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Safe Work Australia

Submission to the House Standing Committee on Education and Employment

Inquiry into workplace bullying

29 June 2012

Contents

Appendixes

Executive Summary

1. Workplace bullying is well recognised as a work health and safety matter. Workplace bullying is a psychological hazard and the risks need to be managed like physical hazards at the workplace.
2. There is wide variation in estimates of the prevalence of bullying in Australian workplaces. A recent and reliable estimate of its prevalence in Australia comes from the Australian Workplace Barometer project which found that 6.8 per cent of Australian workers have been bullied at work in the six months prior to being surveyed. The survey data was collected between 2009 and 2011.
3. The responsibility to prevent workplace bullying is covered in work health and safety (WHS) legislation by the duty of care held by employers to provide a healthy and safe working environment for their workers. Workers also have the duty to ensure their actions do not constitute a risk to health and safety of themselves or other people at the workplace.
4. Safe Work Australia is an independent statutory agency with primary responsibility to improve work health and safety and workers' compensation arrangements across Australia. It is a tripartite body representing the interests of the Commonwealth, states and territories as well as workers and employers in Australia.
5. Safe Work Australia's key role in prevention of workplace bullying has been to develop model WHS laws including a proposed Code of Practice on workplace bullying, the development of the *Australian Work Health and Safety Strategy 2012-2022* and national data collection and research support.
6. Section 1 of this submission provides background information on the establishment and role of Safe Work Australia. Section 2 discusses the model WHS laws including the proposed model Code of Practice on workplace bullying. Section 3 gives an overview of the *Australian Work Health and Safety Strategy 2012-2022*. Section 4 provides an overview of workplace bullying in Australia based on the national data collection and research contributed to by Safe Work Australia.
7. The focus of this submission is on how workplace bullying is dealt with in work health and safety policy and legislative frameworks. The work health and safety framework provides for identifying, preventing and addressing workplace bullying with the model WHS laws providing a consistent package of primary and delegated legislation, Codes of Practice and guidance.
8. The model guidance on workplace bullying is intended to support the prevention of workplace bullying. It will provide for the first time a consistent definition of workplace bullying across Australia.
9. While WHS laws are an appropriate way to prevent and address workplace bullying and strong penalties are included in the model WHS Act for serious bullying, it is still appropriate that serious cases of bullying are capable of being addressed under the relevant criminal law system.
10. The *Australian Work Health and Safety Strategy 2012-2022* (Australian Strategy) is currently awaiting endorsement by the Select Council on Workplace Relations. As well as addressing a range of work health and safety issues the Australian Strategy will also provide a framework to support prevention of workplace bullying. For example the prevention of mental disorders is one of the work related disorders agreed as a national priority for the next decade.
11. Finally the national workers' compensation data presented provides information on compensable injuries resulting from workplace bullying but does not provide a comprehensive picture of the prevalence of bullying in Australian workplaces. The research findings presented, particularly those of the Australian Workplace Barometer

project conducted by the University of South Australia provide a recent estimate of the prevalence of bullying in Australian workplaces.

12. Given that recent data on the prevalence of workplace bullying exists, it is appropriate to concentrate our energies towards activities that seek to prevent workplace bullying through legislation, advice and awareness raising.

Section 1 - Overview of Safe Work Australia – establishment and roles

13. Safe Work Australia was formally established on 1 July 2009 as an independent statutory agency with primary responsibility to improve work health and safety and workers' compensation arrangements across Australia.
14. Safe Work Australia is an inclusive, tripartite body representing the interests of the Commonwealth, states and territories as well as workers and employers in Australia.
15. Safe Work Australia comprises 15 Members, including an independent Chair, nine Members representing the Commonwealth and each state and territory and the Chief Executive Officer of Safe Work Australia. The remaining Members include two Australian Council of Trade Unions (ACTU) Members representing the interests of workers and two Members representing the interests of employers drawn from the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (Ai Group)[1].
16. Safe Work Australia's functions are set out in the *Safe Work Australia Act 2008*. A primary function is to progress the harmonisation of model WHS laws. This has been a central function of Safe Work Australia since its establishment. Other functions include:
    - development of the *Australian Work Health and Safety Strategy 2012-22*
    - conducting and publishing research and collecting, analysing and publishing data or other information relating to work health and safety and workers' compensation to inform the development or evaluation of policies in relation to those matters, and
    - developing proposals relating to harmonising workers' compensation arrangements particularly for businesses with workers in more than one jurisdiction.

The Intergovernmental Agreement and development of model WHS laws

17. In February 2008 the Workplace Relations Ministers' Council (Ministerial Council) agreed the use of model legislation was the most effective way to achieve harmonisation of work health and safety laws.
18. In July 2008 the Council of Australian Governments (COAG) formally committed to the harmonisation of work health and safety legislation by signing the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA)[2].
19. The IGA required the formation of the independent body Safe Work Australia to drive the development and implementation of model WHS laws. Under the IGA each jurisdiction is responsible for enacting the model WHS laws by 1 January 2012.
20. The integrated package developed by Safe Work Australia includes:
    - a model WHS Act
    - a set of model WHS Regulations
    - model WHS Codes of Practice

[1] All working parties set up under Safe Work Australia are representative of its membership. Safe Work Australia Members have decision making responsibility and vote to decide on matters of national work health and safety and workers' compensation policy outlined in the *Safe Work Australia Act*.

