>s151(1)(d)</u> and <u>152(1)(d)</u> - the greater of:</p> <p>(a) 65% of the worker's NWE</p> <p>(b) 60% of QOTE: –</p> <p>Workers with WRI less than or equal to 15%, receive an amount equal to the single pension rate.</p> <p>Total amount payable for weekly benefits is \$209,555 (from 1 July 2006).</p>	<p>Liability for weekly compensation payments can be discharged by a redemption payment agreed between the insurer and worker if worker has been receiving weekly payments for at least 2 years and the worker's injury is not stable and stationary for the purpose of assessing permanent impairment: – <u>Ch 3, Part 9, Div 7</u></p> <p>After a redemption payment has been made the worker has no further entitlement to compensation for the injury, including weekly benefits, and medical and rehabilitation expenses.</p>
TASMANIA	<p>< 13 weeks:</p> <p>100% of weekly payment i.e. the greater of normal weekly earnings (NWE) for the period of twelve months prior to the period of incapacity, or ordinary-time rate-of-pay for work engaged in prior to incapacity.</p> <p>> 13 weeks:</p> <p>85% of weekly payment</p> <p>> 78 weeks:</p> <p>80% of weekly payment Entitlement to weekly payments ceases on the expiration of 9 years after the date of the incapacity: – <u>s69B</u></p>	<p>Settlement of claim by agreement where injury is stable and stationary and 12 months has elapsed since lodgement of claim: – <u>s39</u></p>
NORTHERN TERRITORY	<p>< 26 weeks:</p> <p>Normal weekly earnings (NWE) i.e. worker's normal working hours per week at hourly rate, including overtime and shift penalties (where worked in a regular and established pattern): – <u>s64</u></p> <p>> 26 weeks:</p> <p>Whichever is the greater of:</p> <p>(a) 75% of NWE to a maximum of \$1,549.50; or</p> <p>(b) \$516.90 plus \$129.23 for a dependant spouse and \$64.61 for each dependent child; or 90% of NWE (whichever is the lesser): – <u>s65(1)</u></p> <p>< 104 weeks:</p> <p>Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, provided that suitable employment is reasonably available: – <u>s65(2)(b)(i)</u></p> <p>> 104 weeks:</p> <p>Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment: – <u>s65(2)(b)(ii)</u></p>	<p>Commute weekly benefits into lump sum payment. Maximum 156 times NWE or 156 times AWE, whichever is greater: – <u>s74</u>. Only for workers who are not totally incapacitated and rehabilitation is completed. Medical and like expenses are continued to be paid</p>

TABLE 6.1 (CONTINUED) INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
AUSTRALIAN CAPITAL TERRITORY	<p>Total Incapacity</p> <p>s39(2)(3): – weekly compensation for any period on or after the initial incapacity date, but not for a period of longer than, or for periods (whether or not continuous) totalling more than, 26 weeks; or if the worker was, on the initial incapacity date for the injury, younger than 63 years old – for any period after the worker reaches 65; or if the worker was, on the initial incapacity date for the injury, at least 63 years old – for any period more than 2 years after the initial incapacity date.</p> <p>s39(4)(a): – entitlement is based on the worker's average pre-incapacity weekly earnings.</p> <p>s41: – after 26 weeks of total incapacity, the worker is entitled to receive weekly compensation equal to:</p> <ul style="list-style-type: none"> (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker – 100% of the worker's average pre-incapacity weekly earnings; or (b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker – the statutory floor*; or (c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor** for the worker: – whichever is more <p>Partial Incapacity</p> <p>s39: – weekly compensation for any period on or after the initial incapacity date, but not for a period of longer than, or for periods (whether or not continuous) totalling more than, 26 weeks; or if the worker was, on the initial incapacity date for the injury, younger than 63 years old – for any period after the worker reaches 65; or if the worker was, on the initial incapacity date for the injury, at least 63 years old – for any period more than 2 years after the initial incapacity date.</p> <p>s39(4)(b): – entitlement is based on the difference between the worker's average pre-incapacity weekly earnings; and the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.</p> <p>s42: – the worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working or could earn in reasonably available suitable employment and:</p> <ul style="list-style-type: none"> (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor – 100% of the worker's average pre-incapacity weekly earnings; or (b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor – the statutory floor; or (c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling*** – the statutory ceiling; or (d) in any other case – the relevant percentage of the worker's average pre-incapacity weekly earnings <p>Relevant percentage is:</p> <ul style="list-style-type: none"> (a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less – 65%; or (b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50% – 75%; or (c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75% – 85%; or (d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85% – 95%; or (e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours – 100% <p>* statutory floor is the federal minimum wage under the Workplace Relations Act 1996 (Cth.)</p> <p>** pre-incapacity floor is the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury.</p> <p>*** statutory ceiling is 150% of AWE at the time the amount is to be paid.</p>	<p>Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides as list of injuries, including for the loss of toes, taste and smell, and sets out a % rate (from 2% to 100%) of the single loss amount payable</p>

TABLE 6.1 (CONTINUED) INCOME REPLACEMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	SETTLEMENT, REDEMPTION, COMMUTATION
NEW ZEALAND	<p>Employees For weeks 2-5, 80% of short term rate, which is defined as:</p> <p><i>Permanent employees:</i> earnings in the four weeks prior divided by number of weeks in which they were derived: – <u>Schedule 1, Part 1, 34</u></p> <p><i>Non-permanent employees:</i> all earnings in the four weeks prior divided by number of weeks in which they were derived: – <u>Schedule 1, Part 1, 36</u></p> <p>Week 5, 80% of the long term rate, which is defined as:</p> <p><i>Permanent employees:</i> earnings from employment with that employer in the 52 weeks prior divided by weeks in which they were derived: – Schedule 1, Part 1, 34</p> <p><i>Non-permanent employees:</i> all earnings in the 52 weeks prior divided by 52 weeks: – Schedule 1, Part 1, 36</p> <p>Self-employed Either:</p> <p>(a) the greater of previous earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked or the minimum full-time earner rate</p> <p>(b) earnings as an employee in the 52 weeks prior to the incapacity and as a self-employed person in the relevant year divided by weeks as an employee plus weeks worked as self-employed</p> <p>(c) weeks as an employee divided by 52 plus self-employed earnings divided by 52: – <u>Schedule 1, Part 1, s38</u></p> <p>Share-holder-employees Either:</p> <p>(a) earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked</p> <p>(b) earnings as an employee in the 52 weeks prior to incapacity and as a shareholder employee in the relevant year divided by weeks as an employee plus weeks worked as a shareholder-employee; or</p> <p>(c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52: – <u>Schedule 1, Part 1, s39</u></p> <p>Maximum is NZ\$79,853.80. Will be reduced by a proportion of any earnings derived in the period of incapacity.</p> <p>Minimum for full-time earners: 80% of NZ\$410 (80% of NZ\$328 for <18 years of age).</p>	<p>Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10%</p> <p>From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted</p> <p>The independence allowance can be capitalised for periods of 5 years, weekly compensation and medical costs can not be commuted.</p>

SETTLEMENT OF FUTURE INCAPACITY BENEFITS

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

TABLE 6.2 INCAPACITY BENEFITS SETTLEMENTS (AS AT 30 JUNE 2007)

JURISDICTION	CTH	VIC	NSW	SA	WA	QLD	TAS	NT	ACT	NZ
COVERAGE	Yes – some restrictions	Yes – some restrictions	Yes – some restrictions	Yes	Yes	Yes	Yes – some restrictions	Yes	Yes	Yes

MEDICAL AND HOSPITAL COSTS

Payment of medical and hospital costs assist workers in their recovery from injury by providing necessary rehabilitation and medical services. Providing early medical assistance helps the worker return to work in a safe, timely and durable manner. Most workplace injuries will require some form of medical assistance and there are instances where the worker requires hospital attention due to the severity of the injury. Workers' compensation schemes cover medical, hospital and allied health expenses.

Table 6.3 shows how the *medical and hospital benefits* (see Glossary) are calculated and any limits that may apply.

TABLE 6.3 MEDICAL AND HOSPITAL COSTS (AS AT 30 JUNE 2007)

JURISDICTION	CALCULATION	LIMITS
COMMONWEALTH	All reasonable costs	Comcare: No limit – appropriate costs: – s16 Seacare: No limit: – s28
VICTORIA	All reasonable costs	Entitlement to medical and like services ceases 52 weeks after the entitlement to weekly payments ceases, or if compensation is payable only for medical and like services, 52 weeks after this entitlement commences. In certain circumstances, entitlement does not cease. If injury is a severe injury or results in death, counselling services will be provided to family members, not exceeding \$1,960: – s99(1)(aa)
NEW SOUTH WALES	All reasonable costs: – s60(1) (1987 Act)	\$7,500 for reasonably necessary medical costs under provisional liability. The insurer can approve amounts in excess of \$7,500 in exceptional circumstances \$50,000 for duly made claims. Insurers can apply to WorkCover to approve amounts in excess of \$50,000
SOUTH AUSTRALIA	A worker is entitled to be compensated for reasonable costs, reasonably incurred in consequence of having suffered a compensable disability, (or the regulated amount where applicable) of: a) medical services b) hospitalisation and all associated medical, surgical and nursing services c) approved rehabilitation d) cost of travelling or transportation for the purpose of receiving medical services, hospitalisation or approved rehabilitation e) accommodation if necessary for medical or rehabilitation purposes f) attendance by nurse, etc in certain circumstances g) provision, maintenance, replacement or repair of therapeutic appliances h) medicines and other material purchased on the prescription or recommendation of a medical report; and i) other costs or classes of costs authorised by WorkCover: – s32(1) and (2)	
WESTERN AUSTRALIA	Reasonable expenses incurred: – Schedule 1, clause 17	30% of prescribed amount (\$45,621.00). An additional \$50,000 can be granted by the Dispute Resolution Directorate where the worker's social and financial circumstances justify it: – Schedule 1, clause 18A(1) If a worker meets an exceptional medical circumstances test and has a whole person impairment of not less than 15%, they may apply for additional medical and related expenses capped at \$250,000. Workers granted such an extension are excluded from seeking common law damages: – Schedule 1, clause 18A
QUEENSLAND	Medical treatment or hospitalisation that they consider reasonable, having regard to the injury. The Authority may impose conditions. Insurer must pay the cost of the medical treatment: – s210	
TASMANIA	Reasonable expenses necessarily incurred by the worker as a result of the injury for medical services, hospital services, nursing services, constant attendant services, rehabilitation services and ambulance services: – s75(1)(a)	Entitlements cease ten years after the date of the claim was lodged.
NORTHERN TERRITORY	All reasonable costs	No limit: – s73
AUSTRALIAN CAPITAL TERRITORY	Employer is liable to pay for the cost of medical treatment reasonably obtained in relation to the injury, and for the cost of rehabilitation services: – s70 Employer is liable to pay for hospital treatment: – s73	The total amount payable must not be more than the maximum amount for each of the following: medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid and damage or loss of clothing. The maximum amount means an amount agreed between employer and worker or \$569.07, CPI indexed: – s70
NEW ZEALAND	All reasonable costs associated with treatment, and social and vocational rehabilitation: – s69(1)(a)	Prior approval of expenditure is required except for acute treatment, and all costs approved by contract or regulations: – Schedule 1, Part 1, s1

PERMANENT IMPAIRMENT PAYMENTS

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

Table 6.4 illustrates what permanent impairment payments may be awarded, how they are assessed and other factors that may apply.

TABLE 6.4 PERMANENT IMPAIRMENT PAYMENTS (AS AT 30 JUNE 2007)					
JURISDICTION	BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	WEEKLY BENEFITS STILL PAYABLE?
COMMONWEALTH	<i>Economic:</i> \$141,351.15 <i>Non Economic:</i> \$53,006.72	Guide to the Assessment of the Degree of Permanent Impairment (2nd Edition) – based on American Medical Association Guidelines to the Evaluation of Permanent Impairment (5th Edition)	Comcare: 10% Whole Person Impairment (WPI) 5% hearing >0% Finger/toe, taste/smell Seacare: 10% WPI 5% hearing >0% Finger/toe, taste/smell	Comcare: \$194,357.87 Seacare: \$194,357.87	Payment of Permanent Impairment does not impact on any other entitlements under the SRC Act.
VICTORIA	Single benefit	<i>Physical (excluding hearing and psychiatric)</i> – AMA Guides to the Evaluation of Permanent Impairment (4th Edition) modified for Chapter 3, substituting Chapter 5 (Tables 8 & 10) and excluding Chapter 15 <i>Hearing loss:</i> the improved Procedures for Determination of Percentage loss of hearing (1988 Edition or later prescribed edition) <i>Psychiatric:</i> The Guide to the Evaluation of Psychiatric Impairment for Clinicians	10% WPI (modified for Chapter 3 impairments) 10% WPI and additional 10% WPI for further hearing loss 30% WPI – not arising secondary to physical injury	\$373,420	Weekly benefits and reasonable medical costs are still payable
NEW SOUTH WALES	Up to \$231,000, for permanent impairment, and a maximum of \$50,000 for pain and suffering. Payable in addition to other benefit types Part 3, Div 4 (1987 Act)	American Medical Association Guides to the Evaluation of Permanent Impairment (5th Edition) and the New South Wales WorkCover Guides for the Evaluation of Permanent Impairment	1% WPI generally 15% WPI for psychiatric and psychological impairment 6% binaural hearing loss for hearing loss claims	Up to \$231,000, for permanent impairment, and a maximum of \$50,000 for pain and suffering.	Weekly benefits and medical costs are still payable
SOUTH AUSTRALIA	Varying amounts according to class and degree of disability, set out in Third Schedule to the Act Redemptions under s42	Third Schedule, and Guides to the Evaluation of Permanent Impairment Third Edition (Revised) (AMA) By agreement between the worker and WorkCover	5% for hearing loss	Maximum is 1.675 times the Prescribed Sum (as at 1 Jan 2007, \$136,000)	Where the worker suffers a compensable disability under the Act which results in permanent disability(ies), a lump sum is payable for non economic loss. (subject to adjustment for aggravation of prior disabilities, and Regulations concerning accumulation of previous injuries): – s43 & Reg 25 , General Regs Redemptions are negotiated and agreed between the worker and WorkCover. Any such agreed figure is in addition to a s43 lump sum entitlement

TABLE 6.4 (CONTINUED) PERMANENT IMPAIRMENT PAYMENTS (AS AT 30 JUNE 2007)

JURISDICTION	BENEFITS	GUIDELINES	THRESHOLD TEST	MAXIMUM LUMP SUM	WEEKLY BENEFITS STILL PAYABLE?
WESTERN AUSTRALIA	Single Benefit	WorkCover WA Guides for Evaluation of Permanent Impairment	0% WPI	\$152,070	Weekly payments cease
QUEENSLAND	\$209,555	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4th Edition)	0%	\$209,555	Weekly payments cease
TASMANIA	Single Benefit	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4th Edition): – s71 & s72 and Tasmanian Workers Compensation Guidelines for the Assessment of Permanent Impairment: – s72(1)(a)	% WPI ** 10% WPI (psychological) >5% binaural hearing impairment $= 5 + [0.278 (\text{BHI} - 5)]$ % WPI : – reg 17 & s73(4)	\$208,370	
NORTHERN TERRITORY	Single Benefit	American Medical Association Guides to the Evaluation of Permanent Impairment (4th Edition)	5% WPI	\$215,030	Weekly payments cease
AUSTRALIAN CAPITAL TERRITORY	Single Benefit	American Medical Association Guides to the Evaluation of Permanent Impairment (5th Edition) and the New South Wales WorkCover Guides for the Evaluation of Permanent Impairment (1st Edition)	0%	\$113,813 single \$170,719.51 multiple	Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides as list of injuries, including for the loss of toes, taste and smell, and sets out a % rate (from 2% to 100%) of the single loss amount payable
NEW ZEALAND	Single Benefit	American Medical Association Guidelines to the Evaluation of Permanent Impairment (4th Edition)	10%	NZ\$110,555.80	Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10% From 1 April 2002, spouse of person killed can apply to have weekly compensation commuted The independence allowance can be capitalised for periods of 5 years

** 0% for loss of fingers and toes

DEATH BENEFITS

In the event that a workplace injury results in death, all jurisdictions provide access to *death benefits* (see Glossary). A spouse or dependent of a worker who died in a work related incident may be entitled to certain benefits, which can assist the family with *funeral costs* (see Glossary) and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions.

Table 6.5 outlines death benefits in each jurisdiction.

TABLE 6.5 DEATH BENEFITS (AS AT 30 JUNE 2007)			
JURISDICTION	LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
COMMONWEALTH	Comcare: \$212,026.74: – s17(3), (4)	\$70.65 a week to each child under 16 (or 25 if full-time student): – s17(5)	Reasonable funeral expenses, not exceeding \$9,000.00: – s18(2)
	Seacare: \$212,026.74: – s29(3)	\$70.65 a week to each child under 16 (or 25 if full-time student): – s29(5)	Reasonable funeral expenses, not exceeding \$4,894.39: – s30(2)
VICTORIA	\$250,000: – s92A	Dependent partner – determined by average pre-injury earnings, subject to statutory maximum: – s92B First 13 weeks: > 95% of earnings > \$1,190 max 14 weeks: – 3 years: > 50% of earnings > \$1,190 max \$796 max for partner with more than 5 children A range of payments for dependent children depending on the particular circumstances of the child	Reasonable funeral expenses, not exceeding \$9,000: – s99 Counselling for family members, max. total \$1,960: – s99
NEW SOUTH WALES	\$325,400: – s25 (1987 Act)	\$102.30 a week to each child: – s25(1)(b) (1987 Act)	Funeral expenses \$9,000 maximum: – s27 (1987 Act)
SOUTH AUSTRALIA	Spouse or domestic partner: – A lump sum equal to 1.675 times the prescribed sum (subject to CPI) less any amount that the deceased worker received as compensation for <i>non-economic loss</i> under Division 5: – s44(1)(b) Dependent orphaned child: – A lump sum equal to 50% of 1.675 times the prescribed sum (subject to CPI) less any amount that the deceased worker received as compensation for <i>non-economic loss</i> under Division 5: – s44(1)(c) . [If there is more than 1 dependent orphaned children, that amount is divided equally between them] Max \$227,800 as at 1 Jan 2007.	Dependent spouse or domestic partner – weekly payments equal to 50% (less if partially dependent spouse) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(b) Dependent orphaned child – weekly payments equal to 25% (less if partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(c) Dependent non-orphaned child – weekly payments equal to 12.5% (less if partially dependent child) of the amount of the notional weekly earnings of the deceased worker: – s44(1)(d) Dependent relative: – may be eligible for lump sum or weekly payments if WorkCover determines they are eligible in their particular circumstances: – s44(1)(e)	Funeral expenses: – maximum as at 1 Jan 2007, \$7010 subject to annual CPI increase: – s44(1)(a)
WESTERN AUSTRALIA	\$208,470 from 14 November 2005: – Schedule 1	\$39.90 (subject to CPI) per each dependent child up to age 16 or 21 if a student: – Schedule 1	Funeral expenses- \$7,547: – Schedule 1(17)
QUEENSLAND	\$392,525 reduced by the total amount of weekly payment of compensation received by the worker prior to death: – s200 \$10,480 for a totally dependent spouse (s200 (2)(aa)) and \$20,960 for each dependent family member other than the spouse, under 16 or a student (s200 (2)(b)).	Weekly payment of 8% of QOTE (\$77.60) for the spouse if there is a dependent family member under 6:– s200(2)(ab) and Weekly payment of 10% of QOTE (\$96.95) for each dependent under 16 or a student	Reasonable funeral expenses: – s199, Ch 3 Part 11

TABLE 6.5 (CONTINUED) DEATH BENEFITS (AS AT 30 JUNE 2007)

JURISDICTION	LUMP SUM	PERIODIC PAYMENTS	OTHER BENEFITS
TASMANIA	\$208,370: – s67	Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated: – s67A > first 13 weeks: 100% of weekly payments > 14-78 weeks: 85% of weekly payments 78 weeks-2 years: 80% of weekly payments A dependent child is entitled to 10% of the <i>basic</i> salary, commencing on the expiration of 13 weeks after the date of death: – s67A	Employer is liable to pay as compensation the reasonable cost of burial or cremation: – s75
NORTHERN TERRITORY	Entitled to 260 times the average weekly earnings in: > prescribed proportions (share with children) –, or > such proportions as the Court determines: – s62(1)	Dependants - prescribed proportion of 260 times the average weekly: – s62(1) 10% of average weekly earnings for each child under 16 (or 21 if student), for up to 10 children: – s63	Max: – 10% of the annual equivalent of average weekly earning for funeral costs: – s62(1)(a)
AUSTRALIAN CAPITAL TERRITORY	\$170,719.51 CPI indexed (to be divided between the dependants: – s77(2))	\$56.91 per child CPI indexed: – s77(2)	\$4,552.52 CPI indexed for funeral expenses: – s77(2)
NEW ZEALAND	Spouse: NZ\$5,333.86 Each child or other dependent: NZ\$2,666.94	Spouse: 60% of the long-term rate of weekly compensation that the earner would have received Each child and other dependent: 20% of the weekly compensation If total entitlement exceeds 100% individual entitlements are reduced on a pro rata basis	Funeral grant: NZ\$4,975.01 Child care payments: NZ\$113.42 for a single child, NZ\$68.05 each if there are more than two children, and a total of NZ\$158.79 for 3 or more children

OTHER BENEFITS

There are instances where services are provided that are outside the scope of medical and incapacity benefits. These types of payments are referred to as 'other' benefits and are provided by some schemes in Australia and New Zealand. For example, an injured worker may be entitled to reimbursement for other expenses, such as *attendant care* (see Glossary) or *home help* (see Glossary). Where reimbursement is provided, it is generally provided for expenses which are reasonably necessary.

Table 6.6 shows which jurisdictions provide these benefits, how they are calculated and any limits that may apply to the provision of these benefits.