[2] Work health and safety harmonisation is part of the COAG National Reform Agenda aimed at reducing regulatory burdens and creating a seamless national economy.

- National Compliance and Enforcement Policy, and
- guidance material.

21. Most of the work on the package is now complete except for model Regulations on mines and certain model WHS Codes of Practice and guidance material.

National OHS Review

22. A National Review into Model Occupational Health and Safety Laws (the national OHS review) was conducted to help develop the foundations for a model Occupational Health and Safety (OHS) Act.
23. The national OHS review was carried out by a panel of three independent experts. The panel made recommendations on the optimal structure and content of a model OHS Act that was capable of being adopted in all jurisdictions. In May 2009 the Workplace Relations Ministers Council made decisions on the panel's recommendations setting the policy parameters for developing a model OHS Act.
24. One of the recommendations was to include a definition of health that refers to psychological health. This was to promote the importance of psychological health and provide certainty that the model OHS Act[3] operates in relation to all aspects of work health.

Development of model Work Health and Safety Laws

Model WHS Act

25. Based on the outcomes of the national OHS review and decisions made by the Ministerial Council Safe Work Australia released a draft model WHS Act for public comment in September 2009[4]. A total of 480 submissions were received from individuals, unions, businesses, industry associations, governments, academics and community organisations.
26. The public comment process was a crucial step in forming a comprehensive model WHS Act and it resulted in a number of changes. The Ministerial Council endorsed the revised model WHS Act on 11 December 2009.

Model WHS Regulations and Codes of Practice

27. The general duty provisions in the Act are applicable to all workplaces and maintain relevance as new and improved work methods are developed. Regulations and Codes of Practice provide duty holders with the specificity they need to assist them to meet the general duties contained in the Act.
28. Under the IGA the process for developing the model WHS Regulations required Safe Work Australia to consider areas that were the subject of existing regulations. Unless matters were already regulated in a majority of the jurisdictions they were not included in the model WHS Regulations. Public consultation on the model WHS Regulations and Codes of Practice occurs in accordance with the requirements of the IGA.

[3] Henceforth referred to as the WHS Act.
[4] The IGA also sets out the consultation processes for developing the model laws, including that Safe Work Australia release an exposure draft bill and a Regulation Impact Statement (RIS) for public comment.

Staged development of model Codes of Practice

29. Safe Work Australia is developing the model Codes of Practice in stages to keep the workload manageable and ensure stakeholders have reasonable time to contribute to their development.
30. The first stage of 11 model Codes of Practice were prioritised on the basis they were considered to be critical to the operation of the new model WHS laws. They were approved by a majority of jurisdictions and currently apply in those jurisdictions that commenced the new WHS laws on 1 January 2012[5].
31. Safe Work Australia has completed work on a further 12 Codes of Practice that are currently awaiting approval by the Ministerial Council. A full list of the model Codes of Practice that have been developed or are to be developed as part of the harmonisation process is available at Appendix A.

Commencement

32. The model WHS laws commenced in New South Wales, Queensland, the Australian Capital Territory, the Commonwealth and the Northern Territory on 1 January 2012. The model WHS laws are due to commence in Tasmania on 1 January 2013.
33. Two jurisdictions—South Australia and Western Australia—remain committed to implementing the model WHS laws. The South Australian WHS Bill is currently before Parliament. Victoria is the only jurisdiction to announce that it will not be adopting the model WHS laws in their current form.

Section 2 - Model Work Health and Safety Laws

Model WHS Act and workplace bullying

Model WHS Act

34. All work health and safety laws in Australia recognise workplace bullying as a work health and safety issue with the responsibility to prevent workplace bullying covered by the primary duty of care held by employers.
35. The primary focus of the model WHS Act in relation to workplace bullying is to ensure that workplaces are free of physical and psychological hazards. The model WHS Act makes it clear that 'health' means physical and psychological health and the duty of care extends to the prevention of workplace bullying.
36. Under the model WHS Act:
    - A person conducting a business or undertaking (PCBU) has the primary duty to ensure, so far as is reasonably practicable, that workers and other persons are not exposed to health and safety risks arising from the business or undertaking. This duty includes a requirement to ensure, so far as is reasonably practicable:
        - the provision and maintenance of a work environment that is without risk to health and safety
        - the provision and maintenance of safe systems of work, and
        - the health of workers and the conditions of the workplace are monitored for the purpose of preventing illness or injury.

[5] All jurisdictions that have implemented the WHS laws have adopted the first stage model Codes of Practice approved by the Ministerial Council. Some jurisdictions have adopted the model Codes of Practice awaiting approval by Ministers as guidance and/or have carried over existing codes in order to ensure there are no regulatory gaps

- Officers like company directors must exercise due diligence to ensure the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure the business or undertaking has and uses appropriate resources and processes to eliminate hazards or minimise risks associated with bullying.
- Workers must take reasonable care for their own health and safety and must not adversely affect the health and safety of other persons. Workers must also comply, so far as the worker is reasonably able, with any reasonable instruction and cooperate with any reasonable policy or procedure relating to health and safety at the workplace, including those relating to bullying. A similar duty is placed on other persons at the workplace e.g. visitors.