TABLE 6.6 ATTENDANT CARE (AS AT 30 JUNE 2007)			
JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
COMMONWEALTH	<p>Comcare: liable to pay compensation for attendant care services reasonably required in the amount of:</p> <p>a) \$353.37 per week <u>s29(1)</u>; or</p> <p>b) an amount per week equal to the amount per week paid or payable by the worker for those services</p> <p>Whichever is less: – <u>s29(3)</u></p> <p>Seacare: compensation is payable at the rate of:</p> <p>a) \$353.37 per week <u>s43(1)</u>; or</p> <p>b) an amount per week equal to the amount per week paid or payable by the worker for the services</p> <p>Whichever is less: – <u>s43(4)</u></p>	-	<p>The following matters need to be considered:</p> <ul style="list-style-type: none"> > the nature of the worker's injury and the degree to which that injury impairs worker's ability to provide for their own personal care > the extent to which any medical service or nursing care received by the worker provides for their essential and regular personal care > the extent to which it is reasonable to meet any wish by the worker to live outside an institution > the extent to which attendant care services are necessary to enable the worker to undertake or continue employment > any assessment made in relation to the rehabilitation of the worker; and > the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – <u>s29(4)</u> <p>The following matters need to be considered:</p> <ul style="list-style-type: none"> > the nature of injury and the degree to which that injury impairs the worker's ability to provide for their personal care > the extent to which any medical service or nursing service received by the worker provides for their essential and regular personal care > the extent to which it is reasonable to meet any wish by the worker to live outside an institution > the extent to which attendant care services are necessary to enable the worker to undertake or continue employment; and > the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – <u>s43(5)</u>
VICTORIA	<p>Yes. When making an assessment of the attendant care program, the agent must take into account the worker's:</p> <ul style="list-style-type: none"> > abilities > degree of self reliance > accommodation needs > extent of family support; and > family's need for respite: – <u>s5(1)</u>, <u>s99</u> 	-	-
NEW SOUTH WALES	<p>Yes included in the definition of medical or related treatment: – <u>s59</u> (1987 Act)</p>	-	<p>The maximum amount for which an employer is liable for medical or related treatment is:</p> <p>a) \$50,000, or</p> <p>b) where some greater amount has been fixed by the Authority by order published in the Gazette– the greater amount: – <u>s61(3)</u> (1987 Act)</p>

TABLE 6.6 (CONTINUED) ATTENDANT CARE (AS AT 30 JUNE 2007)

JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
SOUTH AUSTRALIA	<p>WorkCover may as part of a rehabilitation program provide equipment, facilities and services to assist workers cope with their disabilities at home or in the workplace: – s26(3)(g)</p> <p>WorkCover may pay the cost of attendance by a registered or enrolled nurse, or by some other person approved by WorkCover or of a class approved by WorkCover, where the disability is such that the worker must have nursing or personal attendance as is reasonable or prescribed rate: – s32(2)(f)</p> <p>Each case for attendant care must be determined on its own merits, and the test is the reasonableness of the particular worker in incurring the expense in the circumstances.</p> <p>Reasonableness should be considered in the context of:</p> <ul style="list-style-type: none"> > the nature of the service > the necessity of the service > the relationship to the injury > the number and frequency of services > the benefit to the worker > the cost of the service. 	-	-
WESTERN AUSTRALIA	<p>Reasonable expenses associated with a nursing home may be paid where a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance, which cannot be administered in the worker's domestic environment: – Schedule 1, clause 17(1)</p>	-	-
QUEENSLAND	<p>A caring allowance may be paid if the insurer is satisfied that-</p> <ul style="list-style-type: none"> > the worker depends on day to day care for the fundamental activities of daily living; and > the care is to be provided to the worker at the worker's home on a voluntary basis by another person in relation to whom compensation is not payable: – s224(2) 	<p>The insurer may pay the caring allowance –</p> <ul style="list-style-type: none"> > in the way prescribed under a regulation; and > to, or on account of, the person providing the care 	-
TASMANIA	<p>Where as a result of an injury suffered by a worker the question arises as to whether or not any constant attendance services are required by the worker, the matter may be referred to the Tribunal by the worker, employer or the insurer for determination as to:</p> <ul style="list-style-type: none"> a) the necessity for such services b) the period for which such services are to be provided; and c) the level of payments which it considers to be reasonable and appropriate for such services: – s75(3) 	-	-

TABLE 6.6 (CONTINUED) ATTENDANT CARE (AS AT 30 JUNE 2007)

JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
NORTHERN TERRITORY	<p>Employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for a worker who suffers or is likely to suffer a permanent or long term incapacity: – <u>s78(1)</u></p> <p>The following matters are taken into account when considering reasonable and necessary attendant care services:</p> <ul style="list-style-type: none"> > the nature and extent of the worker's injury and the degree to which that injury impairs their ability to provide for their personal care > the extent to which such medical services and nursing care as may be received by him or her provide for their essential and regular personal care > where he or she so desires, the extent to which it is reasonable to meet his or her desire to live outside an institutional environment > the extent to which attendant care services are necessary to enable injured person to undertake or continue employment > any assessment made, at the request of the insurer, by persons having expertise in the worker's rehabilitation > any standard developed or applied by a government department or public authority in respect of the need of disabled persons for attendant care services; and > the extent to which a relative of the worker might reasonably be expected to provide attendant care services: – <u>s78(2)(d)</u> <p>Attendant care services means services (other than medical and surgical services or nursing care) which are required to provide for the person's essential and regular personal care: – <u>s78(4)</u></p>	-	-
AUSTRALIAN CAPITAL TERRITORY	Not prescribed under ACT legislation.		
NEW ZEALAND	<p>In deciding whether to provide or contribute to the cost of attendant care, the Corporation must have regard to –</p> <ul style="list-style-type: none"> a) any rehabilitation outcome that would be achieved by providing it b) the nature and extent of the claimant's personal injury and the degree to which that injury impairs his or her ability to provide for his or her personal care c) the extent to which attendant care is necessary to enable the claimant to undertake or continue employment (including agreed vocational training) or to attend a place of education, having regard to any entitlement the claimant has to education support d) the extent to which household family members or other family members might reasonably be expected to provide attendant care for the claimant after the claimant's personal injury e) the extent to which attendant care is required to give household family members a break, from time to time, from providing attendant care for the claimant; and f) the need to avoid substantial disruption to the employment or other activities of household family members: – <u>cl(14)</u> 	-	-

TABLE 6.7 HOME HELP (AS AT 30 JUNE 2007)

JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
COMMONWEALTH	Comcare: Liable to pay compensation for household services reasonably required: – s29(1)	50% of the amount per week paid or payable by the worker for those services not more than \$353.37: – s29(1)	The following matters need to be considered: <ul style="list-style-type: none"> > extent household services provided by the worker before the date of injury and the extent to which he or she is able to provide those services after that date > number of persons living with the worker as household members, ages and need for services > extent to which household services were provided to worker before the injury > the extent to which members of the household might reasonably be expected to provide household services for themselves and the injured worker; and > the need to avoid substantial disruption to the employment or other activities of persons in the household: – s29(2)
	Seacare: Compensation is payable if worker reasonably requires household services: – s43(1)	Amount of compensation payable must not be more than \$353.37; and must not be less than 50% of the amount paid per week by the worker, unless the amount payable is more than \$706.74: – s43(2)(a) & s43(2)(b)	The following matters need to be considered: <ul style="list-style-type: none"> > extent household services provided by the worker before the date of injury and the extent to which he or she is able to provide those services after that date > number of persons living with the worker as household members, ages and need for services > extent to which household services were provided to worker before the injury > the extent to which members of the household might reasonably be expected to provide household services for themselves and the injured worker; and > the need to avoid substantial disruption to the employment or other activities of persons in the household: – s43(3)
VICTORIA	<p>The agent must assess the worker's individual circumstances to determine whether the:</p> <ul style="list-style-type: none"> > cost of the service is reasonable; and > service is necessary given the worker's circumstances. <p>Agents should consider the following when assessing whether a service is necessary:</p> <ul style="list-style-type: none"> > the relationship of the injury to the requested services > whether the service is for the worker > whether the worker undertook the tasks pre-injury > the worker's ability to undertake the tasks post injury > the size of the worker's home/garden at the time of the injury > the worker's family circumstances; and > the contribution of family/household members 	<p>The Act defines 'reasonable costs' as an amount:</p> <ul style="list-style-type: none"> > determined by the VWA, employer, or self insurer as reasonable in relation to a particular service > that does not exceed an amount (if any), or method to calculate an amount, published in the Government Gazette as a maximum amount payable for a particular service (such an amount must not be less than the amount or fee specified under the <i>Health Insurance Act 1973</i> applicable to a service of that kind) that is determined by the VWA, employer or self-insurer as a reasonable cost having regard to: <ul style="list-style-type: none"> > the service or provision actually rendered > the necessity of the service or provision in the circumstances; and > any guidelines issued by the VWA 	-
NEW SOUTH WALES	<p>Where reasonably necessary:</p> <ul style="list-style-type: none"> > a medical practitioner has certified, on the basis of a functional assessment, that it is reasonably necessary that assistance be provided and the assistance provided is a direct result of the injury > the assistance would not be provided for the worker but for the injury > degree of permanent impairment to the worker is at least 15% or the assistance provided is on a temporary basis; and > the assistance provided is in accordance with a care plan established by the insurer in accordance with WorkCover guidelines: – s60AA (1987 Act) 	<p>Domestic assistance is included in the definition of medical or related treatment: – s59 (1987 Act)</p> <p>The maximum amount for which an employer is liable for medical or related treatment is:</p> <ol style="list-style-type: none"> \$50,000, or where some greater amount has been fixed by the Authority by order published in the Gazette – the greater amount: – s61(3) (1987 Act) 	-

TABLE 6.7 (CONTINUED) HOME HELP (AS AT 30 JUNE 2007)

JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
SOUTH AUSTRALIA	<p>WorkCover may as part of a rehabilitation program provide equipment, facilities and services to assist workers cope with their disabilities at home or in the workplace: – s26(3)(g)</p> <p>WorkCover has authorised certain costs for home help and garden maintenance: – s32(2)(i)</p> <p>If the service is by any other person ie, a family member, that person must be approved by the claims agent to deliver the service.</p> <p>The claims agent has the discretion to approve services. Each case will need to be assessed on its merits; however, the following guidelines are considered:</p> <ul style="list-style-type: none"> > The nature of the worker's injury and the extent of incapacity to perform the particular task/s. > The nature and extent of services requested. > The recommendations of the worker's treating practitioner or contracted rehabilitation provider. > The contribution of the domestic help to the worker's recovery. > Whether the cost is one that is incidental to domestic duties such as cleaning, lawn mowing etc. > Whether the cost is a capital type expense such as painting, pools, and pergolas etc. <p>For the worker to receive compensation for domestic help, the cost must be one that is incidental to domestic duties as opposed to one that has a capital effect.</p> <p>The worker must be given written advice of the claims agent's determination regarding domestic help costs, including review rights.</p> <p>Where approval has been given, the claims agent will need to monitor the worker's recovery so that services/assistance can be terminated once the worker has recovered sufficiently and there is no further justification for ongoing assistance.</p>	<p>Where costs exceed \$500.00 a written request will be required from the worker for approval of further costs, including written confirmation from the worker's treating practitioner that ongoing home maintenance services are necessary.</p>	-
WESTERN AUSTRALIA	Not prescribed in the legislation. In special circumstances insurers may on a without prejudice basis approve limited homecare.		
QUEENSLAND	<p>Additional lump sum compensation for gratuitous care up to \$237,380 – s193</p>	<p>The insurer must decide the amount of the worker's entitlement to additional compensation of up to \$237,380, payable according to a graduated scale prescribed under a regulation, having regard to –</p> <ul style="list-style-type: none"> a) the worker's WRI b) the worker's level of dependency; and c) any other information prescribed under a regulation 	<p>The worker, if the worker has an injury that results in a WRI of 15% or more and a moderate to total level of dependency on day to day care for the fundamental activities of daily living, is entitled to additional lump sum compensation only if –</p> <ul style="list-style-type: none"> a) day to day care for the fundamental activities of daily living is to be provided at the worker's home on a voluntary basis by another person b) the worker resides at home on a permanent basis c) the level of care required was not provided to the worker before the worker sustained the impairment; and d) the worker physically demonstrates the level of dependency mentioned in subsection (1)(b) <p>The insurer must ask that a registered occupational therapist assess the worker's level of dependency resulting from the impairment in the way prescribed under a regulation.</p> <p>In addition, limits on damages for gratuitous care/home help: – Chapter 5, Part 10</p>

TABLE 6.7 (CONTINUED) HOME HELP (AS AT 30 JUNE 2007)

JURISDICTION	REIMBURSEMENT	CALCULATION	LIMITS
TASMANIA	<p>May be considered as part of a rehabilitation program if it facilitates or assists the workers rehabilitation:</p> <p>“rehabilitation services” means –</p> <ul style="list-style-type: none"> a) treatment, training, or other assistance provided to facilitate or assist a worker’s rehabilitation b) the supply of material or equipment in respect of any occupational therapy projects undertaken by a worker; or c) any necessary and reasonable modifications required to be made to a worker’s workplace, place of residence, or motor vehicle: – <u>s74</u> 	-	-
NORTHERN TERRITORY	<p>Employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for a worker who suffers or is likely to suffer a permanent or long term incapacity: – <u>s78(1)</u></p> <p>The following matters are taken into account when considering reasonable and necessary household services:</p> <ul style="list-style-type: none"> > extent to which household services were provided by the worker before the injury and the extent to which he or she is able to provide those services after the injury > number of household family members, their ages and their need for household services > the extent to which household services were provided by other household family members before the injury > extent to which other household family members or other family members might reasonably be expected to provide household services for themselves and for the worker after the injury; and > need to avoid substantial disruption to the employment or other activities of the household family members: – <u>s78(2)(c)</u> 	-	-
AUSTRALIAN CAPITAL TERRITORY	Not prescribed under ACT legislation.		
NEW ZEALAND	<p>Social rehabilitation includes:</p> <ul style="list-style-type: none"> > aids and appliances > child care > educational support > home help > home modifications > training for independence; and > transport costs for such training 	All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome	<ul style="list-style-type: none"> > The cost of implants is only covered if required by surgery. Maintenance of implants or duplication of existing implants is not covered > Child care and home help is not covered if it was already being provided prior to the accident.

RETURN TO WORK

Return to work (see Glossary) means helping injured workers get back to work or remain at work whilst recovering from an injury. This may include employers providing suitable employment that the injured worker can do, which in the total circumstance of the worker, will promote his or her *rehabilitation* (see Glossary) and return to the workforce. Return to work can also involve medical practitioners and rehabilitation service providers rehabilitating injured workers back into the workplace.

PRE-INJURY POSITIONS

When a worker sustains an injury, an early and safe return to work is the goal of all jurisdictions. Most jurisdictions require employers to provide suitable duties, which can be the same or an equivalent position an injured worker held before their injury.

Table 7.1 outlines the pre-injury position provisions in each jurisdiction.

TABLE 7.1 PRE-INJURY POSITION PROVISIONS	
JURISDICTION	PRE-INJURY POSITION PROVISIONS (AS AT 30 JUNE 2007)
COMMONWEALTH	Where an employee is undertaking or has completed, a rehabilitation program, the employer 'shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment': – s40 . Usually this will be to the person's usual position. Because, for incapacitated employees, weekly benefits will continue to be paid to age 65 there is a strong financial incentive to the employer to 'provide the employee with suitable employment or to assist the employee to find such employment'.
VICTORIA	Under the legislation, employers are required to provide injured workers with a job the same as or equivalent to the one the injured worker was doing before the injury or illness. This requirement applies for the first 12 months of incapacity for work, unless the employer can show this would cause unjustifiable hardship for the employer: – s155A
NEW SOUTH WALES	An employer of an injured worker who dismisses the worker is guilty of an offence if the worker is dismissed because the worker is not fit for employment as a result of the injury, and the worker is dismissed within 6 months after the worker first became unfit for employment. If the employer offers a dismissed injured worker's position to a replacement worker, the employer must advise the replacement worker that the injured worker may be re-instated to that position within two years of the date of injury. Industrial Relations Commission may order reinstatement: – Part 8 (1987 Act) If a worker has suffered a compensable disability, the employer from whose employment the disability arose must provide the worker with suitable employment for which they are fit and which is so far as reasonably practicable, the same or equivalent to the worker's pre-injury employment:– s58B . This obligation is not time limited although it does have to be reasonably practicable for the employer to provide the suitable employment.
SOUTH AUSTRALIA	There is a separate provision (s58C) requiring the employer to provide the worker and the WorkCover with 28 days notice if the employer intends to terminate the worker's contract of employment. This provision only requires the notice and does not prevent the employer from terminating employment. Its purpose is to alert the key parties to the employer's intention to terminate employment. The notice period will vary where there are federally registered industrial arrangements in place that require a different notice period. These provisions ensure that the onus to provide suitable employment is not avoided and imposes a general obligation on all employers (registered or self-insured) and there is no time limit. Exceptions to these legislative provisions exist for example where the employer employs less than 10 workers and the worker's incapacity is greater than 12 months: – s58C and s58B(2)(e)
WESTERN AUSTRALIA	Employer required to keep position open (if reasonably practicable for injured worker) for 12 months, and to take reasonable steps to rehabilitate worker. If that job is no longer available, or worker can no longer perform it, employer must offer a similar position for which worker is qualified, and capable of doing: – s84AA (1) Employers are required to notify the worker and WorkCover WA of any intention to dismiss the worker 28 days before the dismissal is due to take place: – s84AB
QUEENSLAND	The prescribed minimum period an employer is allowed before dismissing a worker solely or mainly because of the injury is 12 months: – s232B
TASMANIA	Employer 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: – s138A
NORTHERN TERRITORY	No requirement under the Act for employer to keep a position open for injured worker but employer must take all reasonable steps to provide suitable employment and, if unable to do so, he/she must refer the worker to an alternative employer incentive scheme developed by the NT WorkSafe Authority: – s75A(1),(2)
AUSTRALIAN CAPITAL TERRITORY	Employer has an obligation to keep a position open for 6 months, if requested by the injured worker: – s105
NEW ZEALAND	The employer must take all practicable steps to assist the claimant with the claimant's vocational rehabilitation under his or her individual rehabilitation plan: – s71 There is no requirement for employers to keep a position open for an injured worker.

RETURN TO WORK PROVISIONS

The general aim of workers' compensation schemes in each jurisdiction is to return injured workers to work in a timely, safe and durable manner. The schemes aim to achieve a balance between injured workers returning to work as soon as possible and ensuring that they are fully recovered so as to avoid further injuries.

Table 7.2 outlines the return to work provisions in each jurisdiction.

TABLE 7.2 RETURN TO WORK PROVISIONS (AS AT 30 JUNE 2007)			
JURISDICTION	EMPLOYERS' RESPONSIBILITIES	WORKER'S RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
COMMONWEALTH (COMCARE)	<ul style="list-style-type: none"> > comply with Comcare's rehabilitation guidelines: – s41 - which require development of an employer specific rehabilitation policy which addresses: early intervention case management; rehabilitation assessment and rehabilitation programs; and the provision of suitable duties > the employer is given statutory powers under the SRC Act (s36 and s37) to develop and deliver rehabilitation programs for injured employees. > the employer may, and shall on written request from the employee, undertake an assessment of the employee's capability to undertake a rehabilitation program: – s36(1). > the employer may arrange for the employee to be examined to assist in the assessment (s36(3)) and have regard to the examination report's recommendation as to the kind of program to be provided: – s36(7) > the employer may engage an approved rehabilitation provider to prepare a rehabilitation program: – s37(2) > the employer shall have regard to the assessment, future liability, cost of program, improvement in the employee's opportunities, psychological effect on the employee if not providing the program, employee's attitude to the program, relative merits of alternative programs etc: – s37(3) > the employer is required to advise the employee in writing of its decision, the reasons for its decision and notice of rights of review of its decision: – s37(1) and s61(1) > during or on upon completion of the rehabilitation program the employer shall take all reasonable steps to provide suitable employment: – s40 	<ul style="list-style-type: none"> > the employee may request in writing to be assessed for a rehabilitation program and on that request the employer shall undertake that assessment: – s36(1) > the employee shall cooperate in the assessment of the capacity to undertake a rehabilitation program ("A Guide to Employees" – Sept 2001) > the employee shall undergo a required examination: – s36(3) > the employee should cooperate and actively participate with the case manager and/or rehabilitation provider in the development and performance of the rehabilitation program ("What you should expect from Comcare and your Employer" – Comcare Fact Sheet 51) > All rights and proceedings under the Act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination or a program: – s36(4) and s37(7) 	<p>The employer at time of injury (the liable employer) may arrange a work trial at its expense with the new employer (host employer) when a return to employment with the liable employer is not possible. The liable employer is responsible for the provision of the rehabilitation program, its expense and any shortfall in income as a result of the incapacity. The liable employer may negotiate with the host employer to cover full wages and on-costs for part or all of the work trial as an incentive. At the conclusion of the work trial the liable employer will continue to meet the cost of any ongoing rehabilitation and any income loss arising from the injury. (Liable employers under the Comcare premium arrangements would have these costs reimbursed by Comcare.)</p> <p>The host employer is required to maintain OHS responsibilities and after the work trial should offer appropriate vacancies to the employee and be liable for any subsequent injury. "Procedures for a Work trial Placement" – May 2005)</p>

TABLE 7.2 (CONTINUED) RETURN TO WORK PROVISIONS (AS AT 30 JUNE 2007)

JURISDICTION	EMPLOYERS' RESPONSIBILITIES	WORKER'S RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
COMMONWEALTH (SEACARE)	<ul style="list-style-type: none"> > the employer is given statutory powers under the SRC Act (s49 and s50) to develop and deliver rehabilitation programs for injured employees. > the employer may, and shall on written request from the employee, undertake an assessment of the employee's capability to undertake a rehabilitation program: - s36(1) > if an employee suffers an injury that lasts, or is expected to last, 28 days, which results in an impairment or an incapacity for work, the employee's employer must, within 28 days after receiving notice of the injury, arrange for the assessment of the employee's capability of undertaking a rehabilitation program:- s49(1) > If an employee of an employer is assessed under section 49 as capable of undertaking a rehabilitation program, the employer must, after consulting the employee in relation to: <ul style="list-style-type: none"> (a) the selection of an approved program provider; and (b) the development of an appropriate rehabilitation program by an approved program provider; > make arrangements with an approved program provider for the provision of an appropriate rehabilitation program:- s50(1) > If an employee is undertaking, or has completed, a rehabilitation program, his or her employer must take all reasonable steps to provide the employee with suitable employment, or to assist the employee to find such employment:- s52 	<ul style="list-style-type: none"> > the employee's quick and full recovery and return to work will be greatly assisted if they: <ul style="list-style-type: none"> - participate in treatment and a rehabilitation program - maintain communication with the employer, rehabilitation provider and work colleagues. <p><u>("A Best Practice – Seafarers Rehabilitation and Return to Work" – Publication)</u></p> <ul style="list-style-type: none"> > all rights and proceedings under the Act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination or a program: - s49(4) and s50(5) 	<p>The employer may arrange for employment as a supernumerary on board a ship or ashore following consultation with all key parties.</p> <p>Where return to sea is unlikely the employer should determine whether suitable employment can be found ashore and if such employment is outside of the seafaring industry the employer is to assist the employee in finding such suitable employment with another employer whether inside or outside the industry. (<u>"Best Practice Guide – Seafarers Rehabilitation and Return to Work" – Publication</u>)</p>
VICTORIA	<ul style="list-style-type: none"> > appoint a return to work coordinator and develop a written occupational rehabilitation program with workers and make available to all workers, if annual payroll is \$1 million or more: – s156 & s158 > prepare a return to work plan and nominate a return to work coordinator for any injured worker with an incapacity for work no later than 10 days after a claim being accepted or determined in the worker's favour, or the employer becomes aware that the worker's period of incapacity is likely to exceed 20 days, whichever is the later (whatever the size of the business): – s156(2) & s156(3) > offer pre-injury equivalent or suitable employment within 12 months of the claim being accepted or determined in the worker's favour: – s155A > keep a register of injuries: – s101 > stay in touch with injured worker > develop individual return to work programs for injured workers: – s160; and > have a risk management program in place: – s159 <p>Failure to comply can result in substantial fines</p>	<ul style="list-style-type: none"> > make 'reasonable efforts' to return to work, including: <ul style="list-style-type: none"> a) participating in rehabilitation or RTW plan b) participating in assessments of incapacity, rehabilitation progress and employment prospects; and c) complying with requests to provide information, including medical reports, as to current nature and extent of injury and incapacity: – s93CA, s93CD, s111, s112 > authorise provider of medical services or hospital to provide information regarding injury and treatment in relation to the claim: – s103(d) <p>Benefits may be terminated if worker fails to comply</p>	<p>WISE (WorkCover Incentive Scheme for Employers) scheme is for new employers (other than pre-injury employer) who employ workers ready to return to work but unable to do so with former employer. Includes the following incentives:</p> <ul style="list-style-type: none"> a) wage subsidy of up to \$14,860.00 depending on number of hours worked b) protection from premium impacts if the worker has a new injury; and c) an exemption from costs if worker's original injury recurs and the new employment is not a contributing factor to the recurrence

TABLE 7.2 (CONTINUED) RETURN TO WORK PROVISIONS (AS AT 30 JUNE 2007)

JURISDICTION	EMPLOYERS' RESPONSIBILITIES	WORKER'S RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
NEW SOUTH WALES	<ul style="list-style-type: none"> > participate and cooperate in the establishment of an injury management plan: – s46 (1998 Act) > comply with the provisions of the insurer's Injury Management Program and any Injury Management Plan: – s46 (1998 Act) > establish a Return to Work program: – s52 (1998 Act) > if a Category 1 employer (base tariff premium of over \$50,000), employ a Return to Work Coordinator who has undertaken approved training; and > provide suitable employment (if reasonably practicable to do so) on request from partially incapacitated workers: – s49(1) (1998 Act) 	<ul style="list-style-type: none"> > participate and cooperate in the establishment of an Injury Management Plan (if significant injury): – s47(1) (1998 Act) > comply with the obligations imposed by the Injury Management Plan: – s47(2) (1998 Act) > nominate a treating doctor who is prepared to participate in the development and arrangements under the Injury Management Plan: – s47(3) (1998 Act) > authorise the treating doctor to provide relevant information to the insurer and employer: – s47(5) (1998 Act); and > make reasonable efforts to return to work with the pre-injury employer as soon as possible, having regard to the nature of the injury: – s48 (1998 Act) <p>Unreasonable failure to comply can result in suspension or cessation of weekly payments</p>	<p>JobCover Program offers to new employers:</p> <p>Training/employment allowance: up to \$300.00 per week</p> <p>Premium exemption: a premium exemption for employer for the first 12 months</p> <p>Second injury costs: costs of any claim within 12 months relating to the existing injury, excluded from experience-based premium adjustments</p> <p>Work Trial A Work Trial places an injured worker for a short period of time with a host employer when the worker's pre-injury employer is unable to provide suitable duties. It provides increased workplace based opportunities for injured workers to develop marketable skills, demonstrate their ability to undertake employment and upgrade their physical and psychological capacity for work. An injured worker may participate in one or more Work Trials for a combined total of 12 weeks</p> <p>Retraining WorkCover funds retraining of injured workers who cannot return to their pre-injury duties, have insufficient marketable and transferable skills with which to seek suitable employment and meet a number of other conditions. Cost of training does not form part of the injured worker's claims costs. Expenses that may be covered include course fees, travel, HECS, accommodation, textbooks and stationery, and equipment</p> <p>Equipment Provides injured workers with essential equipment or workplace modifications to return to suitable employment or to safely and successfully participate in training</p>
SOUTH AUSTRALIA	<ul style="list-style-type: none"> > comply with obligations under a rehabilitation program or return to work plan: – s26, s28A(4), and reg 5 > if reasonably practicable, to provide suitable employment for which the worker is fit: – s58B; and > keep in contact with claims agent 	<p>The disabled worker's weekly payments may be discontinued, reduced or suspended if he/she breaches mutuality:</p> <ul style="list-style-type: none"> > fails to submit to medical examination after written request by WorkCover > fails to supply prescribed medical certificate for continuing incapacity > fails to submit to proper medical treatment refuses to participate in, or frustrates a rehabilitation or RTW plan; and > refuses to do suitable work or take reasonable steps to find suitable work, or unreasonably discontinues work: – s36(1)(f) & (1A) > comply with obligations under a rehabilitation program or return to work plan: – s26, s28A(4), reg 5 Rehab Regs 	<p>RISE (Re-employment Incentive Scheme for Employers) scheme offers new employers of injured workers the following:</p> <ol style="list-style-type: none"> gross wage subsidy of 75% for 3 months (excluding overtime) gross wage subsidy of 40% for the second 3 months (excluding overtime) a retention bonus of up to \$2,000 if the worker is employed for greater than 12 months protection from normal liability to pay the first two weeks' income maintenance for that worker, if they suffer an aggravation of the pre-existing condition (up to two years) an allowance of up to \$1,000 for appropriate training; and reasonable workplace modification cost
WESTERN AUSTRALIA	<ul style="list-style-type: none"> > employer must have injury management system in place: – s155B; and > establish return to work program as soon as practicable after doctor writes to insurer saying a return to work program should be established or medical certificate states total or partial return to work: – s155C 	<ul style="list-style-type: none"> > attend medical examinations: – s64 > participate in return to work program: – s72B; and > notify employer within 7 days if returning to employment: – s59 	<p>No direct financial subsidy scheme</p>

TABLE 7.2 (CONTINUED) RETURN TO WORK PROVISIONS (AS AT 30 JUNE 2007)

JURISDICTION	EMPLOYERS' RESPONSIBILITIES	WORKER'S RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
QUEENSLAND	<p>The employer must:</p> <ul style="list-style-type: none"> > give WorkCover a copy of the suitable duties program > take every reasonable step to help with the worker's rehabilitation: – s228; and > have rehabilitation policy and procedures in place: – s227(2) <p>Workplaces that employ 30 or more workers, in a high risk industry (defined in the <i>Workers' Compensation and Rehabilitation Regulation 2003</i>) and/or have wages in Queensland for the preceding financial year more than \$5.135 million must have an accredited Rehabilitation and Return to Work Coordinator and have rehabilitation policy and procedures in place: – Reg 99C. The rehabilitation coordinator, and policy and procedures, must be accredited by Q-COMP: – s41 and s43</p> <p>Employers must take all reasonable steps to assist or provide rehabilitation and suitable duties to injured workers. Within 12 months after a worker sustains an injury, the employer must not dismiss the worker solely or mainly because of the injury: – s232B</p>	<ul style="list-style-type: none"> > take part in a rehabilitation program. Failure to comply without reasonable excuse may result in entitlements being suspended: – s232 > let WorkCover know when condition has changed > provide continuous medical certificates to WorkCover; and > give written notice within 10 business days of the worker returning to work, or engagement in a call to the insurer: – s136 	<p>No direct financial subsidy scheme.</p> <p>Suitable duties program:</p> <ul style="list-style-type: none"> a) total incapacity: When a worker returns to work on a graduated RTW program, the insurer may be responsible for wages paid for an agreed period. The employer is encouraged to pay wages according to partial incapacity as at (b); and b) partial incapacity: When a worker returns to work on a graduated RTW program, employer is responsible for wages paid for the hours worked, with the insurer paying the difference <p>Exempt employer policy: Host employer of injured worker is not responsible for aggravation or exacerbation of the same injury for a period of 6 months (applied administratively by WorkCover Queensland)</p>
TASMANIA	<ul style="list-style-type: none"> > keep position open for injured worker for 12 months, unless it is not practicable to do so, or reason for position no longer exists: – s138A > provide suitable alternative duties for 12 months unless not reasonably practicable to do so: – s138B > prepare a return to work plan where incapacity exceeds 14 days: – s139(1) > prepare and display a rehabilitation policy where there are more than 20 workers: – s143(1); and > provide a person who is responsible for coordinating return to work in accordance with the employer's rehabilitation policy (a rehabilitation coordinator), where there are more than 50 workers: – s143A 	<ul style="list-style-type: none"> > undertake a rehabilitation program or suitable alternative duties recommended by employer, failure or refusal may result in the worker's benefits being terminated/ reduced: – s86(d) > benefits may be suspended if worker refuses or obstructs medical examination or treatment: – s85(6) > make themselves available for medical examinations: – s85(1); and > submit medical reports to employer: – s85(3) 	<p>No direct financial subsidy scheme.</p>
NORTHERN TERRITORY	<ul style="list-style-type: none"> > take all reasonable steps to provide injured worker with suitable employment and participate in retraining the worker so far as is practicable: – s75A(1) > refer worker to an alternative employment incentive scheme developed by the Authority if employer cannot provide suitable employment: – s75A(2) > ensure return to work and rehabilitation program is provided by an accredited vocational rehabilitation provider: – s75B(1)(A); and > pay for any workplace modification and rehabilitation training: – s76(1) <p>If an injured worker is employed by another employer under an alternative employer incentive scheme, the first employer must compensate the worker for any aggravation, acceleration or exacerbation of the injury that occurs within one year after the worker starts employment with the other employer: – 75A(3)</p>	<ul style="list-style-type: none"> > undertake medical, surgical and rehabilitation treatment, rehabilitation training or workplace based return to work program: – s75B(1) > to attend medical exam: – s75B(1); and > to provide ongoing certification of incapacity: – s91A <p>Benefits may be terminated if there is unreasonable refusal or failure.</p> <ul style="list-style-type: none"> > authorise information about injury to be released to employer and insurer if claim form specifies: – s82(4); and > notify employer immediately when returning to work with another employer or their circumstances change: – s90 	<p>Alternative Employer Incentive Scheme</p> <p>The scheme provides:</p> <ul style="list-style-type: none"> > weekly benefits continue to be paid by original employer for up to a twelve week training/ placement period (no payment is made by the host employer) > after initial training/ placement period, the host employer provides employment, the host employer will be eligible for an incentive payment. This is only payable after the completion of twelve weeks of paid employment. It is either 45% of average weekly earnings or 50% of the wage, whichever is lesser and is payable in a lump sum at the end of the 12 weeks paid employment there may be further incentives for up to 12 months; and the original employer's insurer will guarantee to indemnify the alternative employer for any aggravation, acceleration or exacerbation for the pre-existing compensable condition during the first 12 months of the work placement.

TABLE 7.2 (CONTINUED) RETURN TO WORK PROVISIONS (AS AT 30 JUNE 2007)

JURISDICTION	EMPLOYERS' RESPONSIBILITIES	WORKER'S RESPONSIBILITIES	INCENTIVES FOR NEW EMPLOYERS OF INJURED WORKERS
AUSTRALIAN CAPITAL TERRITORY	<ul style="list-style-type: none"> > take part and cooperate in the establishment of a Personal Injury Plan (PIP) for significant injuries and comply with obligations imposed under the PIP : – s100 > establish a Return-to-Work Program in relation to policies and procedures for the rehabilitation of injured workers: – s109 > provide suitable employment if requested by the worker within 6 months from the day the worker became entitled to compensation: – s105 & s106; and > comply with obligations imposed by insurer's injury management program:– s91 	<ul style="list-style-type: none"> > participate & cooperate in the establishment of a PIP and comply with reasonable obligations arising from that plan, including any medical or surgical treatment, rehabilitation and retraining: – s101 > nominate a treating doctor who is prepared to take part in the worker's PIP : – s102; and > make all reasonable efforts to return to work with the pre-injury employer as soon as possible: – s104 <p>If a worker fails to comply with their obligations, their weekly compensation payments may be stopped: – s113</p>	Second injury arrangements are available to encourage the employment of injured workers: – s108(1)
NEW ZEALAND	<ul style="list-style-type: none"> > employer to take all practicable steps to assist a claimant with their vocational rehabilitation, if ACC notifies them that it is reasonably practicable for the claimant to return to their usual employment with that employer: – s71 	<ul style="list-style-type: none"> > provide medical certificates and other relevant information > authorise ACC to obtain medical and other records > undergo assessment; and > cooperate with ACC in the development of an individual rehabilitation plan and participate 	<p>No direct financial subsidy scheme</p> <p>Recovery of costs can be made from previous insurer if the effects of new injury are exacerbated by a previous injury</p>

UNINSURED EMPLOYERS

In all jurisdictions it is compulsory for employers to have workers' compensation insurance to ensure that workers are covered in case work related injury occurs.

There are instances where workers are not covered for workers' compensation for reasons including:

- > employers not being able to be identified or located
- > employers not maintaining a workers' compensation insurance policy at the time of injury; or
- > insurers defaulting in payments or collapsing

Most jurisdictions have a safety net scheme in place to ensure uninsured injured workers receive the same benefits as covered workers under the various pieces of legislation.

Table 8.1 outlines the uninsured employer's provisions in each jurisdiction.

TABLE 8.1 UNINSURED PROVISIONS

JURISDICTION	UNINSURED PROVISIONS (AS AT 30 JUNE 2007)
COMMONWEALTH	<p>Comcare: No provision within the 'premium' (Commonwealth and ACT Public Sector) component of the scheme. In the self insured (licensee) component of the scheme, prudential arrangements including the requirement for a bank guarantee held by SRC Commission ensures that any under insurance or non payment of liabilities is provided for.</p> <p>Seacare: The Seafarers Safety Net Fund which all scheme employers contribute to on a per-berth basis provides for any uninsured claims arising from the scheme.</p>
VICTORIA	Uninsured Employers and Indemnity Scheme (UEIS). Victoria WorkCover Authority may recover the amount of compensation paid or payable under UEIS from the employer. The UEIS falls under the <i>Accident Compensation (WorkCover Insurance) Act 1993</i> .
NEW SOUTH WALES	Uninsured Liability and Indemnity Scheme (ULIS). The employer is required to repay the amount spent on the claim and legal expenses, plus penalties incurred for not maintaining a workers' compensation insurance policy: – s145 (1987 Act)
SOUTH AUSTRALIA	<p>An employer must not employ workers to whom the Act applies if the employer is not registered with WorkCover: – s59</p> <p>Where an employer fails to make a payment of compensation that the employer is liable to make under the Act (e.g., first two weeks income maintenance), WorkCover shall make that payment of compensation and recover from the employer as a debt the amount payable and an administrative fee fixed in accordance with the regulations, and WorkCover shall take all reasonable steps to recover the debt: – s48</p>
WESTERN AUSTRALIA	Where an employer is uninsured, WorkCover WA may sue and recover the amount paid to the injured worker from the General Account (uninsured fund) to the extent of liability payable under the <i>Workers' Compensation and Injury Management Act 1981</i> . WorkCover WA may sue for and recover from the employer fees, costs and charges incurred by WorkCover WA: – s174 and s174AB
QUEENSLAND	WorkCover may recover from the employer the amount of the payment made together with a penalty equal to 50% of the payment, as well as the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium: – s57
TASMANIA	<p>The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where:</p> <ul style="list-style-type: none"> > the employer is not insured; > the employer has left the State and its whereabouts are unknown; > the employer or licensed insurer has become insolvent; > for any other grounds, there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act. – s.121 <p>The Nominal Insurer will attempt to recover the amount paid in relation to the claim from the employer or insurers involved: – s130</p> <p>An uninsured employer may be prosecuted and, if convicted, may be ordered to pay avoided premiums in addition to any fine the court may impose - s97(10)</p>
NORTHERN TERRITORY	Employer shall pay any amount required under the Act (including costs incurred or monies expended in the conduct of the claim) and pay an amount equal to the highest premium payment for the period there was no cover, to the Nominal Insurer: – s172(3)
AUSTRALIAN CAPITAL TERRITORY	<p>The Default Insurance Fund (DI Fund) provides a safety net to meet the costs of workers' compensation claims where an employer did not have an insurance policy or an approved insurer is wound up or cannot provide the indemnity required to be provided under a policy – s166A. A claim for payment must be made not later than 1 month after the day the person becomes eligible to make the claim or any further time that the DI Fund Manager, application, allows – s170A.</p> <p>If an employer fails to maintain a compulsory insurance policy, the DI fund manager may recover the triple recovery amount (being an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy) as a debt owing by the employer to the DI fund. However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if:</p> <ul style="list-style-type: none"> (a) the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers' compensation under the law of the State – s149
NEW ZEALAND	<p>An employer must pay, in accordance with the Act and regulations made under the Act, levies to fund the Work Account.</p> <p>A person who is required to deliver any statement, document, or other information under s241 and who intentionally fails to do so commits an offence against this Act, and is liable to the penalty specified in s315. ref 242</p>

DISPUTE RESOLUTION

Sometimes parties involved in workers' compensation claims are not satisfied with initial outcomes. For example, an employer may feel that a claim should not be approved, or a worker may feel that they are entitled to more benefits.

The function of *dispute resolution* (see Glossary) is to help injured workers and their employers resolve issues arising from workers' compensation claims at an early stage to prevent the issues going to court.

Such disputes will often lead to delays and increased costs as the process of resolving disputes can go through many channels before an outcome is reached. Each jurisdiction has provisions to resolve disputes.

For statistics on dispute resolution in each jurisdiction, please refer to the Comparative Performance Monitoring Report (www.workplace.gov.au/cpm)

Table 9.1 outlines the dispute resolution processes in each jurisdiction.

TABLE 9.1 DISPUTE RESOLUTION PROVISIONS

JURISDICTION	DISPUTE RESOLUTION PROVISIONS (AS AT 30 JUNE 2007)
COMMONWEALTH	<p>Comcare: Following an internal reconsideration process (s62), if either party (employee or Commonwealth / licensee) to a reconsidered decision is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute). The AAT processes include compulsory conciliation. The AAT has the discretion to make or decline to make a decision in the terms agreed to by the parties. The AAT must be satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal. The AAT can also make determinative decisions. – s64</p> <p>Appeals: A party may apply from the AAT to the Federal Court on questions of law.</p> <p>Seacare: Following a reconsideration process which may involve the assistance of an industry panel, or Comcare officer, if either party to a reconsidered decision is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute): – s88-s91</p> <p>Reconsideration: a claimant who is dissatisfied with an employer's determination can request a reconsideration.</p> <p>The employer with the assistance of an industry panel, or Comcare officer, must reconsider the determination, and decide whether to affirm, revoke or vary the determination in such a manner the employer thinks fit: – s79</p> <p>Appeals: Should a dispute still exist after the reconsideration process, then the claimant may apply to the AAT for review of such a decision: – s88-s91</p>
VICTORIA	<p>Court proceedings must not be commenced (except in the case of a fatality or lump sum claims under the old Table of Maims) unless the dispute has been referred for conciliation and the conciliation officer certifies that the worker has taken all reasonable steps to settle the dispute: – s49</p> <p>Conciliation: Any party to a dispute may refer the dispute for conciliation to attempt to resolve the dispute: – s55</p> <p>If the dispute is resolved by agreement, a conciliation officer will issue a certificate outlining the agreement. Failing agreement, a conciliation officer may give directions, make recommendations or decline to give directions or recommendations or refer a medical question to the Medical Panel: – s56 and s57</p> <p>A direction of a conciliation officer is binding on the parties unless subsequently revoked by that conciliation officer or a Court: – s60</p> <p>Where a claimant has taken all reasonable steps to attempt settlement of the dispute but agreement cannot be reached, a conciliation officer will issue a certificate permitting the claimant to commence court proceedings: – s49</p> <p>Unless a Court orders otherwise, a dispute can be conciliated notwithstanding that court proceedings have been commenced: – s58</p> <p>The Magistrates' Court deals with claims up to \$40,000 and claims for arrears of weekly compensation up to 130 weeks. The County Court deals with all other claims: – s43</p>
NEW SOUTH WALES	<p>Injured workers receive a copy of all information used in any decision regarding their benefits. This means that all information is exchanged and considered before an application for dispute resolution is lodged with the Workers Compensation Commission. An injured worker can ask for a review of the insurer's decision and can seek advice from WorkCover's Claims Assistance Service, which provides access to information and assistance for injured workers and employers regarding claims and disputes.</p> <p>If the dispute is about the level of permanent impairment, an approved medical specialist will review all medical evidence, assess the worker, and make a final determination on the level of permanent impairment for a lump sum compensation payment.</p> <p>Disputes: The Workers Compensation Commission (the Commission) is an independent Statutory Tribunal, which deals with disputed workers' compensation claims (except for coal miners).</p> <p>Any party to a workers' compensation dispute can lodge an application to the Commission, except for disputes about permanent impairment, which can only be lodged by a worker.</p> <p>The District Court has exclusive jurisdiction to examine, hear and determine all coal miner matters (except matters arising under Part 5 of the 1987 Act)</p> <p>Appeals: Appeal provisions exist in relation to decisions of arbitrators and Approved Medical Specialists (AMS), under limited grounds. Appeals against the decision of an arbitrator are determined by a Presidential member; appeals against the assessment of AMS are determined by an Appeal Panel comprising of 2 AMS and 1 arbitrator.</p> <p>Medical Panels: AMS are appointed to assess medical disputes.</p>
SOUTH AUSTRALIA	<p>Reconsideration: Disputed claim determinations on a claim must be reviewed and considered by a person who did not make the disputed decision. The reconsideration of the disputed decision must be completed within 7 days after receiving notice of the dispute: – s91</p> <p>Conciliation: A conciliation officer must seek to identify issues in the dispute and explore the possibilities of resolving the dispute by the agreement of all parties: – s92A</p> <p>Arbitration: Arbitration is conducted by an arbitration officer who did not preside at the conciliation proceedings. After a formal hearing at which the parties attend, a decision is handed down that binds both sides, subject to an application for judicial determination (re-hearing): – s93-s94</p> <p>Judicial Determination: A hearing is before a presidential member of the Tribunal: – s94A</p> <p>Full Bench: The President can refer a matter to the Full Bench: – s94A. An appeal lies on a question of law from a judicial determination to the Full Bench of the Tribunal: – s86</p>