37. The model WHS Act also requires that where an issue like workplace bullying arises in a workplace, reasonable efforts to achieve a timely, final and effective resolution of the issue are made using any agreed issue resolution procedures or if there is not one the default procedure prescribed by the WHS Regulations.
38. The model WHS Act recognises the seriousness of work-related injury, illness and deaths. The model WHS Act provides a range of offences including one that is targeted at conduct of the most serious kind involving recklessness and provides for five years imprisonment. Maximum fines for this offence will be $3 million for a body corporate and $600 000 for a PCBU as an individual or officer and $300 000 for a worker. The penalty levels in effect in each jurisdiction before commencement of the model WHS laws is included at Appendix B.
39. The offences in the model WHS Act are largely structured on those in the Victorian *Occupational Health and Safety Act 2004*. Charges were successfully brought under that Act after a 19 year old Melbourne woman committed suicide in September 2006 as a result of 16 months of bullying by co-workers at Café Vamp in Melbourne.
40. The model WHS Act does not make specific provision for compensation orders however various legislation around the country provides for compensation orders in favour of victims of crime (e.g. the Sentencing Act in Victoria).
41. Work health and safety law is essential to address work related harm however it is also appropriate that extremely serious cases of bullying are capable of being addressed under the relevant criminal law system.

Model WHS Regulations

42. As part of the development process to create the model WHS Act and Regulations specific regulations to address workplace bullying were not considered to be within the remit of the harmonisation process as set out by the IGA. This was due to only one jurisdiction having laws on this subject at that time. South Australia has specific legislative requirements relating to the investigation of bullying matters under its OHS & Welfare Act 1986[6].
43. The development of regulations specific to workplace bullying aimed at assisting PCBUs to identify risk factors and control risks that arise in the workplace was raised during the public consultation process.
44. There may be some advantages to including regulations in the model WHS laws that address workplace bullying - including regulations that specifically address the characteristics of workplace bullying as a psychological hazard and set standards for controlling the risks. Although this would have the benefits of raising awareness in the

[6] After the passage of the model WHS Act in the ACT, the Work Health and Safety (Bullying) Amendment Bill 2011 was introduced into the ACT Legislative Assembly by the Greens. The only amendment that was accepted was inclusion of an additional function of the Work Safety Council to advise the Minister on bullying in the workplace and other workplace psychosocial issues.

community the concern is that specific regulations on workplace bullying would do no more than duplicate the primary duty in the model WHS Act.

45. Specific regulations for workplace bullying may be considered further by Safe Work Australia.

Other legislation addressing workplace bullying

46. Outside of the WHS legislative framework, general workplace relations, anti-discrimination and sexual harassment laws, criminal and tort law can be used to deal with workplace bullying. The WHS legislation does not preclude victims of workplace bullying from seeking redress through these laws.

Proposed Code of Practice on workplace bullying released for public comment

47. Prior to jurisdictions implementing the model WHS laws on 1 January 2012 all jurisdictions addressed bullying in the workplace in guidance material or a Code of Practice[7].

48. As part of the harmonisation of WHS laws it was agreed to develop a model Code of Practice on workplace bullying and release it for public comment.

49. The proposed model Code of Practice: *Preventing and Responding to Workplace Bullying* was released for public comment on 26 September 2011 for three months. A copy is provided at Appendix C.

50. The Code of Practice provided information for PCBUs, officers and workers on how to prevent workplace bullying by using a risk management process. It required PCBUs to deal with bullying in the same way as other workplace hazards and risks.

51. The Code of Practice was largely based on *Preventing and Responding to Bullying at Work* the joint guidance material used by Victoria, New South Wales and as a Code of Practice by the Australian Capital Territory. The guidance advises the adoption of a risk management approach to the prevention of bullying at work. This requires:

    - identifying bullying risks
    - assessing the likelihood of those risks causing injury or illness
    - implementing risk control measures to eliminate the risk/s (or where that is not reasonably practicable, reducing the risk so far as is reasonably practicable), and
    - reviewing and improving the effectiveness of risk control measures.

52. Other source documents used to develop the Code of Practice were:

    - South Australian guidance on preventing workplace bullying ─ for the definition of 'repeated' that refers to persistent nature of the behaviour, examples of intentional and unintentional bullying, and the informal and formal complaint resolution process
    - Queensland Prevention of Workplace Harassment Code of Practice ─ for expression of single incidents and that organisational change can be a factor that increases the risk of workplace bullying occurring
    - Ireland's Health and Safety Authority Bullying at Work Code of Practice ─ for the 'downwards', 'sideways' and 'upwards' nature of bullying and complaints resolution process, and

[7] South Australia has specific legislative requirements relating to the investigation of bullying matters under its OHS & Welfare Act 1986.

- Work by academics Dr Caponecchia and Dr Wyatt – for distinguishing bullying from related concepts such as harassment, discrimination, violence and conflict.

53. In total seventy-two public comment submissions were received on the Code of Practice. Interested submitters included academics, government departments, employers, workers, unions, employer and industry associations. Many submitters acknowledged the difficulty of developing guidance in this area and that the subject does not lend itself to a one-size-fits-all approach.
54. Overall there was broad support for the approach to deal with bullying like any other physical hazard in the workplace as well as the adoption of the risk management process to manage the risk of it occurring. However public comment on the form and content of the Code of Practice varied.

Revision following public comment period

55. The document that was released for public comment is currently being revised with the assistance of subject matter experts in the field of workplace bullying including Dr Caponecchia to ensure it reflects concerns raised through public comment, current practices, research findings and outcomes of recent case law.
56. A key aspect under review is the definition of workplace bullying. There is no common definition of workplace bullying across Australia. Appendix D includes the definitions currently being used in each jurisdiction.
57. The definition contained in the public comment Code of Practice reflected the most commonly used in Australia and internationally:

    'repeated, unreasonable behaviour directed towards a worker or a group of workers, that creates a risk to health and safety'

    Repeated behaviour was further defined as:

    '*the persistent nature of the behaviour and can refer to a range of behaviours over time'* [noting that a single incident of unreasonable behaviour may have the potential to escalate into bullying and therefore should not be ignored]

    Unreasonable behaviour was further defined as:

    'Unreasonable behaviour – behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening'.
58. At this stage significant changes are not proposed as there appears to be broad support for this definition, particularly as it defines workplace bullying as a repeated behaviour.
59. It is also still proposed that the focus will remain on assisting PCBUs to understand workplace bullying, how to identify the risks that give rise to it and how those risks can be eliminated or minimised.
60. Proposed revisions include:

    - clarifying what constitutes reasonable management
    - clearly expressing the interaction of bullying with harassment, discrimination and violence
    - emphasising the importance of reporting bullying incidents
    - setting out the resolution and investigative processes
    - providing information to workers to assist them to identify and report workplace bullying, and

- tailoring the information so it is applicable for all businesses regardless of the nature of the business or size.

Code of Practice or guidance material

61. Safe Work Australia Members are still to decide whether the subject matter and material is best suited to a Code of Practice or guidance material.
62. Safe Work Australia Members make the determination on whether material is suitable as a model Code of Practice instead of guidance material using developed criteria including if it is necessary to provide additional guidance to fully understand the extent of duties contained in the WHS Act and/or Regulations.
63. Both Codes of Practice and guidance material play an important role in explaining the requirements of the WHS Act and Regulations and set out practical ways to meet the required standard of WHS practices.
64. However Codes of Practice are automatically admissible in court proceedings under the WHS Act and Regulations. Courts may regard a Code of Practice as evidence of what is known about a hazard, risk or control and may rely on it in determining what is reasonably practicable in the circumstances to which the Code of Practice relates. There is no requirement that Codes of Practice be complied with.
65. Public comment did not provide a clear direction on this issue. Generally employers displayed a strong preference for guidance material and unions for a Code of Practice or legislation.

Next Steps

66. As part of the process of developing model Codes of Practice Safe Work Australia will seek advice from the Office of Best Practice Regulation (OBPR) on whether a Regulation Impact Statement (RIS) is required for a particular code. OPBR has advised that a RIS is required for a Code of Practice on workplace bullying.
67. A draft Consultation RIS to review estimates of costs and safety benefits is being prepared. The RIS will obtain views from business, governments and unions on the potential cost benefits and impacts of any anticipated changes. It will assist with making the decision whether a Code of Practice is required in this area.
68. It is anticipated that a revised Code of Practice and consultation RIS will be released for public comment in the second half of this year.

Section 3 – The Australian Work Health and Safety Strategy 2012-2022

69. The *Australian Work Health and Safety Strategy 2012-22* (Australian Strategy) has been developed by Safe Work Australia Members and is due to be endorsed by the Ministerial Council in July 2012. The Commonwealth, states and territories will be responsible for implementing the Australian Strategy in their jurisdiction.
70. The Australian Strategy aims to drive key national activities to achieve improvement in work health and safety. The prevention of mental disorders including those caused by exposure to workplace bullying is one of the six work-related disorders agreed as national priorities for the next decade.
71. The Australian Strategy has seven action areas which collectively will help to reduce the exposure to or the risk of bullying and harassment. The most relevant to addressing workplace bullying are:

- *Hazards are eliminated or minimised by design*. To ensure that work process and systems of work are designed to eliminate or minimise the risks that give rise to bullying.
- *Improved work health and safety capabilities*. To ensure workers have the knowledge, skills and resources to fulfil their role in relation to work health and safety to eliminate or minimise the risks that give rise to bullying.
- *Leaders in community and organisations promote a positive culture for health and safety*. To ensure that leaders within organisations promote anti-bullying cultures by setting and modelling high standards of conduct and ensuring procedures are developed and followed.

Section 4 - Workplace bullying in Australia

72. There is a growing body of evidence about bullying in Australian workplaces. However comparison of the research and data is affected by the lack of a common definition of workplace bullying. The lack of consistency in the research and data across Australian jurisdictions make it difficult to provide information on the prevalence of bullying in Australian workplaces with certainty and to estimate the total costs of workplace bullying.
73. Data on workplace bullying in Australia comes from two main sources:
    - administrative workers' compensation data, and
    - research studies.