TABLE 9.1 (CONTINUED) DISPUTE RESOLUTION PROVISIONS

JURISDICTION	DISPUTE RESOLUTION PROVISIONS (AS AT 30 JUNE 2007)
WESTERN AUSTRALIA	<p>Conciliation teleconference: The arbitrator may direct the parties to participate in a conciliation teleconference to try and settle the matter: – clause 66 <i>Workers' Compensation (DRD) Rules 2005</i> (the Rules)</p> <p>Conciliation: The arbitrator is not to determine a dispute without first trying to bring both parties to an agreeable settlement: – s185</p> <p>Arbitration: If the matter is not settled at a conciliation conference the arbitrator may determine an application at an arbitration hearing: – clause 71 of the Rules</p> <p>Review: If new information becomes available after an arbitrator's decision has been made, the arbitrator may reconsider the decision and vary, revoke or make any further decisions having regard to the new information: – s186 & s187</p> <p>Commissioner: A party to a dispute may, with the leave of the Commissioner (District Court Judge), appeal to the Commissioner against a decision of an arbitrator: – s247</p> <p>District Court: A party to a proceeding before the Commissioner may appeal to the District Court from a decision of the Commissioner on a question of law</p> <p>Medical Panel: Questions on medical issues, such as conflicting opinions between doctors, can be referred to a Medical Assessment Panel. The Panel also has the ability to determine the nature, extent and degree of permanency of any disability under Schedule 2: – s210(1)</p>
QUEENSLAND	<p>Internal Review by Insurer: Insurer must undertake an internal review of proposed decision to reject the application for compensation. The review is to be undertaken by a person in a more senior position than the person who proposes to make the decision: – s538. Reviewable decisions are outlined in s540</p> <p>Review by Q-COMP: Q-COMP is to hear from both parties and review all relevant information and documentation. Once Q-COMP has reviewed the decision, they can confirm or vary the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with the directions Q-COMP considers appropriate: – s545</p> <p>Appeal to Industrial Magistrate or Industrial Relations Commission: Formal hearing of both sides, where the register can confirm, vary, set aside and substitute another decision, or set aside the decision and return the matter to the decision maker with directions considered appropriate: – s558</p> <p>Appeal to Industrial Court: Court rehears evidence and proceedings and additional evidence if ordered by the Court. The Court's decision is final: – s561-s562</p> <p>Medical Panel: Referral to Medical Assessment Tribunal (MAT). No appeal against a decision by MAT unless fresh medical evidence is submitted to MAT within 12 months of the MAT decision: – s512</p>
TASMANIA	<p>Conciliation: 2 steps: – preliminary stage is to identify issues being disputed and to try and resolve the dispute amicably: – s42D. The next stage is a conciliation conference which provides an opportunity for open and 'without prejudice' discussions based on all available information to facilitate a resolution: – s42E-s42M</p> <p>Arbitration: Formal hearing held in private, where both parties give evidence. Orders made by the Tribunal are final and binding: – s44-s49</p> <p>Appeal to Supreme Court: Can only appeal on points of law: – s58</p> <p>Medical Panel: The Tribunal may refer a medical question to a medical panel when there is conflicting medical opinion, and one of the parties wishes to continue with proceedings. The determination of the medical panel is binding on the Tribunal: – s51 and s63(1)</p>
NORTHERN TERRITORY	<p>Mediation: To try and resolve disputes by having discussions with each party. The mediator may make recommendation to parties in relation to resolution of dispute: – s103B - s103E</p> <p>Work Health Court: Proceedings are conducted with little formality and technicality. The Court may determine the application by confirming, disallowing or substituting the determination: – s111 - s114</p> <p>Appeal to Magistrate: Appeals can be made to Magistrate except for interim determinations: – s114A</p> <p>Supreme Court: Points of law can be referred to the Supreme Court: – s115 & s116</p> <p>Claimant is not entitled to commence court proceedings unless an attempt of resolution had been made through mediation: – s103J(1)</p>
AUSTRALIAN CAPITAL TERRITORY	<p>Conciliation: parties must make a genuine effort to reach an agreement. Conciliation must occur before arbitration unless there is an issue with the insurer rejecting a claim for compensation.</p> <p>The conciliation officer may decide claim for compensation is not suitable for conciliation or the issue is unresolved and may make a recommendation. If parties agree, the record of agreement must be in writing: – Part 6 Regulations</p> <p>Arbitration: If conciliation is unsuccessful or compensation claim has been rejected by the insurer, the matter must be decided by the Committee unless the Committee refers the matter to the Magistrates Court: – Part 7 Regulations</p> <p>Magistrates Court: Appeals or referrals by the Committee: – Part 7 Regulations</p> <p>Medical Referees: Medical referees may be requested throughout the resolution process to prepare a report to help parties reach an agreement: – Part 7 Regulations</p>
NEW ZEALAND	<p>An employer may apply to the Corporation for a review of its decision that a claimant's injury is a work-related personal injury suffered during employment with that employer.</p> <p>A claimant may apply to the Corporation for a review of –</p> <ul style="list-style-type: none"> (a) any of its decisions on the claim (b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay; or (c) any of its decisions under the Code on a complaint. <p>Levy payers can also ask for a review of any levy paid or payable</p> <p>Reviews are conducted by an independent reviewer. A review decision can be appealed to the District Court.</p> <p>Appeals on questions of law can be taken to the High Court and the Court of Appeal.</p>

COMMON LAW ACCESS

Before the introduction of statutory workers' compensation schemes, injured workers had to sue their employers under *common law* (see Glossary) to receive any benefits. Common law actions were far less restrictive than statutory schemes, and could have potentially provided injured workers with larger benefits. If an injured worker had a cause of action, they were entitled to bring such an action and were entitled to a wide variety of damages, and there were no caps placed on the amount of damages they could receive. Each case was decided on its individual merits and there was no guarantee of success, unlike statutory entitlements that are fixed in law.

However, with the introduction of statutory 'no fault' workers' compensation schemes, and with the benefit of reducing costs for all parties involved, access to common law has been significantly restricted and the worker has to prove the employer's negligence before any common law action can succeed.

Some jurisdictions have:

- > abolished the right to access common law or
- > introduced *threshold tests* (see Glossary) and/or
- > placed restrictions on *types of damages* (see Glossary) that an injured worker can receive; and/or
- > placed caps on the amount of damages that can be awarded

Despite these restrictions, some injured workers still want to pursue common law because they feel that the benefits under workers' compensation are inadequate. However, if an injured worker elects to pursue common law, they may have to reimburse their employer or WorkCover Authority for any statutory benefits paid out.

Table 10.1 outlines the access to common law in each jurisdiction.

TABLE 10.1 COMMON LAW PROVISIONS AS AT 30 JUNE 2007

JURISDICTION: COMMONWEALTH			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes (limited)	<p>If compensation is payable under the permanent impairment provisions and the employer is liable for damages, the worker is able to make an irrevocable election to take action for damages: – s45</p> <p>[Seafarers Act: – s55]</p>	<p>Where an injury has resulted in the employee's death, the dependant of that employee is able to take a damages action against the Commonwealth: – s44(3)</p> <p>Damages include any non-economic loss, including pain and suffering, suffered by the worker. Such a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.</p> <p>A worker is able to take action for damages against third parties, subject to the laws of the relevant State/Territory legislation.</p>	<p>Damages shall not exceed \$110,000 [\$138,570.52 under Seacare].</p> <p>These amounts are not indexed.</p>
JURISDICTION: VICTORIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>To obtain common law damages, a worker must first be granted a 'serious injury' certificate. There are two ways a worker can obtain a 'serious injury' certificate:</p> <ol style="list-style-type: none"> during the impairment assessment process, be assessed as having a whole person impairment of 30% or more (can combine physical and mental impairments); or the Authority or the County Court determines that the worker has a 'serious injury' pursuant to the narrative test. (Accident Compensation Act 1985: – s134AB(37)) <p>A worker has the option of having their whole person impairment assessed first or by-passing the impairment assessment process and relying on the narrative test. Either way, the worker must make a serious injury application and have that application accepted or rejected by the Authority before they can proceed to the next step.</p> <p>If the worker's impairment assessment is under 30% and/or their serious injury application relying on the narrative test has been rejected, the worker has 30 days to issue County Court proceedings for a Judge to determine whether they have a 'serious injury' on the narrative test: – s134AB</p> <p>A worker can have a 'serious injury' that entitles them to pursue pain and suffering damages only and/or economic loss damages. To qualify for serious injury status for economic loss if serious injury is determined under the narrative test the worker must prove they have suffered and will continue to suffer a loss of earning capacity of 40% or more: – s134AB(37) and s134AB(38)</p>	<p>Damages for pain and suffering and/or economic loss may be pursued. There are additional requirements to prove a permanent loss of 40% earning capacity to be able to pursue economic loss damages: – s134AB</p> <p>If pain and suffering damages are awarded the amount must be reduced by any lump sum impairment benefit paid: – s134AB(36)</p> <p>If economic loss damages are awarded the amount is reduced by any past weekly payments made to the worker: – s134AB(36)</p> <p>No interest is payable on damages: – s134AB(34)</p> <p>There is a continued right to medical and like expenses if damages are paid: – s99(13)</p>	<p>Damages for pain and suffering must not be awarded if the amount is less than \$45,590: – s134AB(22)</p> <p>Maximum amount for pain and suffering damages is \$462,720: – s134AB(22)</p> <p>Damages for economic loss must not be awarded if the amount is less than \$47,210: – s134AB(22)</p> <p>Maximum amount for economic loss damages is \$1,062,800: – s134AB(22)</p>

TABLE 10.1 (CONTINUED) COMMON LAW PROVISIONS AS AT 30 JUNE 2007

JURISDICTION: NEW SOUTH WALES			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes (limited)	<p>To be eligible to take action under common law, three criteria must be met:</p> <ul style="list-style-type: none"> > worker must demonstrate negligence of the employer or a person for whom the employer is vicariously liable or a person who is vicariously liable for the employer > worker must have a permanent impairment that is at least a 15% whole person impairment; and > claim cannot be started for at least six months after the worker gave notice of the injury to the employer, or not more than three years after the date of injury: – Part 5, Division 3 (1987 Act) 	<p>Damages are paid as one lump sum, to cover past and future economic loss only. Damages can be reduced if the worker's own negligence contributed to the injury: – Part 5, Division 3 (1987 Act)</p>	<p>A common law settlement cancels all other entitlements to workers' compensation benefits: – Part 5, Division 2 (1987 Act)</p> <p>If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme.</p>
JURISDICTION: SOUTH AUSTRALIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
No			
JURISDICTION: WESTERN AUSTRALIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>As of 14 November 2005 access to common law is based on the worker's degree of whole person impairment. The threshold for accessing common law is not less than 15% WPI. Secondary psychological, psychiatric and sexual conditions are excluded: – Part IV, Subdivision 3</p> <p>Causes of action that occurred before 14 November 2005 are dealt with under the old previous law regimes: – Part IV, Subdivision 2 – s93D & s93E</p>	<p>A worker has the right to obtain damages, however damages shall be reduced by the amount of compensation paid to the worker.</p>	<p>Where a worker has a WPI of less than 25% the maximum amount of damages that may be awarded is \$319,349 (indexed annually): – s93K</p> <p>Unlimited common law is available to a worker with a WPI of greater than 25%.</p>
JURISDICTION: QUEENSLAND			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes	<p>If the worker has WRI of less than 20% or no WRI, the worker must decide to either accept the lump sum payment or seek damages: – s189</p>	<p>A worker has the right to seek common law damages, however these are reduced by the amount of compensation paid to the worker.</p>	<p>Unlimited.</p>
JURISDICTION: TASMANIA			
ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
Yes: – s133	<p>A worker must suffer at least 30% WPI before he or she can elect to commence proceedings for an award of damages.</p>	<p>A worker has the right to obtain damages, however damages shall be reduced by the amount of compensation paid to the worker.</p>	<p>–</p>

TABLE 10.1 (CONTINUED) COMMON LAW PROVISIONS AS AT 30 JUNE 2007

JURISDICTION: NORTHERN TERRITORY

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
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Common law rights against employer or fellow worker abolished for injuries occurring after 1 January 1987.

JURISDICTION: AUSTRALIAN CAPITAL TERRITORY

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
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Yes: – s184	-	A worker has the right to obtain damages, however damages shall be reduced by the amount of compensation paid to the worker.	Unlimited, outside of workers' compensation scheme.
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JURISDICTION: NEW ZEALAND

ACCESS TO COMMON LAW	THRESHOLD TEST	TYPES OF DAMAGES	LIMITS
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People do not have the right to sue for personal injury, except for exemplary damages.	No threshold	These damages are punitive, and aimed at punishing the conduct of the offender. They are not intended to compensate for the injury	-
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CROSS-BORDER PROVISIONS

Workers' compensation schemes vary significantly between jurisdictions, which can lead to confusion for employers and workers. All jurisdictions have acknowledged this and have implemented, or will implement, *cross-border provisions* (see Glossary) which are based on the National Cross-Border Model developed by HWCA.

Cross-border provisions provide coverage for workers who travel to or work temporarily in different jurisdictions, as long as workers meet a 'state of connection' test.

An injured worker's State or Territory of connection is determined by the following tests:

Test A - The Territory or State in which the worker usually works in that employment or

Test B - If not identified through (A) – the Territory or State in which the worker is usually based for the purposes of that employment; or

Test C - If not identified through (A) or (B) – the Territory or State in which the employer's principal place of business in Australia is located.

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

These tests are hierarchical, so if the first test does not provide an answer, the next test is applied until the worker's status is determined. Special arrangements apply for workers on ships and a safety net also applies.

Table 11.1 shows the status of implementation of the national cross-border model in each jurisdiction.

TABLE 11.1 CROSS-BORDER PROVISIONS AS AT 30 JUNE 2007

JURISDICTION	CROSS-BORDER PROVISIONS
COMMONWEALTH	<p>Comcare: There are no formal cooperative arrangements with other jurisdictional compensation authorities, as the Commonwealth scheme does not operate on a geographical basis.</p> <p>Seacare: State/Territory compensation schemes have no application if Seafarers Act applies.</p>
VICTORIA	<p>National cross-border model implemented from 1 September 2004.</p> <p>Effective from 1 July 2005, Victorian legislation imposed a Victorian premium liability on employers only in respect of workers who are connected to Victoria as defined.</p>
NEW SOUTH WALES	National cross-border model implemented on 1 January 2006.
SOUTH AUSTRALIA	<p>As at 30 June 2007, there were no formal cooperative arrangements with other jurisdictional compensation authorities.</p> <p>It should be noted that the National cross-border model commenced in South Australia on 1 January 2007.</p>
WESTERN AUSTRALIA	National cross-border model implemented 22 December 2004.
QUEENSLAND	National cross-border model implemented as at 1 July 2003.
TASMANIA	National cross-border model implemented from December 2004.
NORTHERN TERRITORY	National cross-border model implemented from 26 April 2007.
AUSTRALIAN CAPITAL TERRITORY	National cross-border model implemented on 3 June 2004.
NEW ZEALAND	The ACC scheme covers New Zealand residents injured outside of New Zealand if they have been or remain absent for less than six months or intend to be absent for less than six months. Additional cover can be purchased for up to 24 months.

RECENT DEVELOPMENTS

COMMONWEALTH

Changes to the **Safety, Rehabilitation and Compensation Act 1988** (SRC Act) came into effect on 13 April 2007.

In summary, the amendments seek to:

- > strengthen the required connection between work and eligibility for workers' compensation, particularly in relation to disease and psychological claims so that only significant contribution by work will be accepted.
- > remove workers' compensation coverage for journeys between residence and usual place of employment and from recess breaks away from the place of employment where there is a lack of employer control over activity
- > provide for claimants who are no longer employed by the Commonwealth (or a licensee) to have their capacity to work outside Commonwealth (or licensee) employment to be taken into account when calculating incapacity benefits.

A number of the amendments were also beneficial to employees such as an increase to funeral benefits (to \$9,000) and an increase to weekly benefits paid to retired employees.

The amendments are similar to those that have been made in other schemes and make a clearer link between what is in the employer's control and responsibility and compensation. These improvements will better align the SRC Act to the duties of employers and employees under the **Occupational Health and Safety Act 1991**.

VICTORIA

The **Accident Compensation Act 1985** was amended on 15 August 2007 to clarify the financial guarantee requirements on employers who exit the Victorian WorkCover scheme (or Victorian self insurer arrangements) to self insure under the federal Comcare scheme. Furthermore an offence provision has been included to ensure enforcement against non-compliant employers. The Act was also amended to mandate the return of the management of tail claim liabilities to the Victorian WorkCover Authority for Victorian self insurers who cease their self insurance arrangements under the Victorian scheme. This removed a discretion that ceased self insurers previously had.

The **Transport Accident and Accident Compensation Acts Amendment Act 2007**, relevant parts of which commenced on 19 September 2007, subsequently also amended the Act to restore the original approach to the assessment of permanent impairment for injured workers with spinal injuries. This was in response to the decision of the Full Court of the Supreme Court in **Mountain Pine Furniture Pty Ltd v Taylor**. The amendment provides that the assessment of permanent impairment is only to be carried where the worker's injury has stabilised, and taking into account the effects of any surgery.

The Bill also amended the Act to confirm and clarify that compulsory employer superannuation payments are not taken into account in the calculation of weekly benefit compensation. This approach was thrown into doubt by a Northern Territory Supreme Court decision that found that employer superannuation should be included in the calculation of an injured worker's average weekly earnings.

Another amendment effected by the Bill was an increase in the cap on counselling benefits for the families of deceased or seriously injured workers or transport accident victims to \$5000 (under the WorkCover scheme the maximum was previously \$1960).

NEW SOUTH WALES

As a result of the sustained improvement in the overall performance of the NSW WorkCover Scheme, workers' compensation premium rates for NSW employers have been reduced on four separate occasions since 31 December 2005. The premium rate reductions included:

- > a five per cent reduction for policies commencing on or after 31 December 2005
- > a ten per cent reduction for policies commencing on or after 30 June 2006
- > a five per cent reduction for policies commencing on or after 31 December 2006
- > a five per cent reduction for policies commencing on or after 30 June 2007.

A ten per cent increase in lump sum compensation benefits for permanent impairment (whole person impairment) applied to all types of permanent impairment arising from injuries received on or after 1 January 2007.

New arrangements in the management of workers' compensation claims were implemented on 1 November 2006. These arrangements improve claims decision making in order to prevent disputes, and aim to efficiently resolve any disputes that do occur. Inappropriate disputes about insurer decisions will be prevented by the full exchange of all information relevant to a decision between the injured worker and the insurer. Unnecessary disputes will also be prevented by a safety mechanism that facilitates quick correction of errors. An injured worker can ask for a review of the insurer's decision and can seek intervention from WorkCover's Claims Assistance Service. This is an essential pre-requisite prior to lodging an Application for Dispute Resolution at the Workers Compensation Commission

To support the changes, WorkCover revised and gazetted the following guidelines in consultation with all relevant parties:

- > Claiming compensation benefits
- > Independent medical examinations and reports
- > Medical assessment
- > Evaluation of permanent impairment
- > Interim payment directions by the Workers Compensation Commission.

The Workers Compensation Commission Rules and practice directions were also revised.

A new costs regime has been introduced, which fixes maximum costs for legal or agent services in connection with workers' compensation matters. The new arrangement is based on a 'lump sum' costs model covering the overall costs in resolving a claim or dispute and supports the revised claims management and dispute procedures.

The new schedule of fees was developed to reward legal practitioners for early resolution of a dispute.

SOUTH AUSTRALIA

Territorial Provisions

On 26 September 2006, the *Workers Rehabilitation & Compensation (Territorial Application of Act) Amendment Act 2006* was passed in Parliament. The changes became effective on 1 January 2007.

The legislation brings South Australia's territorial provisions into line with those of the other states, as part of a national model of territorial/cross-border legislation.

The new legislation will benefit employers by ensuring that they only have to pay into one workers' compensation system for each worker, irrespective of temporary movements interstate.

In relation to injured workers, every worker will be covered by a scheme, so no worker or their dependants will be denied compensation due to 'falling between the cracks' in states' workers' compensation systems.

Limited retrospectivity and 'ex gratia' payment provisions are included in the legislation to ensure workers injured before 1 January 2007 who have previously fallen through the cracks are not forgotten. These particular provisions came into force on 13 September 2007 and will operate for six months ending 12 March 2008.

Specifically:

- > Limited 'retrospective' payments will be available to those who have made a claim for compensation before 1 January 2007, and were rejected on territorial grounds at the time. The payment will include weekly payments up to a maximum of 12 months, and unlimited medical expenses, although lump sum payments for permanent impairment will not be included.
- > An 'ex gratia' payment may be made, at the complete discretion of the WorkCover Board, to either someone who has made unsuccessful claims, or someone who has never made a claim. WorkCover must be satisfied that there is substantial hardship and that it is appropriate that payments be made.

More detail on these two forms of special payment can be found on the WorkCover SA website. For more information please contact WorkCover SA's Service Centre on 13 18 55.

Domestic Partners

The *Statute Amendment (Domestic Partners) Act 2006* ('Domestic Partners Act'), which came into force on 1 June 2007, amends the *Workers Rehabilitation and Compensation Act 1986* (WRC Act) and numerous other Acts to provide for recognition of certain domestic relationships.

For the purposes of this Act, a person is considered to be the domestic partner of a worker if he or she lives with the worker in a close personal relationship and the person has been so living with the worker continuously for the preceding period of three years or variations thereof.

The Domestic Partners Act changes the 'Interpretation' ([section 3](#)), 'Compensation payable upon death' ([section 44](#)) and 'Transitional provisions' sections ([Schedule 1](#)) within the WRC Act.

Specifically, the Act includes:

- > a definition of 'close personal relationship' within [section 3](#) of the WRC Act, to mean the relationship between two adult persons (whether or not related by family, and irrespective of their gender) who live together as a couple on a genuine domestic basis; and
- > a definition of 'domestic partner'.

Further, it amends two other definitions of 'relative' to include a reference to domestic partner, and amends the definition of 'spouse'.

In circumstances where compensation is payable upon death, the WRC Act has been expanded to include references to domestic partners, not only spouses.

A copy of the Domestic Partners Act may be found on the South Australian Legislation [website](#).

Retirement Provisions

On 26 September 2006, the Minister for Industrial Relations, the Hon Michael Wright, released a draft Bill to stakeholders for consideration on amendments to the existing retirement age provisions in the *Workers Rehabilitation and Compensation Act 1986*.

The Bill aims to extend the period of weekly payment from six months to two years.

The Minister is considering the responses to the consultation before progressing with the Bill.