Workers' Compensation Data

74. There are eleven workers' compensation schemes operating in Australia – three Commonwealth schemes and one for each state and territory. There are numerous inconsistencies between the schemes including the level of entitlements. Safe Work Australia develops and publishes the *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2012* which sets out the comparative details of these schemes. Of particular interest for the purposes of the inquiry are the tables on common law access to compensation and the statutory requirements for a psychological injury. A copy is provided at Appendix E.
75. The National Data Set for Compensation Based Statistics (NDS) which is collated, maintained and analysed by Safe Work Australia includes information on all claims (accepted, pending and rejected) from all Commonwealth, state and territory workers' compensation schemes. Claims are coded using a national standard (the NDS and the Type of Occurrence Classification Scheme) and coded information is provided to Safe Work Australia by all Australian workers' compensation schemes.
76. Coded information includes the coding of 'mechanism' which identifies the overall action, exposure or event that best describes the circumstances that resulted in the most serious injury or disease being compensated. One of the mechanisms is Mental stress of which 'work-related harassment and/or workplace bullying'[8] is a subcategory.

[8] 'Work-related harassment and/or bullying' includes victims of repetitive assault and/or threatened assault by a work colleague or colleagues and repetitive verbal harassment, threats and abuse from a work colleague or colleagues. It does not include harassment or bullying by a person or persons other than work colleagues or victim of sexual or racial harassment by a person or persons including work colleagues.

77. While compensation data can provide an indicator of the extent of workplace bullying it is unable to provide information on the overall prevalence of bullying in Australian workplaces for a number of reasons:

    - workers' compensation is only available to about 88 per cent of workers and is not available to the self-employed
    - workers' compensation is only available to people with a compensable 'injury'. In the case of workplace bullying workers' compensation data would only include information on workers diagnosed with an 'injury' like anxiety or depression resulting from the bullying
    - there is evidence that groups of people including casual employees, part time workers and especially part time shift workers are less likely to apply for and receive workers' compensation for any type of illness or injury, and[9]
    - there is evidence that workers may be reluctant to apply for compensation for an injury or illness arising from workplace bullying, with those reporting an injury or illness due to 'exposure to mental stress' the least likely of any group to apply for and receive workers' compensation.[10]

78. The information provided below on accepted compensation claims should be read in this context.

79. Between 2003 and 2010 the number of accepted claims for workplace bullying/harassment across Australia increased from 1210 to 1460 compared to a total of more than 300 000 accepted claims each year for all injuries. Over the eight years there was an average of 1180 accepted bullying/harassment claims each year.

80. Compensation claims due to work-related mental stress and specifically to workplace bullying and harassment result in longer periods off work and higher costs than claims due to other causes. For example, for the financial year 2007-08 the average cost of a compensation claims due to workplace bullying/harassment was $41 700 and the average time lost from work was 25 weeks compared to the average cost of all claims of $13 300 and the average time lost from work of 7 weeks.[11]

Research Studies

81. Safe Work Australia is currently involved in, or has been involved in, a number of studies that examine workplace bullying. Detailed information on these studies is included in Appendix F[12].

    - National Hazard Exposure Worker Surveillance (NHEWS) survey (2008). Undertaken by Safe Work Australia's predecessor the Australian Safety and Compensation Council the survey of 4 500 Australian workers includes three general questions on bullying and harassment.
    - Australian Workplace Barometer (AWB) project (2009-11).Undertaken by the University of South Australia this survey of 3 513 workers from all states and territories except Queensland and Victoria collected representative data on psychosocial risk factors at work.

[9] Data from the Australian Bureau of Statistics Work-related injury survey (WRIS)found that female employees without leave entitlements (casual employees) are the least likely to apply for and receive workers' compensation with only 26% applying for compensation of which only 80% actually received it. The group most likely to apply for compensation was male employees with leave entitlements with 52% applying for compensation of which 90% received it. Safe Work Australia. Work-related injuries in Australia: who did and didn't receive workers' compensation in 2009-10. Nov 2011.

[10] WRIS data show that those who reported an injury or illness due to 'exposure to mental stress' were the least likely of any group to apply for and to receive workers' compensation. *Work-related injuries in Australia: who did and didn't receive workers' compensation in 2009-10.* Nov 2011.

[11] Data on average costs and time lost have been provided for the financial year 2007-08 as this allows time for the claims to mature.

[12] Safe Work Australia has not yet considered the research findings for some of these projects.

- Personality and Total Health (PATH) through Life project is a longitudinal study on mental and physical health. Managed by the Australian National University the study has been running for 12 years out of a planned 20 years and follows three cohorts of people initially aged in their 20s, early 40s and early 60s. In 2011 a general question on bullying and 21 detailed questions that assess different bullying behaviours were added.
- People at Work (PAW) project (1st wave 2008-10; 2nd wave 2012-15) is a Queensland organisation based study with three main objectives: to develop a risk assessment tool for psychological injury, to develop a representative database of psychosocial risk factors at work and to improve the capacity of Queensland businesses to manage the risk of psychological injury in the workplace.

82. In addition there are two other major studies that have collected information relevant to this enquiry: the Productivity Commission 2010 report *Performance Benchmarking of Australian Business Regulation*; and the State of the Service survey which is run annually by the Australian Public Service Commission.
83. The research above is not a complete list of all workplace bullying studies in Australia. They are the main studies Safe Work Australia is aware of, had involvement in, or that had data analysed in time for this inquiry.
84. There are a number of gaps in our knowledge of workplace bullying in Australia including:
    - A lack of longitudinal data on bullying / harassment
    - The lack of a complete national picture of the extent of workplace bullying across all jurisdictions in Australia, and
    - The lack of information on how sources of bullying vary between industrial sectors in Australia.
85. The most significant findings and statistics from the research above are summarised below.