Jockeys

The purpose of the Workers Rehabilitation and Compensation (Claims and Registration) Variation Regulations 2007 was to bring South Australia into line with all other States (except Tasmania) with regard to the treatment of “licensed jockeys” while they are engaged in ‘thoroughbred riding work’. Both terms are defined in the Regulations.

The new Regulation 5(1)(g) has the effect of deeming licensed jockeys engaged in ‘thoroughbred riding work’ as being workers for the purpose of the Act. It further deems that Thoroughbred Racing SA will be taken to be his or her employer.

The new Regulation took effect from 1 June 2007. Prior to that date, only apprentice jockeys with a contract of employment with a trainer, or jockeys who were working directors of their own incorporated company were covered.

If the work involved riding other than ‘thoroughbred riding work’, that may be grounds for rejection on the basis the jockey was not undertaking prescribed work. However, care must be taken to ensure the proper status of the jockey and the nature of the work involved when the injury (referred to as ‘disability’ in the Regulations) occurred are adequately investigated prior to decision. If the jockey is an apprentice, then he/she may be covered anyway by virtue of the fact that a contract of employment exists with the trainer responsible for the apprenticeship. If the jockey is a working director of his/her own company, then he/she may be covered as a working director. In both these cases, even though ‘thoroughbred riding work’ was not involved, the injuries may well be compensable.

Review into the South Australian Workers Rehabilitation and Compensation Scheme

The Government, with the support of the Chairman of the WorkCover Board, Mr Bruce Carter, has commissioned appropriately qualified and independent experts to review and report on proposals put to the Government by the WorkCover Board.

The review shall consider the proposals of the WorkCover Board arising from its report dated November 2006 for changes to the *Workers Compensation and Rehabilitation Act 1986* and make recommendations to the Minister for Industrial Relations about those proposals and any modifications or alternatives thereto (including those relating to weekly benefits, lump sum payments and other entitlements, levy structures, cost efficiency and dispute resolution) having regard to the following objectives:

- > Injured workers should receive fair and equitable financial and other support that should be delivered efficiently and equitably and enable the earliest possible return to work.
- > The average employer levy rate should be reduced and contained within the range of 2.25% to 2.75% by July 1 2009.
- > The scheme should be fully funded as soon as practicable having regard to the above objectives.

The Review will:

- > Investigate the operation of the current workers' compensation scheme under the Act in terms of the balance between equitable provision for the needs of injured South Australian workers and scheme affordability for South Australian employers.
- > Consider and report upon a comparison of the entitlements structure and average premium rates under the South Australian scheme and those in other Australian jurisdictions.
- > Assess the adequacy and efficiency of incentives for employers to reduce the incidence of injuries, illness and claims and achieve the effective rehabilitation and return to work of injured and ill workers.
- > Assess the likely financial impact, and impact on levy rates, of recommendations arising from the review.

The review may, at its discretion, arrange for independent actuarial evaluation and social or economic impact assessment of the proposals that it considers are necessary to properly inform its deliberations and the deliberations of the Government and invite written submissions from the public or interested parties relevant to its deliberations.

The review was released on 26 February 2008.

WESTERN AUSTRALIA

In late 2004, the State Government gave an undertaking that an evaluation of the 'impact of the legislative reforms' associated with the **Workers' Compensation Reform Act 2004** would be undertaken after a full financial year of operation. The responsibility for undertaking the evaluation lies with WorkCover WA.

Following feedback from stakeholder groups WorkCover WA prepared an Evaluation Report of the 2005 legislative reforms that were introduced in two stages in January 2005 and November 2005. The report is now available on the WorkCover WA website.

QUEENSLAND

The **Workers' Compensation and Rehabilitation Act 2003** was amended in March 2006 to protect the original objectives of the Medical Assessment Tribunals (MATs) and to ensure their independent and non-adversarial role. The amendment was subsequent to a Queensland Court of Appeal decision which held that self-insurers had a right to hear, see and comment on submissions made to MATs. Some of the implications arising out of this decision included protracted delays for the processing of cases and increased expenses for insurers and employers.

The **Workers' Compensation and Rehabilitation Act 2003** was again amended in May 2006 to transfer from the **Queensland Industrial Relations Act 1999** to the **Workers' Compensation and Rehabilitation Act 2003** the protection, for twelve months, for workers who have sustained a work-related injury or disease from dismissal solely or mainly because the worker is not fit for employment.

TASMANIA

A Bill is currently being considered by Parliament to make a number of amendments to the Workers Rehabilitation and Compensation Act 1988. If passed, the changes will make the system fairer for workers and employers and provide greater certainty for all parties.

The key proposed changes include:

- > improved compensation for industrial deafness. In the past some workers were unable to establish a claim for industrial deafness because their employer has failed to conduct baseline audiometric testing – the amendments have rectified this.
- > a fairer method of calculating the rate of weekly compensation, especially for workers who have a short employment history and where the award does not include an ‘ordinary-time rate of pay’.
- > workers’ compensation coverage for jockeys.
- > addressing a Supreme Court decision that limited the ability of employers to recover compensation costs from a negligent third party.
- > clarifying coverage of luxury hire car drivers and consolidating provisions relating to taxi drivers.
- > amending the work-relatedness test for injury from ‘arising out of and in the course of’ to ‘arising out of or in the course of’, so it is clear that injuries can be compensable even when symptoms only become apparent after the worker has left the relevant employment (however to be compensable all injuries and diseases must be caused by work). This change will bring Tasmania in line with other Australian States and Territories.
- > measures to better deal with disputes between insurers or disputes between employers. This is to ensure that payment of compensation is not delayed because of a dispute between insurers or between employers.

Other proposed changes in the Bill will:

- > suspend weekly payments while the worker is in prison.
- > require employers to display a summary of the Act and evidence of insurance cover.
- > require employers to keep relevant employment records.
- > make clearer that weekly payments are to be paid in the same way that wages were paid (unless there is a genuine agreement on an alternative method).

NORTHERN TERRITORY

‘Cross border’ amendments to the Work Health Act commenced on 26 April 2007 so employers are only required to maintain a workers’ compensation policy in the Northern Territory when they employ workers with a ‘State of Connection’ to the Northern Territory.

The new cross border arrangements reduce red tape for employers and make it easier to do business by removing the need for the majority of employers to obtain multiple workers’ compensation policies for workers who are temporarily working interstate.

All the other Australian states and territories have introduced cross border provisions that allow workers to work across their borders for temporary periods, under an existing NT workers’ compensation policy.

AUSTRALIAN CAPITAL TERRITORY

The ACT Government initiated an independent Review of the ACT Workers' Compensation Scheme late in 2006. A consortium led by Australian Health and Safety Services Pty Ltd along with partners, Canberra office of national law firm Dibbs Abbott Stillman and Melbourne based actuaries Cumpston Sarjeant Pty Ltd., was engaged to undertake the review. After an intensive stakeholder consultation phase through the first half of 2007, the consortium provided a final report to Government in August 2007. The Minister for Industrial Relations subsequently referred the report to the Government's principal advisory body on OHS and workers' compensation matters, the OHS Council, for their advice. Comments are expected early in 2008.

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

NEW ZEALAND

The *Injury Prevention, Rehabilitation, and Compensation (IPRC) Amendment Act 2007* came into force on 1 April 2007.

This legislative amendment to the IPRC Act 2001 established a new merged Work Account that incorporates the Self-Employed Work Account and Employers' Account and their respective reserves and liabilities. The IPRC (Employer Levy) Regulations and the IPRC (Self-Employed Work Account Levies) Regulations were also replaced with a single set of Levy Regulations covering levies for employers and self-employed.

Also in the 2007 amendment act, the Medical Misadventure Account was renamed as Treatment Injury to better reflect the intention of this cover.

JURISDICTIONAL RESPONSIBILITY FOR WORKERS' COMPENSATION

TABLE 13.1 JURISDICTIONAL RESPONSIBILITY FOR WORKERS' COMPENSATION POLICY, PREMIUMS, CLAIMS AND DISPUTES.

JURISDICTION	POLICY	PREMIUM	CLAIMS	DISPUTES
COMMONWEALTH	Department of Employment and Workplace Relations and Comcare	Comcare	Comcare and for self insurers, the employers	Comcare, AAT, Federal Court
VICTORIA	Victorian WorkCover Authority	Victorian WorkCover Authority	Private sector agents	VWA, Accident Compensation Conciliation Service (ACCS), Magistrates' or County Court
NEW SOUTH WALES	WorkCover NSW	WorkCover NSW	Private sector agents For self and specialised insurers, the employer	WorkCover NSW, Workers Compensation Commission
SOUTH AUSTRALIA	WorkCover SA	WorkCover SA	Single private sector agent Employers Mutual	Workers Compensation Tribunal
WESTERN AUSTRALIA	WorkCover WA	WorkCover WA	Private sector agents	Dispute Resolution Directorate, Commissioner, District Court
QUEENSLAND	Department of Employment and Industrial Relations	WorkCover Queensland	WorkCover Queensland and self insurers	Q-COMP, Industrial Magistrate, Industrial Relations Commission, Industrial Court
TASMANIA	Department of Justice WorkCover Tasmania	Licensed insurers Oversight by WorkCover Tasmania	Licensed insurers	Workers Rehabilitation and Compensation Tribunal, Workers Compensation Commissioner, Supreme Court
NORTHERN TERRITORY	Department of Employment, Education & Training	Private sector agents	Private sector agents	NT WorkSafe (mediation), Work Health Court
AUSTRALIAN CAPITAL TERRITORY	Office of Industrial Relations	Private sector agents	Private sector agents	Conciliation, arbitration, Magistrates Court
NEW ZEALAND	Department of Labour	Accident Compensation Corporation	Accident Compensation Corporation	Accident Compensation Corporation, mediation, Dispute Resolution Services Limited, court system

JURISDICTION CONTACTS

TABLE 14.1 JURISDICTIONAL CONTACTS

	CONTACT	POSITION	PHONE NO.	FAX NO.	EMAIL	POSTAL ADDRESS	INTERNET
COMCARE	Alex O'Shea	Director, SRC Policy	1300 366 979	(02) 6276 0310	o'shea.alex@comcare.gov.au	SRC Policy, Comcare, GPO Box 9905, CANBERRA ACT 2601	www.comcare.gov.au
SEACARE	Phillip Beaumont	Manager, Seacare Authority	(02) 6275 0082	(02) 6275 0067	beaumont.phillip@comcare.gov.au	Seafarers' Safety, Rehabilitation and Compensation Authority GPO Box 9905, CANBERRA ACT 2601	www.seacare.gov.au
VICTORIA	Elizabeth McDowall	Senior Corporate Adviser, Scheme Policy	1800 136 089 (general) (03) 9641 1292 (specific)	(03) 9641 1769	elizabeth_mcdowall@worksafe.vic.gov.au	Victorian WorkCover Authority GPO Box 4306 MELBOURNE VIC 3001	www.worksafe.vic.gov.au
NEW SOUTH WALES	WorkCover Assistance Service		13 10 50		contact@workcover.nsw.gov.au	WorkCover NSW, Locked Bag 2906, LISAROW NSW 2252	www.workcover.nsw.gov.au
SOUTH AUSTRALIA	Paul McEvoy	Manager, Policy and Government Relations, Strategy	131 855 (general enquiries) (08) 8233 2544 (specific enquiries)	(08) 8233 2044	pmcevoy@workcover.com	Policy and Government Relations, WorkCover Corporation, GPO Box 2668, ADELAIDE SA 5000	www.workcover.com
WESTERN AUSTRALIA	Paul Brookes	Principal Policy Officer	(08) 9388 5569	(08) 9388 5550	paul.brookes@workcover.wa.gov.au	Scheme Development WorkCover Western Australia, 2 Bedbrook Place SHENTON PARK WA 6008	www.workcover.wa.gov.au
QUEENSLAND	Bevan Hughes	Director, Workers' Compensation Policy Branch, Department of Employment and Industrial Relations	(07) 3247 4652	(07) 3404 3550	bevan.hughes@deir.qld.gov.au	Department of Employment and Industrial Relations, GPO Box 69, BRISBANE QLD 4001	www.deir.qld.gov.au

TABLE 14.1 (CONTINUED) JURISDICTIONAL CONTACTS

	CONTACT	POSITION	PHONE NO.	FAX NO.	EMAIL	POSTAL ADDRESS	INTERNET
TASMANIA	Rod Lethborg	Principal Policy Advisor, Workers' Compensation	(03) 6233 3182	(03) 6233 8338	Rod.Lethborg@justice.tas.gov.au	Workplace Standards Tasmania, PO Box 56 ROSNY PARK TAS 7018	www.justice.tas.gov.au
NORTHERN TERRITORY	Ros Miller	Assistant Manager, Compensation and Rehabilitation	(08) 8999 5015	(08) 8999 5141	ros.miller@nt.gov.au	Rehabilitation and Compensation Unit, NT WorkSafe, GPO Box 4821, DARWIN NT 0801	www.worksafe.nt.gov.au
AUSTRALIAN CAPITAL TERRITORY	Brett Phillips	Executive Director, Office of Regulatory Services, Dept of Justice and Community Services	(02) 6205 5074	(02) 6207 0538	Brett.phillips@act.gov.au	GPO Box 158, CANBERRA ACT 2601	www.ors.act.gov.au/
	Liesl Centenera	Director, Office of Industrial Relations, Chief Minister's Department	(02) 6207 6003	(02) 6207 6775	Liesl.centenera@act.gov.au	GPO Box 158, CANBERRA ACT 2601	www.cmd.act.gov.au
NEW ZEALAND	Keith McLea	General Manager, Levy and Scheme Management	00 64 4 918 7700 (general) 00 64 4 918 7665 (specific)	00 64 4 918 7351	keith.mclea@acc.co.nz	Accident Compensation Corporation, P O Box 242, Wellington, New Zealand	www.acc.co.nz

OTHER WORKERS' COMPENSATION SCHEMES

Some jurisdictions have minor pieces of workers' compensation legislation in place that relate to a specific group of workers, for example coal miners and members of the Australian Defence Force.

These pieces of legislation can override the jurisdiction based legislation or can be in conjunction with the jurisdiction's workers' compensation legislation.

The following tables provide information on the jurisdictions who have minor workers' compensation schemes in place.

COMMONWEALTH

ADMINISTRATIVE SCHEME FOR BRITISH NUCLEAR TEST PARTICIPANTS

ADMINISTERED BY	<u>Comcare</u>
PURPOSE	<p>In 1950, the Australian Government agreed to a British request that nuclear weapons tests be conducted in Australia. The weapons tests took place between October 1952 and October 1957 and were undertaken at three locations: Maralinga and Emu Field in South Australia and the Monte Bello Islands in Western Australia. Additional "minor" trials were conducted until 1963.</p> <p>An acknowledged study showed a possible increase in the risk of test participants developing multiple myeloma and leukaemia (other than chronic lymphatic leukaemia).</p> <p>The British Government extended its war pensions scheme to cover British participants who suffered from these conditions. As the activities of Australian and British personnel at the sites were similar, the Commonwealth Government decided to introduce a scheme to cover Australian participants.</p> <p>The scheme provided payment of compensation to those Australian participants in the atomic tests (and to the dependants of those participants in death cases) who developed leukaemia (other than chronic lymphatic leukaemia) in the first 25 years after participation.</p>
COVERAGE	For pastoralists, contracted civilians and indigenous persons in the vicinity of or in the pathway of fallout from the British Atomic Weapons testing program who were likely to have been exposed to radiation and who have suffered adverse health effects.
NUMBER COVERED	This scheme has now closed.
BASIS FOR LEGISLATION	The type of compensation is based on the <i>Safety, Rehabilitation and Compensation Act 1988</i> (and its antecedents) provisions.

SPECIAL ADMINISTRATIVE SCHEME AND ACT OF GRACE SCHEME

ADMINISTERED BY	<u>Department of Education, Employment and Workplace Relations</u>
PURPOSE	The Special Administrative Scheme provides compensation to any participant in the atomic test programme who has developed leukaemia (other than chronic lymphatic leukaemia) within the first 25 years of participation in the tests. The Act of Grace Scheme enables plaintiffs with common law actions issued and served on the Commonwealth in 1988 and up to September 1989 to apply to have their cases assessed outside the court system.
COVERAGE	<p>Defence Force personnel have access to the Special Administrative Scheme and an Act of Grace Scheme</p> <p>The Act of Grace Scheme enabled plaintiffs with common law actions, issued and served on the Commonwealth in 1988 and up to 4 September 1989, to have their cases assessed on their merits outside the court system. It was a short 'window of opportunity' for some common law applicants to have their claims resolved quickly under the <i>Safety, Rehabilitation and Compensation Act 1988</i>.</p>
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	The preservation of Common Law rights for actions instituted pre 1989 having regard to the <i>Safety, Rehabilitation and Compensation Act 1988</i> provisions.

MILITARY REHABILITATION AND COMPENSATION ACT 2004

ADMINISTERED BY	The <u>Military Rehabilitation and Compensation Commission</u> regulates the scheme and that Commission with the assistance of the <u>Department of Veterans Affairs</u> administers the scheme.
PURPOSE	<p>The Military Rehabilitation and Compensation Scheme (MRCS) provides rehabilitation, treatment and compensation for Australian Defence Force members who suffer mental or physical injury or contract a disease as a result of military service on or after 1 July 2004. It also provides compensation to their eligible dependants if their death, on or after 1 July 2004, is related to that service, if they were entitled to maximum permanent impairment compensation, or, had been eligible for a Special Rate Disability Pension.</p> <p>The MRCS has a focus on providing rehabilitation services to help injured or sick personnel make as full a recovery as possible and, if possible, return to their normal duties. MRCS also increases the amount of compensation available in the event of severe service-related injury, disease or death.</p>
COVERAGE	ADF members, wholly dependant partners and dependants (in case of death).
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	The type of compensation is based on the <i>Safety, Rehabilitation and Compensation Act 1988</i> and <i>Veterans Entitlements Act 1986</i> provisions.

VETERANS' ENTITLEMENTS ACT 1986	
ADMINISTERED BY	Department of Veterans Affairs
PURPOSE	<p>Provides entitlements to compensation and rehabilitation for members and former members of the Australian Defence Force injured in the course of their duties.</p> <p>Disease or death occurring on or before 30 June 2004 for the following service:</p> <ul style="list-style-type: none"> > peacetime service (after completion of three-year qualifying period) – from 7 December 1972 to 6 April 1994. Members who enlisted before 22 May 1986 and who served continuously until after 6 April 1994 are also covered for service after that date; > all periods of operational service, peacekeeping service and hazardous service; and > war-like operations (for example in East Timor) and non war-like operations.
COVERAGE	<p>To be eligible for compensation payments under the VEA a person must first qualify as a 'veteran', a 'member of the Forces' or a 'member of a Peacekeeping Force'. Certain civilians also have access to the VEA.</p> <p>A member who had not completed the three-year qualifying period before 7 April 1994 is not covered under the VEA, unless he/she was medically discharged within that time.</p>
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	N/A

VICTORIA

VOLUNTEERS – RECOUPABLE CLAIMS	
ADMINISTERED BY	<p>Claims by volunteers under the:</p> <ul style="list-style-type: none"> > <i>Country Fire Authority Act 1958</i> (CFA Act) are administered by the Country Fire Authority > <i>Police Assistance Compensation Act 1968</i> (PAC Act) are administered by the Police Department. <p>Except for claims under the PAC Act 1968 or CFA Act, <u>WorkSafe</u> Victoria (WSV) administers claims of volunteers as an agent on behalf of the Crown.</p> <p>The claims agent responsible for managing claims for the Department of Justice manages claims by volunteers under the following Acts:</p> <ul style="list-style-type: none"> > <i>Victorian State Emergency Services Act 1987</i> > <i>Juries Act 2000</i> > <i>Emergency Management Act 1986</i> <p>The agent responsible for managing claims for the Department of Education manages claims by volunteers under the <i>Education Act 1958</i>.</p> <p>WSV is reimbursed from the Consolidated Fund for any compensation payments made and the costs and expenses associated with administering these claims.</p>
PURPOSE	Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the <i>Accident Compensation Act 1985</i> if injured while carrying out specified duties.
COVERAGE	<p>Nominated volunteers specified under various pieces of legislation set out below. The term 'volunteers' includes people assisting government agents. Volunteers are not workers unless deemed so and are not entitled to compensation unless specified in one of the Acts of Parliament named below.</p> <p>Workers assigned to emergency organisations by their employers as part of their contract of service, remain workers of the employer. They will only be entitled to compensation as volunteers if they are covered by the above acts.</p> <p>While carrying out the relevant duties, volunteers in prisons and offenders working or participating in a program under a Correctional Order, a provision of the <i>Sentencing Act 1991</i> or part nine of the <i>Corrections Act 1986</i>, are deemed workers employed by the Crown</p>
NUMBER COVERED	Not known
BASIS FOR LEGISLATION	<p>The following acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured while carrying out relevant duties:</p> <ul style="list-style-type: none"> > <i>Victoria State Emergency Services Act 1987</i> (applies to casual emergency workers) > <i>Juries Act 2000</i> (applies to jurors) > <i>Education Act 1958</i> (applies to volunteer school workers or volunteer student workers) > <i>Emergency Management Act 1986</i> (applies to registered and casual emergency workers) > <i>Police Assistance Compensation Act 1968</i> (applies to volunteers assisting police officers) > <i>Country Fire Authority Act 1958</i> (applies to casual fire fighters, volunteer auxiliary workers, volunteer officers and volunteer members)

NEW SOUTH WALES

WORKERS COMPENSATION (BUSH FIRE, EMERGENCY AND RESCUE SERVICES) ACT 1987

ADMINISTERED BY	<u>NSW WorkCover</u>
PURPOSE	To continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers.
COVERAGE	Bush fire fighters, emergency service workers and rescue association workers.
NUMBER COVERED	94,600 Rural Fire Service, State Emergency Service and Surf Life Saving volunteers
BASIS FOR LEGISLATION	Unique Scheme

COAL INDUSTRY ACT 2001

ADMINISTERED BY	<u>Coal Services Pty Limited</u>
PURPOSE	Providing occupational health and rehabilitation services for workers engaged in the coal industry, including providing preventative medical services, monitoring workers' health and investigating related health matters.
COVERAGE	Workers employed in or about a mine – definition from 1987 Act.
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	Unique Scheme

TREASURY MANAGED FUND

ADMINISTERED BY	NSW Self-Insurance Corporation, a branch of <u>NSW Treasury</u>
PURPOSE	TMF clients are the NSW Government budget dependent agencies. Other non-budget dependent public sector agencies may join the TMF on a voluntary basis.
COVERAGE	Workers' compensation as per NSW statute
NUMBER COVERED	Employees of 137 member agencies (approximately 290,000 employees as at June 2007)
BASIS FOR LEGISLATION	Unique Scheme

ASSOCIATED GENERAL CONTRACTORS INSURANCE COMPANY LIMITED ACT 1980

ADMINISTERED BY	<u>NSW WorkCover</u>
PURPOSE	To make provisions relating to claims against and liabilities incurred by Associated General Contractors Insurance Company Limited in respect of policies of insurance or indemnity under the <i>Workers' Compensation Act 1926</i> .
COVERAGE	Any person who would have had (but for the dissolution taking place) an entitlement to payment of any amount arising from or pertaining to any <u>policy of insurance</u> issued by the <u>Company</u> is entitled to payment of that amount: (a) out of the <u>fund</u> , and (b) after the <u>fund</u> is closed, out of the <u>Contribution Fund</u> .
NUMBER COVERED	Not specified
BASIS FOR LEGISLATION	Protect the entitlement for any person whose claim was payable out of the fund administered by the Associated General Contractors Insurance Company.