Summary of key research findings

Prevalence

86. There is wide variation in estimates of the prevalence of bullying in Australian workplaces (3.5 per cent - 21.5 per cent). This is largely due to inconsistent definitions of bullying in research, varying levels in specificity in survey questions about bullying, different time frames for reporting bullying and different measurement methods such as via 'self-labelling' of bullying experiences or measurement of a 'behavioural experience' approach.
87. The most recent and reliable estimate of the prevalence of workplace bullying in Australia comes from the AWB project. It found that 6.8 per cent of Australian workers have been bullied at work in the six months prior to being surveyed, with 3.5 per cent experiencing bullying for longer than a six month period[13]. The survey data was collected between 2009 and 2011. These findings are supported by the PATH through Life study (ANU)[14] which also found that 6.8 per cent of workers had been bullied at work in the six months prior to being surveyed. The survey data was collected in 2011.
88. Both these studies used a restrictive set of questions that included a narrow definition of bullying and so this prevalence estimate is likely to be robust at a national level.

[13] Australian Workplace Barometer (AWB) Project: Professor Maureen Dollard, Centre for Applied Psychological Research, University of South Australia
[14] Personality and Total Health (PATH) through Life project: Centre for Research on Ageing, Health and Welfare, The Australian National University.

However it should be noted that the AWB project excluded workers who may have witnessed bullying and workers who were bullied by co-workers of equal 'power'. This may have resulted in an underestimate of the prevalence and impact of workplace bullying.

Cost

89. Cost estimates vary widely as a result of variation in the estimates of the prevalence of bullying but have been placed in the range of $6-$36 billion in 2000 by the Productivity Commission[15].

90. This cost estimate was based on international workplace bullying prevalence estimates because at the time there were no suitable Australian data. The cost of workplace bullying could be better estimated today owing to the near national data set on workplace bullying in the AWB project. Nevertheless the AWB estimate of 6.8 per cent of workers experiencing bullying in the last six months falls within the prevalence range used to calculate the cost of bullying in the Productivity Commission report.

Coverage of Australian workforce

91. Safe Work Australia is unaware of any research data set on bullying that covers the whole Australian workforce. However the AWB project includes a random sample of workers from all states and territories except Queensland and Victoria.

92. There is no evidence that the prevalence of bullying varies in a statistically significant way between the Australian states and territories included in the AWB project. This means that assuming Victoria and Queensland are similar to the other states the national estimate of 6.8 per cent of workers experiencing bullying is likely to be unchanged with the inclusion of Victorian and/or Queensland data.

Industries with high prevalence of workplace bullying

93. Workers' compensation statistics show that there is a higher incidence rate of bullying/harassment claims in industries with a high proportion of public sector employees such as Education, Government administration & defence, Health & community services and Personal & other services which include the police and emergency services. This is likely to be due to public sector employees' awareness of bullying and greater likelihood of making a claim for injuries arising from bullying rather than to a higher prevalence of bullying in the public sector.

94. There is preliminary evidence that the perception and labelling of bullying varies by industry or public / private sector[16]. Public sector workers may be more likely to self-label their experience as bullying even if their experience of bullying behaviours is less than for private sector workers.

95. Comparison of bullying rates as determined in the AWB project with bullying compensation rates do not show a perfect match by industry. For example bullying in the Construction industry is reported at a much higher rate in the AWB project than it is compensated. Government administration & defence has considerably lower rates of reporting bullying in the AWB project than other industries but is the industry most frequently compensated for bullying.

96. High rates of bullying are shown in both the compensation data and AWB project for: Health & community services, Electricity, gas & water supply, Personal & other services and Education.

[15] http://pc.gov.au/projects/study/regulationbenchmarking/ohs/report
[16] People at Work (PAW) study: KA Way, NL Jimmieson & P Bordia. (in review). Self-labelling versus Behavioural experience of workplace bullying: differences in industry and sector-level prevalence and sources. Journal of Health, Safety and Environment

97. Preliminary analysis of the AWB data suggests that bullying compensation is less likely to occur in industries characterised by physical demands and where being sworn or yelled at is most frequent. On the other hand bullying shows higher rates of compensation in industries associated with higher levels of physical threat, work pressure, serious bullying, and greater levels of engagement and reward.

Consequences of bullying

98. Preliminary analysis of the PATH data shows that experiencing bullying of any type is associated with a greater risk of depression[17]. The AWB project found that the majority of the costs of bullying and job strain[18] through sickness, absence and presenteeism may be accounted for by workers who report only mild symptoms of depression[19].

Reporting of bullying and rates of complaint and enquiry

99. Safe Work Australia is aware of only one study that examines issues surrounding the reporting of bullying and this is probably an area of bullying research that deserves more attention. The Australian Public Service Commission includes questions relating to this topic in its annual State of the Service survey.

100. Although the findings relate only to the Australian Public Service they indicate low levels of reporting of bullying and harassment. This is for a variety of reasons but mainly because workers felt no action would be taken or that it would affect their career. Only about half of those who did report the bullying felt that action to some extent had been taken and only 34 per cent of these were satisfied with the outcome.