WORKERS COMPENSATION (BRUCELLOSIS) ACT 1979

ADMINISTERED BY	<u>NSW WorkCover</u>
PURPOSE	An Act to make special provisions with respect to the payment of workers' compensation to certain workers having or suspected of having brucellosis; to establish a Brucellosis Compensation Fund; to provide for the payment of contributions to that Fund by certain employers and for the reimbursement out of that Fund of certain compensation paid to those workers; to make provisions for or with respect to the medical examination of those workers.
COVERAGE	Any worker suffering from Brucellosis
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	To establish an industry specific fund to compensate workers who have contracted Brucellosis. Type of compensation is based on the <u>Workers Compensation Act 1987</u> .

WORKMEN'S COMPENSATION (LEAD POISONING – BROKEN HILL) ACT 1922

ADMINISTERED BY	N/A
PURPOSE	An Act to extend the provisions for the payment of compensation to persons disabled by lead poisoning in or upon the Broken Hill mines.
COVERAGE	Any workman who was in the employment of a mine-owner for any time during the period of twelve months preceding the thirty-first day of May, 1919, and who, prior to that date, had been employed for not less than one thousand two hundred and fifty shifts in or upon Broken Hill mines, notwithstanding that he may not have been employed in any such mine within twelve months previous to the date of his disablement if the board certifies that: (i) the said workman is suffering from lead poisoning, and is thereby disabled from earning full wages at the work at which he was employed, or (ii) the death of such workman has been caused by lead poisoning:
NUMBER COVERED	Not specified
BASIS FOR LEGISLATION	To provide a statutory benefits regime for mine workers who were previously excluded from the principle statutory workers' compensation systems.

WORKERS COMPENSATION (DUST DISEASES) ACT 1942

ADMINISTERED BY	<u>Workers Compensation (Dust Diseases) Board</u>
PURPOSE	This Act makes provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to a dust disease specified in <u>Schedule 1</u> of the Act, including any pathological condition of the lungs, pleura or peritoneum, that is caused by <u>dust</u> that may also cause a disease so specified, to validate certain payments.
COVERAGE	Any worker in NSW suffering a 'dust disease' as defined in <u>Schedule 1</u> of the Act
NUMBER COVERED	Not specified.
BASIS FOR LEGISLATION	A system of no fault compensation for workers and their dependants where a worker suffers death or disability from dust diseases.

SOUTH AUSTRALIA**STATUTORY RESERVE FUND**

ADMINISTERED BY	<u>WorkCover SA</u>
PURPOSE	Established under the repealed <i>Workers Compensation Act 1971</i> and came into operation in 1980 against which claims relating to workers' compensation could be made in the event of insolvency of an insurance company or the insolvency of an uninsured employer.
COVERAGE	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987
NUMBER COVERED	Respond to claims arising in respect of unsatisfied workers' compensation liabilities (including common law) due to insolvency of an insurance company or uninsured employer. Run off of 47 claims as at 30 June 2007 and contingent liability for incurred but not reported claims including exposure to asbestos related injuries incurred prior to 4.00pm 30 September 1987
BASIS FOR LEGISLATION	See above and <u>Clause 5 Schedule 1</u> <i>Workers Rehabilitation and Compensation Act 1986</i>

INSURANCE ASSISTANCE FUND	
ADMINISTERED BY	<u>WorkCover SA</u>
PURPOSE	Exists to support policies issued under section 118g of the repealed <i>Workers Compensation Act 1971</i> (1971 Act)
COVERAGE	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987
NUMBER COVERED	No new policies issued post 4.00pm 30 September 1987. Run-off of claims Nil as at 30 June 2007 and contingent liability for incurred but not reported claims including exposure to asbestos related injuries incurred prior to 4.00pm 30 September 1987
BASIS FOR LEGISLATION	Insurer of last resort under 1971 Act to make provision so that an employer could meet their obligation to be fully insured against liability to pay compensation under the 1971 Act – See <u>Clause 5A Schedule 1</u> <i>Workers Rehabilitation and Compensation Act 1986</i>

WESTERN AUSTRALIA

<u>WATERFRONT WORKERS (COMPENSATION FOR ASBESTOS RELATED DISEASES) ACT 1986</u>	
ADMINISTERED BY	<u>WA WorkCover Authority</u>
PURPOSE	This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant injury under section 33 of the Compensation Act, but in respect of whom it is not known who was the employer who last employed the waterfront worker in the employment to the nature of which the relevant injury is, or was, due. relevant injury~ means (a) mesothelioma; or (b) lung cancer; or (c) that form of pneumoconiosis known as asbestosis.
COVERAGE	Waterfront workers, within the meaning of the <i>Compensation Act</i> , employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	N/A

<u>EMPLOYERS INDEMNITY SUPPLEMENTATION FUND ACT 1980</u>	
ADMINISTERED BY	<u>WA WorkCover Authority</u>
PURPOSE	Provides for the determination of recommended premium rates for certain employer indemnity policies.
COVERAGE	Waterfront workers, within the meaning of the <i>Compensation Act</i> , employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	N/A

TASMANIA

WORKERS COMPENSATION ACT 1927

ADMINISTERED BY	<u>Department of Justice</u>
PURPOSE	This Act was the former workers' compensation legislation repealed in 1988. Some claims under this legislation are still outstanding; however, no new claims are permitted.
COVERAGE	N/A.
NUMBER COVERED	N/A.
BASIS FOR LEGISLATION	N/A.

WORKERS' (OCCUPATIONAL DISEASES) RELIEF FUND ACT 1954

ADMINISTERED BY	<u>Department of Justice</u>
PURPOSE	This Act contained specific provisions for certain occupational diseases that were relevant to employees working in particular industries, eg mining. Most provisions of the Act have been repealed and no new claims are permitted.
COVERAGE	N/A.
NUMBER COVERED	N/A
BASIS FOR LEGISLATION	N/A

NEW ZEALAND

TUBERCULOSIS ACT 1948

ADMINISTERED BY	<u>Ministry of Health</u>
PURPOSE	Make better provision for the treatment, care and assistance of persons suffering or having suffered from tuberculosis and for preventing the spread of tuberculosis.
COVERAGE	Any person who is suffering from tuberculosis in an active form and who is likely to infect others. Can claim for workers' compensation if contracted during employment.
NUMBER COVERED	350-400 new cases a year.
BASIS FOR LEGISLATION	N/A

SELF-INSURER ARRANGEMENTS

Each jurisdiction provides for employers to self-insure for workers' compensation, rather than being financial contributors to the State and Territory managed schemes. This allows companies to manage and pay for all their employees' claims for work-related fatality, injury and illness, rather than paying premiums to insurers to take on those responsibilities. This allows companies to process and finance their own workers' compensation claims. Self-insured companies must conform to each jurisdiction's specific legislative requirements, such as the level of benefits payable to injured employees, but self-insurance gives them financial freedom to fund and manage their own workers' compensation liabilities. Self-insurance also promotes improved occupational health and safety practices, as a self-insured company will be directly responsible for the cost arising, so it is in their interest to prevent work related injury.

All workers' compensation jurisdictions, except Seacare, allow employers to self-insure if they meet certain requirements; the most critical of which is the financial capacity to fully fund future liabilities. Regulatory authorities in each jurisdiction also need to be satisfied that self-insuring employers have adequate occupational health and safety, injury management and return to work arrangements, as well as the capacity to effectively manage workers' compensation without external involvement.

The following tables outline the self-insurance approval process, application requirements, ongoing licence requirements, and exiting requirements for each jurisdiction.

COMMONWEALTH

APPLICATION PROCESS	
APPLICATION PROCESS	<p>Process for applying for eligibility</p> <ul style="list-style-type: none"> > Corporation that is about to cease to be a Commonwealth authority or a corporation that was previously a Commonwealth authority or Corporations carrying on business in competition with a Commonwealth authority or a corporation that was a former Commonwealth authority request in writing to the Minister that they are seeking declaration under <u>s100</u> to be eligible to be granted a licence. > If the corporation is declared by the Minister as an eligible corporation, the corporation can then apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence <p>Process for applying to become a self-insurer</p> <ul style="list-style-type: none"> > Once a corporation is declared an eligible corporation by the Minister, it may then apply to the Commission for a licence under section <u>102</u> of the SRC Act. > The Commission will consider the application and may grant a licence under <u>s103</u> and <u>104</u> of the SRC Act
COSTS	<ul style="list-style-type: none"> > One off application fee of approximately \$25,000 having regard to size, complexity, need for external financial assessment etc
CRITERIA FOR BECOMING A SELF INSURER	
NO. OF EMPLOYEES	Preferred in excess of 500 (Minister's section 100 guidelines)
FINANCIAL / PRUDENTIAL REQUIREMENTS	<p>Financial: - provide independent actuarial estimate of the liabilities that the licensee is likely to incur over the first 12 and 24 months of the licence</p> <ul style="list-style-type: none"> > provide previous 5 years' audited statements > quality assets and liabilities will be assessed > up to date independent valuations of plant, property and equipment may be required > provide certification from principle officer that they are not aware of any likely events which may materially impact on the suitability of the applicant for approval <p>Prudential: - must have actuary prepare a liability report to Commission's requirements</p> <ul style="list-style-type: none"> > must estimate outstanding liability at the end of the first 2 years' of licence and the level of bank guarantee required > must recommend a level of provisions to be made in to accounts and appropriate reinsurance arrangements and comment on suitability of arrangements > licensee required to obtain bank and other guarantees in the form required by the Commission and before the commencement of the licence.
OHS, REHABILITATION AND WORKERS' COMPENSATION REQUIREMENTS ON LICENCE APPLICATION	<p>Previous 12 months performance in conforming and complying with OHS, rehabilitation and workers' compensation. The following will be examined:</p> <ul style="list-style-type: none"> > OHS Act and all the requirements of any applicable laws of a State or Territory with respect to health and safety of employees, in relation to recorded injury rates, provision of notification and reports, investigations/inspections, audits and any breaches in prosecution > obligations as a rehabilitation authority, especially in relation to any rehabilitation guidelines issued by Comcare (<u>s41 of Act</u>) > claims management obligations, including payment of premium, record of early lodgement of claims to claims manager, provision of relevant employment information and quick and accurate payment of employee benefits, in accordance with workers' compensation legislation
BANK GUARANTEES/ PRUDENTIAL MARGINS	<p>The bank guarantee must be for an amount calculated by the actuary as the greater of:</p> <ol style="list-style-type: none"> a) the 95th percentile of Outstanding Claims Liabilities at the Balance Date and the addition of one reinsurance policy retention amount; or b) the 95th percentile of projected Outstanding Claims Liabilities in 12/18/24* months time from the Balance Date and the addition of one reinsurance policy retention amount <p>subject to a minimum amount of \$2,500,000.</p> <p>* Note: actual licence will specify: 12 months for licences in the 6th or more year of licence; 18 months for licences in the 4th – 5th year of licence; 24 months for licences in the 1st – 3rd year of licence</p>
RESTRAINTS ON COMPANY STRUCTURE	A licence is required for each legal entity.
EXCESS OF LOSS REQUIREMENTS	Variable retention based on actuarial advice
OUTSOURCING ALLOWED	Licensees are allowed to outsource their claims management if the licensee receives authorisation from the Commission. The claims agent can not manage claims that were made before the licence was in force

ONGOING LICENCE REQUIREMENTS	
REPORTING REQUIREMENTS	<p>The licensee is to meet the following performance standards and be judged against performance measures under each standard:</p> <ul style="list-style-type: none"> > commitment and corporate governance > planning > implementation > measurement and evaluation > management systems review and improvement <p>The licensee must certify in writing to the Commission by specified dates, the estimation of the liability to pay compensation and other amounts under the SRC Act, provision in its accounts for meeting liabilities and the capacity to meet any single claim up to the reinsurance policy retention amount</p> <p>The licensee must commission a written liability report in respect of each financial year and calculated at the end of that year</p> <p>The licensee must lodge with the Commission a copy of:</p> <ul style="list-style-type: none"> > reports required under <u>Division 1 of Part 2M.3 of the Corporations Act 2001</u> > any periodic financial information regarding the affairs of the Licensed Corporation for a financial year that is required to give to any financial market as defined in the <u>Corporations Act 2001</u> > any reports or information outlined in the prudential conditions
COSTS	<ul style="list-style-type: none"> > annual licence fee payable with a base fee of \$30,000. The fee varies based on contributions to regulatory management of the SRC Act scheme with special emphasis on issues relevant to licences, plus costs specifically applicable to overseeing the licence compliance evaluation program for each licence, and the size of the licensee. There is an OHS contribution to meet regulatory activities in workplace safety.
AUDITING	<ul style="list-style-type: none"> > Pre and post licence evaluations occur in the period approaching and immediately after the grant licence. External audits in OHS, rehabilitation and claims management are performed in the first year a licence is granted and in the last year of each licence period. External audits of licensees "in other years are based on a needs basis. Licensees are required to audit themselves every year and, unless granted self audit status, present the results to Comcare for desktop auditing. > where using a contracted claims management service provider the licensee is required to audit that provider each year and within 6 weeks of the completion of each performance audit, give the Commission a written report on the claims manager's performance > must co-operate with, and give assistance to, the Commission or its representatives in respect of any audits and evaluations conducted by the Commission or its representatives
COMPLIANCE	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> > the SRC Act, Regulations and any other applicable guidelines issued by the Commission under <u>s73A</u> of the SRC Act in respect to rehabilitation and compensation > Commonwealth OHS Act and any applicable laws of the States or Territories with respect to the safety and health of employees > any such guidelines dealing with covert surveillance of employees > Conditions of licence relating to financial reporting and prudential arrangements
DURATION OF LICENCE	Initially a period for 2 years and then 4 years
ONGOING LICENCE REQUIREMENTS	<p>Comply with any written directions given by the Commission</p> <p>If claims are managed by a claims manager, provide a copy of the Commission's directions to the claims manager</p> <p>Advise and provide a copy of the initiating process to Comcare as soon as possible of any court proceedings in relation to a matter arising in respect of a claim</p> <p>Must notify Comcare in writing immediately that the licensee becomes aware:</p> <ol style="list-style-type: none"> licensee has not complied with, or not likely to comply with, a condition of the licence of any event that may materially impact upon its sustainability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in financial position any material change to its legal structure, ownership or control of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees <p>Provide Commission upon request, information relating to the licensee's operations</p> <p>Ensuring claims manager complies with the conditions of the licence</p> <p>Be accountable for all claims management policies issued by the claims manager</p> <p>Notify the Commission in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence</p> <p>Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the Commission</p> <p>Obligations imposed by the licence must be written into the contract between the licensee and the claims manager</p> <p>Provide a yearly bank guarantee</p> <p>Maintain an appropriate level of reinsurance</p>

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE

A licensee may request the Commission to revoke its licence at a date from which it no longer wishes to hold such a licence under the SRC Act.

VICTORIA

APPLICATION PROCESS

APPLICATIONS PROCESS

Assessment of organisation's eligibility to apply

If eligible, the organisation may submit an application for approval to the Victorian WorkCover Authority (VWA). The assessment of the application may include on-site audits, interviews and inspections.

COSTS

Assessment fee applies to all applications and is calculated as:

- > 0.033% of the total remuneration paid to Victorian employees, by the organisation, in the 12 months immediately prior to the date of application lodgement; or
- > \$44,330 (as at 1 July 2007 and subject to indexation), whichever is the lesser amount.

CRITERIA FOR BECOMING A SELF-INSURER

NO. OF EMPLOYEES

Not applicable

FINANCIAL/ PRUDENTIAL REQUIREMENTS

Consideration given to both primary and secondary indicators dependent on industry sector i.e. Manufacturing, Finance, Retail, Transport & Other.

Primary indicators: Claims liabilities as % of Net Assets (4%), Gearing Ratio (55-80%), Bad Debt Ratio (2%), Cash & Liquid Assets (= sum of \$5m + 30% of total liabilities) & Excess Capital (10%)

Secondary indicators: Stock Turnover (3.5-5%), Debtor Turnover (46-50%), Revenue Growth (2-16%) & Labour Costs (33%)

OHS REQUIREMENTS ON LICENCE APPLICATION

Safety Management Systems are audited against the National OHS Audit Tool for all new applicants and Initial Level SafetyMAP (4th edition) for existing self-insurers until January 2009; the National OHS Audit Tool will then be the standard.

Compliance with OHS Act 2004 – Inspectorate field interventions including enforcement activity, prosecutions and incident notifications.

Claims frequency rates and claims costs.

BANK GUARANTEES/ PRUDENTIAL MARGINS

150% of self insurer liabilities

RESTRAINTS ON COMPANY STRUCTURE

Holding company and all wholly owned subsidiaries

EXCESS OF LOSS REQUIREMENTS

Min \$500,000. Max \$2m. No other exclusions

OUTSOURCING ALLOWED

A self-insurer may appoint a person approved by the Authority to act as the agent to carry out the functions Parts III (dispute resolution) and IV (payment of compensation)

ONGOING LICENCE REQUIREMENTS	
REPORTING REQUIREMENTS	<p>Data to be submitted by 31 August each year. Data required is:</p> <ul style="list-style-type: none"> > workplace location > predominant industry > number of workers > remuneration > estimated remuneration > whether the workplace opened or closed during the reporting period > Quarterly Electronic Data Transfer (Claims Information)
COSTS	<p>Application fee as per the <u>Accident Compensation Regulations 2001</u></p> <p>Quarterly contributions payable for the duration of the licence period. The amount payable pursuant to section 33A of the <u>Accident Compensation Act 1985</u> is determined by a formula set out in the <u>Accident Compensation Regulations 2001</u>.</p>
AUDITING	<p>Annual self-audit requirements for the duration of the licence period – Claims Management & Occupational Rehabilitation & Occupational Health and Safety Management Systems</p> <p>Regulatory audit at time of application – Occupational Health and Safety & Occupational Rehabilitation</p>
COMPLIANCE	<p>VWA will monitor the organisation's compliance to the <u>Accident Compensation Act 1985</u>, the Regulations, any terms and conditions of approval and other legislation (e.g., the Occupational Health and Safety Act 2004) throughout the licence period. An annual performance report is provided to each self-insurer with information on a range of indicators (and where possible benchmarked against comparable employers and/or other self-insurers or VWA Agents); including but not limited to claims frequency rates, claims costs, injured worker satisfaction survey and self-audit results.</p>
DURATION OF LICENCE	<p>Initial approval is for a period of 3 years and any subsequent approvals are for four years. Terms and conditions may be placed against the organisation as part of the approval.</p> <p>Refer to auditing requirements.</p>
ONGOING LICENCE REQUIREMENTS	<p>Guarantee given by an authorised deposit-taking institution at all times during period of licence guaranteeing payment of amounts not less than the amount of the assessed liability in cases of self-insurer failing to meet its liabilities.</p> <p>Have in force at all times a contract of insurance for contingent liabilities</p>
RENEWAL/SURRENDERING/EXITING REQUIREMENTS	
REQUIREMENTS FOR SURRENDERING LICENCE	<p>Where a self-insurer requests that their licence be cancelled or in the case where the Authority revokes an approval, the Authority assumes the liability in respect of the assessed liability. An approval may be revoked if a self-insurer is assessed as not being 'fit and proper' or fails to meet a term and condition of the licence.</p> <p>The former self-insurer must ensure all claims and other relevant information is given to the Authority and all new claims are lodged with the Authority.</p> <p>Where the Authority assumes liability, the liability shall, within 28 days after being assumed by the Authority be assessed by an actuary appointed by the Authority; or if the self-insurer fails to permit the actuary to inspect their books to enable that assessment to be made, be the amount determined by the Authority.</p> <p>The amount of the liability assessed or determined is a debt due to the Authority by the self-insurer and is payable within 28 days after the date of the assessment or determination.</p> <p>If the self-insurer fails to pay the amount due within the period, the Authority may recover that amount under the guarantee.</p> <p>Where the liability of the self-insurer is assessed or determined, the Authority shall, after the expiration of three years after that assessment or determination, cause that liability to be re-assessed by an actuary appointed by the Authority.</p> <p>If the amount of the liability as re-assessed exceeds the amount at the date of the re-assessment of the sum of amounts recovered under the guarantee or the prescribed securities or from the self-insurer, together with any interest accrued on those amounts, the difference is a debt due to the Authority from the self-insurer.</p> <p>If the amount of the liability as re-assessed is less than the sum of the amounts, at the date of the re-assessment, the amount of the difference shall be paid to the self-insurer.</p>
PENALTIES FOR EXITING STATE SCHEME AND MOVING TO COMCARE SCHEME	<p><u>Accident Compensation Act 1985 — s165</u></p> <p>Application: Former premium payers and self-insurers. Specific reference to exiting employers who join the Comcare scheme. Applies from 1 July 2005 and hence excludes Optus.</p> <p>Tail claims: Scheme assumes liability and seeks value of assessed tail claim liabilities from exiting employers. Actuarial assessment every year for 6 years by an actuary appointed by the Authority and employer must pay any assessed increase in the cost of tail claims at the end of the third and sixth year.</p> <p>Extra charges: Actuarial charges and any extra assessment if employer disputes the WorkCover assessment.</p> <p>Time for payment: 28 days to pay tail claim liability.</p> <p>Specific review provisions: Employer may appoint its own actuary to review WorkCover's final revised assessment of liability. Legal proceedings seeking a review under the <u>Administrative Law Act 1978</u> are excluded.</p> <p>Penalties: Interest of 11.0% payable on unpaid amounts as per the <u>Accident Compensation Act 1985</u>.</p>

NEW SOUTH WALES

APPROVAL PROCESS	
APPLICATIONS PROCESS	<ol style="list-style-type: none"> 1. Acknowledge receipt of the application fee. 2. Validate application information and request for missing or additional information required for the review. 3. Review application in different areas including financial, injury and claims management (case management), OHS, data management and compliance. 4. Prepare Board Submission to recommend either approving or rejecting the application. 5. Prepare a letter to notify the applicant of either granting the licence with the date of commencement or rejecting the application
COSTS	One-off cost on application of \$25,000 for Single Self-Insurer licence, \$30,000 for Group Self-Insurer licence.