101. Data from various work health and safety jurisdictions indicate that bullying-related complaints and enquiries are increasing. Guidance material on bullying remain among the top downloads from work health and safety authority websites. This may reflect an increased awareness and recognition of workplace bullying in the community, and because it is the type of guidance that is relevant to all workplaces.

Next Steps

102. Administrative workers' compensation data is a useful source of data on the level of claims for workers' compensation due to workplace bullying. However research studies can provide a broader picture on the prevalence of bullying by accounting for cases of bullying that do not result in an injury or compensation claim.

103. The data provided by the AWB project is a recent estimate of the prevalence of workplace bullying in Australia. The findings of this project are further supported by the PATH research.

104. Given that recent data on the prevalence of workplace bullying exists it is appropriate to concentrate our energies towards activities that seek to prevent workplace bullying through legislation, advice to businesses and workers and community awareness raising.

[17] Personality and Total Health (PATH) through Life project: Centre for Research on Ageing, Health and Welfare, The Australian National University.
[18] A risk factor for stress
[19] Australian Workplace Barometer (AWB) Project: Professor Maureen Dollard, Centre for Applied Psychological Research, University of South Australia.

Appendix A: Progress of Model Codes of Practice

Name	*Timing*
First Set	
1. How to Manage Work Health and Safety Risks 2. Work Health and Safety Consultation, Cooperation and Coordination 3. Managing the Work Environment and Facilities 4. Managing Noise and Preventing Hearing Loss at Work 5. Confined Spaces 6. Hazardous Manual Tasks 7. Managing the Risk of Falls at Workplaces 8. How to Manage and Control Asbestos in the Workplace 9. How to Safely Remove Asbestos 10. Preparation of Safety Data Sheets (SDS) for Hazardous Chemicals 11. Labelling of Workplace Hazardous Chemicals.	Endorsed in-principle by the Workplace Relations Ministers Council on 10 August 2011.
Second Set	
1. First aid in the workplace 2. Construction Work 3. Preventing Falls in Housing Construction 4. Managing Electrical Risks at the Workplace 5. Managing Risks of Hazardous Chemicals 6. Managing Risks of Plant in the Workplace 7. Spray Painting and Powder Coating 8. Abrasive Blasting 9. Welding Processes 10. Excavation Work 11. Demolition Work 12. Safe Design of Structures	Awaiting approval from the Select Council on Workplace Relations.
13. Tree Trimming and Removal Crane Access Method	Being revised based on public comment feedback. A draft is expected mid-year.
14. Preventing and Responding to Workplace Bullying	Being revised based on public comment feedback. A draft is expected mid-year.
15. Preventing and Managing Fatigue in the Workplace	Being revised based on public comment feedback. A draft is expected by the end of the year.
Third Set	
1. Safe Design, Manufacture, Import and Supply of Plant 2. Working in the Vicinity of Overhead and Underground Electrical Lines 3. Traffic Management in Workplaces 4. Scaffolding Work 5. Formwork and Falsework	Being revised based on public comment feedback.
Fourth Set	
1. Cranes 2. Amusement devices 3. Industrial lift trucks 4. Rural plant 5. Cash-in- transit 6. Forestry	Released for public comment from 8 June – 24 August 2012.
Codes – Under development	
1. Diving work – Stakeholder consultation occurring. 2. Managing risks in policing – Stakeholder consultation occurring. 3. Tilt-up and Pre-cast concrete in building construction - Delayed until AS 3850 is revised. 4. Managing Risk in Housing Construction - Stakeholder consultation occurring. 5. E-waste – Stakeholder consultation occurring. 6. Stevedoring – Stakeholder consultation occurring.	

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APPENDIX B - PENALTY LEVELS IN EFFECT IMMEDIATELY BEFORE COMMENCEMENT OF MODEL WHS LAWS ON 1 JANUARY 2012

The following table summarises the penalty schemes (including dollar amounts) for work health and safety offences by persons conducting a business or undertaking (or employers) and also employees, workers and 'third parties' at a workplace.

The review panel into the national OHS review noted the disparity in schemes. The rationale for the penal levels under the model WHS Act is explained in general terms in the First Report of the Panel.

Penalties in this table are maximum penalties only and there is court discretion in awarding penalty levels in relation to particular offences.

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
Model WHS Act	Model WHS Act	**Section 31 Reckless conduct—Category 1** - In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$300 000 or 5 years imprisonment or both - In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$600 000 or 5 years imprisonment or both - In the case of an offence committed by a body corporate - —$3 000 000 **Section 32 Failure to comply with health and safety duty—Category 2** - In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$150 000 - In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$300 000 - In the case of an offence committed by a body corporate —$1 500 000 **Section 33 Failure to comply with health and safety duty—Category 3** - In the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)—$50 000 - In the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—$100 000 - In the case of an offence committed by a body corporate —$500 000 **Section 34 Exceptions apply in relation to volunteers, except in their capacity as workers.**	**Same penalty scale as in column 3**
Cth	Occupational Health and Safety Act 1991 (Repealed)	**Section 16(1) Employer's duty to employees section** - Offence resulting in death or serious bodily injury (includes negligence and recklessness) – 4500 penalty units ($495 000) - Offence exposing employee to a substantial risk of death or serious bodily injury (includes negligence and recklessness) – 3 000 penalty units ($330 000) **Section 17 Employer's duty to third parties section** = 4 500 penalty units	**Section 21(1)** Employee's duty in relation to OHS section 21(1) = 180 penalty units ($19 800)