CRITERIA FOR BECOMING A SELF-INSURER	
NO. OF EMPLOYEES	500 permanent staff including full-time and part-time. WorkCover may use its discretion to grant a licence to an employer which does not meet this requirement if such an employer currently holds a self-insurer licence issued by another workers' compensation jurisdiction.
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<p>A self-insurer must have sufficient financial resources to meet its liabilities and be able to demonstrate long term financial viability by way of audited financial statements prepared in accordance with generally accepted accounting principles for the previous five years.</p> <p>WorkCover must be satisfied that self-insurers:</p> <ul style="list-style-type: none"> (i) are adequately capitalised, without any undue reliance on external borrowings - i.e. are conservatively geared; (ii) have a strong and sound financial position based on net tangible assets; (iii) have a sound profit history and positive cash flow. <p>In determining financial viability and strength, WorkCover is not restricted to the exclusive use of the above financial indicators.</p>
OHS REQUIREMENTS ON LICENCE APPLICATION	WorkCover will measure the applicant's performance against the criteria of WorkCover Self-insurer OHS model, "An Occupational Health and Safety Model for Self-insurers – July 2005". The applicant must satisfy all requirements, in 6 out of 6 elements during the initial OHS audit.
BANK GUARANTEES/ PRUDENTIAL MARGINS	The initial amount of security will be equivalent to the tariff premium (WIC rate x estimated wages) for the ensuing twelve months plus a prudential margin of 50%.
RESTRAINTS ON COMPANY STRUCTURE	<p>Under a group licence there is no provision for selective inclusion of subsidiaries by the applicant. The legislation specifies that only wholly owned subsidiary companies are to be included in the group licence. For group licences the applicant company would generally be the ultimate holding company in Australia.</p> <p>This requirement is applicable to group self-insurer licences. All companies in the group licence must execute a cross guarantee in a form approved by WorkCover under which each of the companies guarantee the other companies' liabilities to workers under the <u>Workers Compensation Act 1987</u> and independent of the <u>Workers Compensation Act 1987</u>. WorkCover may use its discretion to take a holding company guarantee as an alternative to a cross guarantee in certain circumstances.</p>
EXCESS OF LOSS REQUIREMENTS	<p>A self-insurer must obtain and maintain unlimited reinsurance cover during the currency of the licence, so as to restrict its liabilities under the <u>Workers Compensation Act 1987</u> and independently of the <u>Workers Compensation Act 1987</u> to a maximum amount approved by the Authority in respect of any one event. The reinsurance cover must be provided by an insurance company authorised by the Australian Prudential Regulation Authority.</p> <p>A retention amount under the above policy or policies, provided that it is within the range of \$100,000 - \$1,000,000 per event is acceptable to WorkCover.</p> <p>Retentions in excess of \$1,000,000 will require prior approval by WorkCover. In such instances WorkCover will require the self-insurer to undertake and provide an assessment of the likely cost of risk retention and the appropriateness of the level of retention sought as part of the approval process.</p>
OUTSOURCING ALLOWED	<p>WorkCover may use its discretion to approve outsourcing arrangements for injury and claims management and data lodgement to a suitably qualified third party, subject to it being satisfied that such an arrangement will not lead to a decrease in established service standards to injured workers.</p> <p>Any outsourcing of injury and claims management and data lodgement requires the prior approval of WorkCover. Notwithstanding any approved outsourcing arrangement, WorkCover will hold the licensee responsible for maintaining a satisfactory standard of injury and claims management and administration.</p>
COSTS	One-off cost on application of \$25,000 for Single Self-Insurer licence, \$30,000 for Group Self-Insurer licence.

ONGOING LICENCE REQUIREMENTS

REPORTING REQUIREMENTS	<p>Self insurers must notify WorkCover, in writing and within 10 business days, of becoming aware of any change in the effective control of the Licensee or any change in ownership of the Licensee exceeding 20% of its shareholding.</p> <p>Self Insurers must prepare and lodge with WorkCover, each financial year, a copy of the annual report (including audited financial statements) for the Licensee and, if it is a subsidiary of an Australian holding company, for its ultimate holding company as well. The financial statements must be provided within 4 months of the end of the relevant financial year or such longer period as WorkCover may allow.</p> <p>Self-insurers are also required to provide monthly claims data in a form approved by WorkCover and within the timeframes specified by WorkCover.</p> <p>In order to accurately assess the outstanding claims liability, a self-insurer must provide WorkCover with an actuarial report completed by an actuary in accordance with PS300 on an annual basis certifying the amount of total claims liability incurred as a self-insurer. The actuary must adopt the assumptions advised by WorkCover regarding the appropriate discount rate and claims administration expenses in determining the total claims liability.</p> <p>Self-insurers will be required to report Case Management self-audit results at least 6 months prior to their licence expiry date and lodge any revised injury management program to WorkCover.</p> <p>Reporting requirements pursuant to the Occupational Health & Safety Model for Self-insurers July 2005:</p> <ul style="list-style-type: none"> > The Audit Plan > Audit Report Summary > Narrative Report > Non-conformance Report > OHS Statistics
AUDITING	WorkCover will conduct Case Management audit and OHS Management System audit on self-insurers periodically as they are required.
COMPLIANCE	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. Failure to meet such requirements may constitute a basis for licence suspension, cancellation or non-renewal
DURATION OF LICENCE	A licence will be granted for a standard period of 3 years and be capable of renewal for further 3-year terms. WorkCover has discretion to grant licences for shorter terms if it believes circumstances are warranted, for example due to a breach of one or more licence conditions.
ONGOING LICENCE REQUIREMENTS	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity.

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE	<p>Self-insurers must submit the request in writing to WorkCover. WorkCover will consider the request under s.212 and s.183 of the <u>Workers Compensation Act 1987</u>. WorkCover meets with the self-insurer to discuss the process of surrendering the licence.</p> <p>WorkCover requires a written undertaking from the self-insurer to comply with WorkCover's licensing policy requirements as outlined in policy item 15 which states:</p> <p>(a) Should a self-insurer no longer hold a licence, it will still be held responsible for the management of the tail of claims incurred whilst licensed as a self-insurer;</p> <p>(b) The former licensee will be expected to manage and administer run off claims in a professional manner and continue to co-operate in the provision of claims data and other specified information to WorkCover. Run-off arrangements will be subject to WorkCover approval;</p> <p>Security held by WorkCover and other guarantee arrangements will remain in force until WorkCover is satisfied that all claims have been discharged or adequately provided for pursuant to section 216 of the <u>Workers Compensation Act 1987</u>.</p>
CONTRIBUTIONS BY EMPLOYERS EXITING THE MANAGED FUND SCHEME (NSW)	<u>Workers Compensation Act 1987 s208AA</u> provides for contributions to the Premiums Adjustment Fund to be made by employers who on or after 1 July 1998 became or becomes a self-insurer. As an alternative to the making of a contribution to the Premiums Adjustment Fund, the self-insurer may enter into an agreement with WorkCover to assume responsibility for the outstanding claim liabilities against the self-insurer that would otherwise be payable by the Managed Fund insurer who previously insured the employer
PENALTIES EXITING STATE SCHEME AND MOVING TO COMCARE SCHEME	<p>Extra charges: N/A</p> <p>Time for payment: N/A</p> <p>Specific review provisions: N/A</p> <p>Penalties: N/A</p>

SOUTH AUSTRALIA

APPLICATION PROCESS	
APPLICATIONS PROCESS	<p>The application process and its progress will consist of a number of steps as outlined below. An indicative time line for the process is Annexure E to the Code.</p> <ul style="list-style-type: none"> (i) Application submitted for evaluation and consideration (ii) Written confirmation by the employer that they have received a copy of the Code, have understood and are prepared to be bound by the Code as a term and condition of registration as a self-insured employer (iii) WorkCover appoints one or more evaluators to evaluate the application (iv) The evaluators meet with the employer to outline and discuss the requirements of the evaluation process (see Chapter 8 for details on the evaluation process) (v) The evaluation process proceeds until WorkCover determines whether the employer has met all appropriate Standards and criteria (vi) The employer and WorkCover agree on a target date for commencement of self-insured employer registration if the application is successful (vii) An actuarial evaluation is obtained to cover both the value of the existing claims liability and to estimate the likely liability that may be incurred during the first year of self-insured employer registration (viii) The employer and WorkCover agree the terms and conditions for the management of transitional liabilities (including all the necessary financial calculations and adjustments) (ix) The Board of WorkCover or Delegated Committee considers the application, and if appropriate, grants self-insured employer registration (x) The employer submits the required financial guarantee, and evidence of the existence of the excess of loss insurance policy (xi) Commencement of self-insured employer registration
COSTS	> yearly special levy payable by self-insurer is a percentage of the levy that would have been payable if they were not a self-insurer

CRITERIA FOR BECOMING A SELF INSURER	
NO. OF EMPLOYEES	200 workers. Workers employment must have some connection with South Australia for the purposes of having the prescribed number of workers.
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<ul style="list-style-type: none"> > net worth of \$50 million or higher > gearing ratio of 2.0 or lower > liquidity ratio of 1.3:1 or higher > profitability ratio of 10% per annum on shareholders funds; and > positive rating by a mercantile agency of risk lower than the industry average
OHS REQUIREMENTS ON LICENCE APPLICATION	Compliance with the Self Insurer Standards which can be found at Annexure A to the Code.
BANK GUARANTEES/ PRUDENTIAL MARGINS	Outstanding liability multiplied by a prudential margin of 1.75. It is revised annually in accordance with an actuarial report the employer must submit within 3 months after the end of the financial year. Minimum guarantee applies 2007 \$690,000 indexed.
RESTRAINTS ON COMPANY STRUCTURE	A group of employers may apply for registration as a group of self-insured employers providing they are related corporations.
EXCESS OF LOSS REQUIREMENTS	<p>Self-insurers need to maintain an excess of loss insurance policy that must satisfy:</p> <ul style="list-style-type: none"> > \$100 million on the sum insured > a deductible of not less than \$500,000 per event or series of events; and > if the self-insured employer elects to include a stop loss excess or aggregate excess, such stop loss or aggregate excess must not be less than the higher of: <ul style="list-style-type: none"> - 3 times the individual incident excess; or - 10% above the average incurred claim cost for the prior 3 years.
OUTSOURCING ALLOWED	Not generally. Decisions must be made by the self insurer itself and this cannot be delegated.

ONGOING LICENCE REQUIREMENTS	
REPORTING REQUIREMENTS	All claims data must be reported by Electronic Data Interchange on a fortnightly basis.
COSTS	yearly special levy payable by self-insurer is a percentage of the levy that would have been payable if they were not a self-insurer
AUDITING	Evaluation against the standards will be carried out in preparation for each registration renewal, and at other times should something come to WorkCover's attention that indicates a need for a further evaluation.
COMPLIANCE	
DURATION OF LICENCE	Licence (registration) granted for an initial period not exceeding 3 years (in practice it will normally be limited to 2 years initially). A self-insurer may apply to WorkCover to renew its licence for a further period of 3 years.
ONGOING LICENCE REQUIREMENTS	<p>submit an actuarial report within 3 months of the end of the financial year</p> <ul style="list-style-type: none"> > provide annual financial statements no later than 5 months after the expiry of the financial year.

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR
SURRENDERING LICENCE**Assumption of liabilities**

WorkCover must undertake the liabilities of any self-insured employer that ceases to be registered as a self-insured employer. However WorkCover has the discretion to delay this transfer.

WorkCover will ordinarily determine to delay the transfer of the self-insured employer's liabilities if it is satisfied of the ability of the employer to continue to manage and bear financial responsibility for the balance of its liabilities for a period of up to 3 years. Where WorkCover assumes the liabilities of a self-insured employer, either in whole or part, it is entitled to receive a payment from the employer equal to the capitalised value of all outstanding liabilities multiplied by that same prudential margin applied on calculating financial guarantees.

WorkCover may recover the amount of liabilities undertaken by WorkCover either as a debt due to WorkCover or as a claim, in the event the employer is wound up.

Payment

WorkCover may, at its discretion, give a self-insured employer whose registration is ceasing a choice as to whether to pay the capitalised sum from its own resources, or to have the financial guarantee provided during the period of self-insured employer registration paid to WorkCover.

Any shortfall in the financial guarantee relative to the assessed value of the liabilities will be payable by the employer to WorkCover as a debt.

If the employer elects to pay the capitalised sum from its own resources, WorkCover will retain the financial guarantee for such period as WorkCover determines is necessary to ensure that no part of the payment received by WorkCover is subject to repayment pursuant to the laws relating to insolvency or bankruptcy.

Run off of claims

Where WorkCover is satisfied of the ability of the employer to continue to manage and bear financial responsibility for any claims by its workers in relation to compensable disabilities, it may allow the former self-insured employer to retain responsibility for such liabilities for such a period as WorkCover determines appropriate (a 'run off').

Where WorkCover deems a run off to be appropriate or necessary in the circumstances, WorkCover may also determine that the former self-insured employer continues to exercise some or all of its delegated powers and discretions.

If a former self-insured employer is permitted to run off its claims and continue to exercise its delegated powers and discretions, WorkCover may require the former self-insured employer to enter into an agreement with WorkCover.

Without limitation, WorkCover will ordinarily consider the following circumstances as being suitable circumstances in which to allow the former self-insured employer to run off its claims:

- (i) Employers that have substantially reduced their workforce but which have performed their self-insured employer duties and obligations in accordance with the requirements of the Act and its term and conditions of registration
- (ii) A subsidiary of a self-insured employer is sold and the subsidiary or the self-insured employer has sufficient resources and financial security to run off its claims
- (iii) An employer closes down its operations in the state, but remains a viable company operating interstate.

WorkCover will evaluate the former self-insured employer's compliance with the Act, Standards and the agreement and may terminate the run off if WorkCover considers there are substantive grounds for doing so.

Upon cessation of the run off period, WorkCover will appoint an Actuary to assess the value of the claims existing at that time in order to calculate the capitalised sum (if any) the employer must pay to WorkCover.

Agreement

In circumstances where WorkCover has decided not to undertake all of the liabilities of the former self-insured employer and to continue the delegation of powers and discretions to the former self-insured employer, WorkCover may require the former self-insured employer to enter into an agreement with WorkCover.

Where appropriate, the agreement will ordinarily:

- (i) identify the circumstances and conditions under which the employer is permitted to retain its liabilities and exercise its delegated powers and discretions
- (ii) prescribe the consequences of any change in the circumstances or breach of any conditions imposed by WorkCover in such circumstances
- (iii) plan for the takeover of any residual liabilities by WorkCover, and
- (iv) provide for operational requirements that must apply, including the provision of an appropriate form of financial guarantee and the maintenance of appropriate qualitative Standards during the period of run off and exercise of delegated powers.

The employer must apply for registration as a registered employer with WorkCover within fourteen (14) days of the cessation of its registration as a self-insured employer.

(CONTINUED) RENEWAL/SURRENDERING/EXITING REQUIREMENTS

PENALTIES FOR EXITING STATE SCHEME AND MOVING TO COMCARE SCHEME	<u>Workers Rehabilitation and Compensation Act 1986 — s50, s67</u>
	Application: All premium payers and self-insurers who exit the South Australian Compensation Fund. No specific reference is made to employers who join the Comcare scheme.
	The balancing payment applies whether the premium paying employer exits to self insurance, joins Comcare, leaves the state or simply ceases employing in South Australia for any reason. A balancing payment will not generally be due from a self insurer that exits to Comcare.
	Balancing Payment: The balancing payment is a contribution to the under funded position of the scheme that has built up while the employer is in the scheme. Its calculation is quite complex and is designed to put the scheme in the position it would be in if the employer remained in the scheme till the 2012/13 year and covered all its claim costs and liabilities from its levies.
	Time for payment: Not specified in legislation.
	Specific review provisions: Employer may seek review by WorkCover if it believes supplementary levies unjust.
	Penalties: If an employer fails to comply with a condition imposed WorkCover, a further supplementary levy may be imposed.

WESTERN AUSTRALIA

APPROVAL PROCESS

APPLICATIONS PROCESS	<ul style="list-style-type: none"> > employer submits application to Authority > Authority reviews and considers the application for self-insurer status > Authority provides recommendation on the application to the Minister. > The Governor, on recommendation of the Minister, may exempt an employer.
COSTS	Contribute annually to the General Fund. The amount is a percentage fixed by the Authority of the total amount of the notional premium. The minimum contribution is \$40,000.

CRITERIA FOR BECOMING A SELF-INSURER

NO. OF EMPLOYEES	N/A
FINANCIAL/ PRUDENTIAL REQUIREMENTS	Provide audited financial statements, which include: <ul style="list-style-type: none"> > current ratio (current assets/current liabilities) > leverage ratio (debt/total assets) > net assets (equity)
OHS REQUIREMENTS ON LICENCE APPLICATION	
BANK GUARANTEES/ PRUDENTIAL MARGINS	Bank guarantee to be determined by the Authority upon application or review. The minimum level for the bond is \$1 million. In the first year of approval the amount of bond will be rounded to the next million. Subsequent years the amount shall be rounded up in accordance with the Authority's approval methodology.
RESTRAINTS ON COMPANY STRUCTURE	
EXCESS OF LOSS REQUIREMENTS	Common law and catastrophe insurance policy for a minimum of \$50 million for any one claim or series of claims arising out of one event.
OUTSOURCING ALLOWED	N/A

ONGOING LICENCE REQUIREMENTS

OTHER MATTERS	Adequate expertise to determine claims within the State in the time limits specified
	Effect weekly payments within the frequency specified
	Carry out responsibility with respect to injury management
	Submit accurate and timely statistical returns/information
	Provide and maintain: <ul style="list-style-type: none"> > copy of organisational chart > demonstration that an injury management programme is in place > information management systems utilised by the self insurer are able to meet the compliance standards as defined in the Q1 specifications including the provision of data and returns
REPORTING REQUIREMENTS	N/A
COSTS	Contribute annually to the General Account. The amount is a percentage fixed by the Authority of the total amount of the notional premium. The minimum contribution is \$40,000.
AUDITING	
COMPLIANCE	Authority conducts periodic checks to ascertain if self insurers maintain an acceptable level of compliance against the Guidelines and the Act.
DURATION OF LICENCE	N/A
ONGOING LICENCE REQUIREMENTS	N/A

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE	<u>Bank Guarantees</u>
	If employer has: <ul style="list-style-type: none"> > ceased to employ workers; or > obtained from an approved insurer a policy of insurance and: <ul style="list-style-type: none"> > there are no outstanding claims for compensation; or > satisfactory provision has been made for discharging any outstanding claims for compensation.
	A bank guarantee may be released upon the written commitment from an approved insurer to provide for any past, current and future outstanding claims liabilities.
PENALTIES FOR EXITING TERRITORY SCHEME AND MOVING TO COMCARE SCHEME	No specific provisions

QUEENSLAND

APPROVAL PROCESS	
APPLICATIONS PROCESS	
COSTS	\$15,000 application fee for single employers \$20,000 application fee for group employers Levy is paid each financial year

CRITERIA FOR BECOMING A SELF-INSURER	
NO. OF EMPLOYEES	2000 full-time Queensland workers
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<ul style="list-style-type: none"> > long-term financial viability
OHS REQUIREMENTS ON LICENCE APPLICATION	<ul style="list-style-type: none"> > satisfactory occupational health and safety performance > provision of adequate resources for administering claims and managing rehabilitation of workers (requirement under Act no OHS <u>s75</u>) > all workplaces of the employer must have workplace rehabilitation policies and procedures and resources provision of adequate re-insurance cover (requirement under Act no OHS <u>s75</u>)
BANK GUARANTEES/ PRUDENTIAL MARGINS	<ul style="list-style-type: none"> > provision of an unconditional bank guarantee or cash deposit of 150% of estimated claims liability, or \$5 million (whichever is the greater)
RESTRAINTS ON COMPANY STRUCTURE	Groups are restricted to groups of employers that are made up as follows: <ul style="list-style-type: none"> > employers who are in the same industry and have a pre-existing stable business relationship; or > related bodies corporate (as defined in Corporations Law).
EXCESS OF LOSS REQUIREMENTS	Retention between \$300,000 and \$1M
OUTSOURCING ALLOWED	Yes (<u>s 92(4)</u>)

ONGOING LICENCE REQUIREMENTS	
OTHER MATTERS	
REPORTING REQUIREMENTS	Required to submit claims data (as per the Workers' Compensation Insurers' Interface Data Specifications available at qcomp.com.au) to Q-COMP by the 10 th day of the following month
COSTS	Initial set up fee: \$15,000 application fee for single employers \$20,000 application fee for group employers A levy is paid each financial year
AUDITING	Insurance performance management plan
COMPLIANCE	
DURATION OF LICENCE	Original licence issued for a period of 2 years, on renewal, licence period can be up to 4 years
ONGOING LICENCE REQUIREMENTS	<ul style="list-style-type: none"> > ability to provide data in the format and at time intervals required by Q-COMP > A self-insurer must supply to Q-COMP summary information about the claims they have processed on their system. When requested, provide copies of: <ul style="list-style-type: none"> > documents relating to all claims made > documents that may assist in assessing the quality and timeliness of claims and rehabilitation management > documents may assist in assessing the self-insurer's financial situation > any other documents required to be kept under the licence.

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE	<p>If the self-insurer does not intend to renew the licence, the self-insurer must advise the Authority of that fact at least 20 business days before the current licence period ends.</p> <p>If a self-insurer's licence is cancelled, the premium payable by the former self-insurer is to be calculated in the way prescribed under a regulation.</p> <p>The self-insurer must forward on to WorkCover all claims and related documentation for compensation, and any claims that would have been lodged with the self-insurer are to be lodged with WorkCover.</p> <p>If the Authority considers it appropriate, the Authority may, at the request of a former self-insurer, allow the former self-insurer to continue to have functions and powers previously had by the former self-insurer.</p> <p>Recovery of ongoing costs from former self-insurer</p> <p>If after the cancellation of a licence, WorkCover pays compensation or damages, or incurs management costs in managing claims for which a self-insurer is liable, this is a debt due to WorkCover by the self-insurer.</p> <p>Debts are payable within 20 business days after WorkCover's written demand for payment. WorkCover may recover the debt from the unconditional bank guarantee or cash deposit if the former self-insurer fails to pay the debt within the period or authorises WorkCover to do so in writing.</p> <p>Assessing liability after cancellation</p> <p>WorkCover must appoint an actuary to assess the former self-insurer's liability. The amount of liability assessed and management costs are a debt due to WorkCover and are payable within 20 business days after the date of assessment.</p> <p>If the former self-insurer fails to pay the debt within the period, WorkCover may recover the debt from the unconditional bank guarantee or cash deposit.</p> <p>Return of bank guarantee or cash deposit after cancellation</p> <p>When a self-insurer's licence is cancelled and they consider that all accrued, continuing, future and contingent liabilities have been discharged or adequately provided for, the self-insurer may, by written notice, ask the Authority to return the balance of the bank guarantee or cash deposit.</p>
PENALTIES FOR EXITING STATE SCHEME AND MOVING TO COMCARE SCHEME	<p><u>Workers' Compensation & Rehabilitation Act 2003 — s105B</u></p> <p>Application: Solely to former self-insurers who join the Comcare scheme.</p> <p>Tail claims: The employer's State licence continues for 12 months after exit and they retain liability for tail claims. After 12 months, WorkCover takes over responsibility for pre-exit tail claims and seeks contribution from employer or authorises the employer to continue to manage and pay for these claims.</p> <p>Extra charges: Levy fee for 12 months, share of actuary charges, and share of any arbiter costs.</p> <p>Time for payment: Interim payment 12 months after exit date needs to be made within 20 business days of receiving written assessment from WorkCover.</p> <p>Four years following licence cancellation, WorkCover and the employer must each appoint an actuary to recalculate the amount of liability. The employer must pay WorkCover the difference between the interim payment and the recalculation amount, plus interest on the difference from the day the whole of the interim payment was made.</p> <p>Specific review provisions: If WorkCover and the employer cannot agree on the recalculated amount they may refer to an arbiter.</p> <p>Penalties: No penalties specified for late payment.</p>

TASMANIA

APPROVAL PROCESS	
APPLICATIONS PROCESS	An employer must make application to the WorkCover Tasmania Board on the prescribed form.
COSTS	No application fee.
CRITERIA FOR BECOMING A SELF-INSURER	
NO. OF EMPLOYEES	Not applicable.
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<p>Summary of financial indicators is to be extracted from the financial statements in the employer's most recent annual report. Financial statements have to be prepared in accordance with Australian Accounting Standards, and financial statements were audited in accordance with Australian Auditing Standards. Summary of financial indicators are:</p> <ul style="list-style-type: none"> > net worth : current assets, non-current assets, current liabilities, non-current liabilities > liquidity ratio: current assets, current liabilities, > equity debt: current liabilities, non-current liabilities, shareholders funds > return on equity > profitability <p>Copies of three most recent annual reports and audited financial statements.</p> <p>Historical financial information to cover the applicant's trading period from commencement to date, complying with Australian Accounting Standards and the Corporations Regulations.</p> <p>Provide Forecast Financial Information, which consists of statement of financial performance; statement of financial position; statement of cash flows, to cover a forecast 12-month trading period.</p>
OHS REQUIREMENTS ON LICENCE APPLICATION	<p>Must have an established occupational health and safety management system.</p> <p>Upon application to self insure, a SafetyMAP Version 4 Audit report is provided by a certified auditor or evidence of JAS-ANZ certification against AS/NZ 4801:200.</p> <p>Must undertake annual self audits using SafetyMAP and forward results to the WorkCover Tasmania Board. (Where certification under a JAS-ANZ certification program has been achieved, the annual self audit will not normally be required.)</p>
BANK GUARANTEES/ PRUDENTIAL MARGINS	<p>Bank guarantee equal to:</p> <p>Yr 1: Notional Premium x 100%</p> <p>Yr 2: Notional Premium x 140%</p> <p>Yr 3: Notional Premium x 180%</p> <p><i>+ the greater of:</i></p> <p>30% of the adjusted notional premium; or the quantum of the catastrophe deductible (per event retention); or \$500,000.</p>
RESTRAINTS ON COMPANY STRUCTURE	N/A.
EXCESS OF LOSS REQUIREMENTS	Excess of loss policy for a minimum amount of \$50 million.
OUTSOURCING ALLOWED	Yes

ONGOING LICENCE REQUIREMENTS	
OTHER MATTERS	Licence granted to a specialized insurer shall be subject to the condition that the specialized insurer shall insure only such classes of employers as are specified in the licence against the employers' liability to their workers under this Act.
REPORTING REQUIREMENTS	<p>Monthly claims payment data, new policies and premiums to be submitted by the 21st of each month.</p> <p>Must provide annual financial statements to the Board within 5 months of end of financial year.</p> <p>Claim forms must be submitted to the Board within 5 days of receipt.</p> <p>Must advise in advance of any proposed changes to the company's structure or legal entity.</p>
COSTS	Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.
AUDITING	<p>Occupational health and safety management system to be self-audited annually, with the use of SafetyMAP as the audit tool.</p> <p>Annual self-audits on injury and claims management systems using injuryMAP as the audit tool.</p>
COMPLIANCE	
DURATION OF LICENCE	Initially 1 year and then depending on outcome of audit, it can range from 1 year to 3 years.
ONGOING LICENCE REQUIREMENTS	N/A

RENEWING/SURRENDERING/EXITING REQUIREMENTS	
REQUIREMENTS FOR SURRENDERING LICENCE	<p>A self-insurer who wishes to surrender its self-insurer permit must provide the Board with the following in support of its application to cease to hold a self-insurer permit:</p> <ol style="list-style-type: none"> 1. An undertaking to maintain its bank guarantee in place until the Board is satisfied that all existing and potential workers' compensation claim liabilities have been met. 2. A detailed explanation of how existing claims and incurred but not reported claims will be managed if the Board agrees to cancel the permit. This explanation should include financial claim management details, injury management details and advice of the existence of return-to-work plans as required by s139 of the Act. 3. An undertaking to maintain reporting of statistical and other data related to claims that occurred during the period of self-insurance. 4. A deed to the WorkCover Tasmania Board providing legally binding obligation to continue to supply data after ceasing to be a self insurer. 5. A communication plan of how all workers of the self-insurer will be notified of the cessation of self-insurance, and what practical effect this cessation has for them. The communication plan should contemplate a broadcast letter to all workers and individual letters to any worker with an existing claim. <p>The Board, following its consideration of the application and supporting information, shall determine the effective date the self-insurance ceases to be a permit holder.</p> <p>Depending on when the self-insurer ceases to be a permit holder may result in a reimbursement of contribution to the Board or the payment of a contribution to the Board.</p>
PENALTIES FOR EXITING STATE SCHEME AND MOVING TO COMCARE SCHEME	No specific provisions

NORTHERN TERRITORY

APPROVAL PROCESS	
APPLICATIONS PROCESS	Employer to write to Authority for approval to self-insure – s119
COSTS	<p>The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary.</p> <p>Once a self-insurer, will be required to pay the Territory an amount determined by the Authority as a contribution towards :</p> <ul style="list-style-type: none"> > administration costs of the Work Health Court > administration costs of the Supreme Court associated with proceedings under the Act > costs incurred by the Authority in providing a mediation service, and > cost of printing scheme documents.
CRITERIA FOR BECOMING A SELF-INSURER	
NO. OF EMPLOYEES	No limits
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<p>Financial viability of the employer s119 (3)(d), which is to be demonstrated through:</p> <ul style="list-style-type: none"> > the provision of the company's three latest detailed annual balance sheets, including profit and loss statements, together with notes and their auditor's report thereon; > an actuarial report on the company, which details its current NT workers' compensation liabilities and ability to meet both its current and expected liabilities under the Act; > reinsurance cover of an unlimited amount in excess of the company's liability of \$1m (indexed) for any one event; and > a three year history of the company's NT workers' compensation claims.
OHS REQUIREMENTS ON LICENCE APPLICATION	Evidence that the company's NT operation has in place an occupational health and safety management system and evidence that the company's OH&S policy has been brought to the attention of the company's NT workers.
BANK GUARANTEES/ PRUDENTIAL MARGINS	150% of self-insurer liabilities on application and as assessed at each review.
RESTRAINTS ON COMPANY STRUCTURE	N/A
EXCESS OF LOSS REQUIREMENTS	N/A
OUTSOURCING ALLOWED	N/A

ONGOING LICENCE REQUIREMENTS

OTHER MATTERS	<p>Ongoing satisfactory demonstration of the employer's ability to:</p> <ul style="list-style-type: none"> > provide the statistical and other information required; > provide financial contributions as requested; and > adequately provide for and manage the company's NT workers' compensation claims. <p>Adequate expertise to determine claims within the Territory in the time limits specified.</p> <p>Effect weekly payments within the frequency specified.</p> <p>Carry out responsibility with respect to injury management.</p> <p>Submit accurate and timely statistical returns/information.</p>
REPORTING REQUIREMENTS	Monthly
COSTS	<p>There is no cost to employers to lodge a self-insurer application. The only fee for employers is for an actuarial assessment to be completed.</p> <p>Once a self-insurer, required to pay the Territory an amount determined by the Authority as a contribution towards :</p> <ul style="list-style-type: none"> > administration costs of the court > part of administration costs of the Supreme Court associated with proceedings under the Act; and > costs incurred by the Authority in providing a mediation service.
AUDITING	Generally annual self reporting.
COMPLIANCE	
DURATION OF LICENCE	Initially 1 year, then up to 3 years once demonstration of satisfactory performance is well established.
ONGOING LICENCE REQUIREMENTS	N/A

RENEWAL/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE	N/A
PENALTIES FOR EXITING TERRITORY SCHEME AND MOVING TO COMCARE SCHEME	No penalties.

AUSTRALIAN CAPITAL TERRITORY

APPROVAL PROCESS	
APPLICATIONS PROCESS	<ul style="list-style-type: none"> > Submit application to the Office of Regulatory Services > The Office of Regulatory Services will undertake the approval process > Once approval process has been undertaken, the Office of Regulatory Services will make a recommendation to the Minister > Once the Minister has made their decision, the applicant will be notified > Should the application be successful, the applicant must complete and return an Acceptance Form within 14 days of the date of notification.
COSTS	<p>Application fee to be a self-insurer - \$6339.25 (updated each year)</p> <p>Pay the cost of an audit conducted on behalf of the Minister to establish that the employer has adequate resources to meet the employer's expected liabilities</p> <p>Pay the cost of an investigation by the Minister to assess the employer's injury management programs and personal injury plans</p>

CRITERIA FOR BECOMING A SELF-INSURER	
NO. OF EMPLOYEES	Not applicable
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<p>Copy of employer's annual report and balance sheet for the previous 3 years</p> <p>Actuarial report, containing:</p> <ul style="list-style-type: none"> > estimate of current outstanding liability in relation to compensable injuries > estimate of the total of the employer's expected liability for each year in relation to which the employer is applying to be a self-insurer; and > estimate of the total of the expected payments in satisfaction of the employer's liability for compensable injuries that will be made for each year in relation to which the employer is applying to be a self-insurer <p>A written statement by the employer that the employer will be able to meet present and future claims under the Act for which the employer is, or is expected to be liable</p>
OHS REQUIREMENTS ON LICENCE APPLICATION	<p>Compliant with employer's duties under <i>Occupational Health and Safety Act 1988</i>, Part 4</p> <p>Copy of OH&S policy and evidence that it has been brought to the attention of the employer's workers</p> <p>Has in place an occupational health and safety management system that complies with Australian Standard 4801</p> <p>Written statement by the employer that the employer will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans</p>
BANK GUARANTEES/ PRUDENTIAL MARGINS	<p>Guarantee from an authorised deposit-taking institution for the greater amount of:</p> <ul style="list-style-type: none"> > \$750,000; or > an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.
RESTRAINTS ON COMPANY STRUCTURE	Licence for each legal entity, wholly owned subsidiaries can be included on licence
EXCESS OF LOSS REQUIREMENTS	Reinsurance of at least \$50,000 cpi indexed for a single event to cover the employer's future liability under the Act
OUTSOURCING ALLOWED	An employer is able to outsource their vocational rehabilitation services to an approved rehabilitation provider

ONGOING LICENCE REQUIREMENTS	
ONGOING REPORTING REQUIREMENTS	<p>Must provide claims, payments and estimates data on-line on a monthly basis 10 days after the last working day in any month</p> <p>Must provide a monthly report on policy data details 10 days after the last working days in any month</p>
COSTS	Appropriate audit costs and application fee on renewal of licence
AUDITING	May be audited for performance against <i>Workers' Compensation Regulation 2002</i> .
COMPLIANCE	<p>Continue to meet obligations under the Act and Regulations, and any other protocol approved by the Minister that relates to self-insurance</p> <p>Ensure that workers' compensation claim form, register of injuries and early injury notification form comply with Workers' Compensation Insurer's Form Specifications</p> <p>Comply with Workers' Compensation Insurers Download Specifications</p>
DURATION OF LICENCE	Up to 3 years
ONGOING LICENCE REQUIREMENTS	Employer to give information to the Minister reasonably required in writing about workers' compensation, vocational rehabilitation and occupational health and safety to allow the Minister to assess the employer's continuing suitability to be a self-insurer.

RENEWING/SURRENDERING/EXITING REQUIREMENTS

REQUIREMENTS FOR SURRENDERING LICENCE	No specific requirements in place
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PENALTIES FOR EXITING TERRITORY SCHEME AND MOVING TO COMCARE SCHEME	No specific provisions
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NEW ZEALAND

APPLICATION PROCESS

APPLICATION PROCESS	<ul style="list-style-type: none"> > employer completes an application form providing supporting financial, business and health and safety information > notifies all staff in writing about their intention to join > consult with employee representatives about intention to join > co-ordinate staff and documentation for the health and safety audit (completed by an ACC approved independent auditor) using the approved audit tool <p>Submit application to ACC (the Manager)</p> <ul style="list-style-type: none"> > ACC will undertake the approval process > Once approval process has been undertaken, ACC makes decision > The applicant will be notified
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COSTS	Pay a portion of the pre-entry audit costs
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CRITERIA FOR BECOMING A SELF INSURER

NO. OF EMPLOYEES	<p>No specific minimum employer number</p> <p>In practice, the pricing mechanism makes entry to the programme not financially viable to employer whose standard levy is less than NZ\$150,000.</p>
FINANCIAL/ PRUDENTIAL REQUIREMENTS	<p>Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme.</p> <p>ACC is required to satisfy itself in respect of an employer's net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).</p> <p>The measures are:</p> <ul style="list-style-type: none"> > It has substantial net worth; > That its contingent liabilities are not excessive (details to be provided including an evaluation as to likely crystallisation of those liabilities) > It has an appropriate working capital ratio based on current assets divided by current liabilities. > It has an appropriate equity to debt ratio; and > It has an appropriate return on equity. <p>These figures should, where possible, be provided for the 3 financial periods preceding the application and include best estimates for at least the then current financial period and the next financial period ("period" normally meaning a year).</p>
OHS, REHABILITATION AND WORKERS' COMPENSATION REQUIREMENTS ON LICENCE APPLICATION	<p>An audit of an employer's health and safety systems and practices is carried out as part of the entry requirements.</p> <p>A comprehensive entry audit is undertaken in order to satisfy ACC that an employer has the capacity and capability to manage and administer claims at least to the same standard as ACC.</p> <p>Every Accredited Employer must agree to provide to each employee, without charge, a written statement, in plain English, that specifies the procedures and requirements under its contract in relation to the lodging of claims, provision of treatment, handling of claims, assessment of incapacity, assessment of capacity for work, and dispute resolution.</p>
BANK GUARANTEES/ PRUDENTIAL MARGINS	<p>No formal security is taken. No legislative provision to allow formal security arrangements like debentures over assets, bank bonds or guarantees or any other third party guarantees. An employer must prove it has the ability to meet its programme obligations completely in its own right in order to be accredited.</p>
RESTRAINTS ON COMPANY STRUCTURE	<p>Any 'employer' in New Zealand is eligible to become 'accredited' provided they are able to meet the eligibility requirements outlined in regulation. Eligibility is not confined by structure. Therefore any employer entity, including by way of example a company (including a consolidated group of companies), a partnership, an incorporated society, a Government, State Owned Entities, District Hospital Boards, Local Government Authorities and Incorporated Societies.</p> <p>A group of employers may become accredited where each member of the group meets the definition of a subsidiary company, as determined by the Companies Act. Any subsidiary where ownership is greater than 50% is able to be a member of the accredited group.</p>
EXCESS OF LOSS REQUIREMENTS	<p>ACC provides Stop loss cover within a range of 160% to 250% of the defined risk. Stop loss cover is mandatory for Full Self cover employers and optional for the Partnership discount plans. Any other reinsurance is prohibited under the legislation. The accredited employer is required to carry the risk of workplace injury with no ability to offload any of this risk.</p>
OUTSOURCING ALLOWED	<p>Although Accredited Employers may, with the consent of the Manager, retain third party providers to assist in the management of workplace injuries this is subject to them maintaining direct personal involvement with the claimant</p>

ONGOING LICENCE REQUIREMENTS	
REPORTING REQUIREMENTS	The Accredited Employer must regularly report to the Manager on claims, entitlements and expenses arising during the Cover Period and ensuing Claim Management Period. At the end of each month, and no later than 5 working days.
COSTS	Cost of the independent audit of Health and Safety
AUDITING	<p>Monitoring and audit programme includes:</p> <ul style="list-style-type: none"> > A review of the reporting of claims details and expenditure, to be utilised to provide regular comparative benchmarking reports for the Manager and the individual Accredited Employer > Onsite audits at least annually of individual Accredited Employer claims management performance. > Regular meetings between the account manager of the Manager and the Accredited Employer (the frequency of which will depend on the experience of the individual Accredited Employer). > In the discretion of the Manager and in conjunction with the annual audit programme, a claimant satisfaction survey to determine overall claimant satisfaction with the Accredited Employers Programme; > Active liaison with Accredited Employer's workplace employee representatives (if any) > Monitoring of the ongoing solvency of the Accredited Employer and its expected ability to meet its obligations under the Accreditation Agreement. > Annual health and safety audit using approved audit tool
COMPLIANCE	<p>Licensee must comply with the requirements of:</p> <ul style="list-style-type: none"> > the IPRC Act, Regulations and any other applicable guidelines issued by ACC > the Privacy Act 1993 > Health Information Privacy Code 1994 > The Code of ACC Claimants' Rights
DURATION OF LICENCE	<p>Approval may be for 1 to 3 years at the employer's option.</p> <p>Annual reviews are undertaken in order to ensure entry (including prudential) requirements are being maintained.</p>
ONGOING LICENCE REQUIREMENTS	<p>Comply with any written directions given by ACC</p> <p>Advise ACC of:</p> <ul style="list-style-type: none"> > any serious ongoing claim or claims with a duration < 12 months, as soon as practicable > any insolvency event > any report from Occupational Health and Safety (Department of Labour) > anything that could contribute to ACC reviewing the status of the employer > provide a copy of the initiating process to ACC as soon as possible of any court proceedings in relation to a matter arising in respect of a claim <p>Provide ACC upon request, information relating to the licensee's operations</p> <p>Ensuring claims manager complies with the conditions of the licence</p> <p>Retain overall responsibility for claim and case management</p> <p>Notify ACC in writing as soon as possible after it becomes aware that the claims manager has done, or omitted to do, something which has the effect that the licensee is, or likely to be, in breach of a term or condition of the licence</p> <p>Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the ACC</p>
RENEWAL/SURRENDERING/EXITING REQUIREMENTS	
REQUIREMENTS FOR SURRENDERING LICENCE	<p>ACC has the right to terminate in respect of</p> <ul style="list-style-type: none"> > any insolvency event > a material breach <p>if the AE no longer complies with the framework or the IPRC Act</p>

GLOSSARY

Administrative scheme: a scheme put in place where no legislation applies

Attendant care: services of a person to provide regular and essential personal care to an injured worker

Benefits: money paid to injured workers as compensation for economic and non-economic loss arising from work related injury

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

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

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

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

Cross-border arrangements: provisions which allow workers who are injured away from their main State or Territory of employment to be covered for workers' compensation in their main State or Territory of employment

Current Work Capacity: as the result of an injury, a worker is presently unable to return to pre-injury employment but is able to return to work in suitable employment. (cf **partially incapacitated**)

Date of injury: the date a worker became injured - in the case of diseases, this may be the first time symptoms became manifest or the first time medical treatment was sought

Death benefits: compensation payable to the financial dependants (usually families) of workers who die in work-related circumstances

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

Diseases: can include any physical or mental disorder, defect or morbid condition, whether of sudden or gradual development

Dispute resolution: processes for resolving disputes between parties in the claims process

Employee: a person who works for an employer on a full-time or part-time basis under a contract of service and receives remuneration in wages or salary (see also worker)

Funeral costs: reimbursement for the cost of a funeral to the family of a deceased worker or to a person who buries a deceased worker

Home help: services of a person to provide domestic assistance to an injured worker

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

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

Injury: can include a full range of physical injuries, illnesses, psychological conditions and diseases, as well as aggravations, exacerbations and recurrences of existing injuries

Levy: the term used in South Australia and New Zealand for Premiums (See Premiums)

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

Multi-jurisdiction employer: an employer who conducts their business in more than one jurisdiction and has separate workers' compensation cover in each jurisdiction

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

Net funding ratio: ratio of assets to outstanding liabilities

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

No current work capacity: the injured worker is unable to perform any duties in the workplace (cf **totally incapacitated**)

Non-economic loss: measure of the impact of an injury on a worker's lifestyle, such as pain and suffering, disfigurement and reduced expectation of life, normally associated with permanent impairment

Partially incapacitated: the worker is able to return to work and perform suitable duties, even if it is not the same job they were previously doing before the injury. (cf **current work capacity**)

Permanent impairment payments: payment compensating for the permanent loss of a body part or function, for which there is little expectation of recovery or improvement

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

Privately underwritten schemes: schemes of workers' compensation where the underwriting function is performed by the private insurers, with varying degrees of government regulation

Prudential requirements: ensures that private insurers can operate on a fully funded basis to meet all expected compensation payments and the costs of managing claims

Psychological injury: a range of conditions relating to the functioning of people's minds

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

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

Remuneration: the total amount of gross earnings of workers of an employer (see also premiums)

Return to Work: the process of employers or other people or organisations helping injured workers to get back to work or stay at work while they recover from an injury (see also rehabilitation)

Self Insurer: employers who manage their workers' compensation arrangements themselves, without having to pay annual premiums

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

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

Threshold test: a level of impairment an injured worker must reach

Totally incapacitated: the injured worker is unable to perform any duties in the workplace. (cf **no current work capacity**)

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

Underwriting: the process of writing and signing a policy of insurance

Worker: a person who is covered for workers' compensation benefits

Workers' compensation: financial support to workers who are injured in the course of employment and suffer a consequent loss