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
		($495 000)	
NSW	Occupational Health and Safety Act 2000 (Repealed)	**Section 8 Employer's duty to employees and others at workplace** - in the case of a corporation (being a previous offender)—7 500 penalty units ($825 000) - in the case of a corporation (not being a previous offender)—5 000 penalty units ($550 000) - in the case of an individual (being a previous offender)—750 penalty units ($82 500) or imprisonment for 2 years, or both, or - in the case of an individual (not being a previous offender)—500 penalty units ($55 000) **Section 32A** Reckless conduct causing death by person with OHS duties - in the case of a corporation—15 000 penalty units ($1 650 000) - in the case of an individual—imprisonment for 5 years or 1 500 penalty units ($165 000), or both	**Section 20 Employee's duty while at work** - in the case of a previous offender—45 penalty units ($4 950) - in any other case—30 penalty units ($3 300) **Section 21 Person's duties** - in the case of a previous offender—45 penalty units ($4 950) - in any other case—30 penalty units ($3 300) **Section 24 Person's duties (interfering with first aid treatment of injured worker)** - in the case of a corporation (being a previous offender)—7 500 penalty units ($825 000) - in the case of a corporation (not being a previous offender)—5 000 penalty units ($550 000) - in the case of an individual (being a previous offender)—750 penalty units ($825 000) - in the case of an individual (not being a previous offender)—500 penalty units ($55 000) **Section 32A Reckless conduct causing death by person with OHS duties** - in the case of a corporation—15 000 penalty units ($1 650 000) - in the case of an individual—imprisonment for 5 years or 1 500 penalty units ($165 000) or both
Vic	Occupational Health and Safety Act 2004	**Section 21 Employer's duties to employees** - natural person 1 800 penalty units ($219 852) - body corporate 9 000 penalty units ($1 099 260) **Section 23 Employer's duties to other persons** - natural person 1800 penalty units ($219 852) - body corporate 9000 penalty units ($1 099 260) Self-employed persons duties to other persons = 1800 penalty units ($219 852) **Section 32 Person's duties not to recklessly endanger** in the case of a natural person, a term of imprisonment not exceeding 5 years or 1 800 penalty units ($219 852), or both - in the case of a body corporate, 9 000 penalty units ($1 099 260)	**Section 25 Employee's duties** = 1800 penalty units ($219,852) **Section 32 Person's duties not to recklessly endanger** - in the case of a natural person, a term of imprisonment not exceeding 5 years, or 1 800 penalty units ($219 852), or both - in the case of a body corporate, 9 000 penalty units ($1 099 260)
Qld	Workplace Health and Safety Act 1995 (Repealed)	**Section 24 Person on whom OHS obligation imposed (employers, employees and other persons etc)** - if the breach causes multiple deaths—$1 000 000; or - if the breach causes death or grievous bodily - harm—$500 000; or - if the breach causes bodily harm—$375 000; or - if the breach involves exposure to a substance likely to - cause death or grievous bodily harm—$375 000; or - otherwise—$250 000.	**Section 24 Person on whom OHS obligation imposed (employers, employees and other persons etc)** - if the breach causes multiple deaths—2 000 penalty units ($200 000) or 3 years' imprisonment - if the breach causes death or grievous bodily harm—1 000 penalty units ($100 000) or 2 years' imprisonment - if the breach causes bodily harm—750 penalty units ($75 000) or 1 year's imprisonment

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
			- if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units ($75 000) or 1 year's imprisonment - otherwise—500 penalty units ($50 000) or 6 months' imprisonment
WA	Occupational Safety and Health Act 1984	**Section 3A** sets penalty levels with 3 different penalty levels. **Level 1 Offences** **Offence by Employee:** First offence—$5 000 Subsequent offence—$6 250 **Offence by Employer** Individual First offence— $25 000 Subsequent offence—$31 250 Body Corporate First offence— $50 000 Subsequent offence—$62 500 **Level 2 Offences** Individual First offence— $100 000 Subsequent offence—$125 000 Body corporate First offence— $200 000 Subsequent offence— $250 000 **Level 3 Offence** Individual First offence— $200 000 Subsequent offence— $250 000 Body corporate First offence— $400 000 Subsequent offence— $500 000 **Level 4** Individual First offence— $250 000 and imprisonment for 2 years Subsequent offence, to a fine of $312 500 and imprisonment for 2 years	**Section 20 Duty of employees to themselves and others** Gross negligence— $25 000 and $31 250 for subsequent offence Contravention causes the death or serious harm—$20 000 and $25 000 for subsequent offences In any other case—$10 000 and $12 500 for subsequent offences **See also Level 1 Offence level in column 3**

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
		Body corporate First offence— $500 000 Subsequent offence— $625 000 **Section 19 general duty to employees** Gross negligence—level 4 penalty Contravention causes the death of, or serious harm to, an employee—level 3 penalty In any other case—level 2 penalty	
SA	Occupational Health, Safety and Welfare Act 1986	Sub-regulation (5) of definition of *'workplace'* sets penalty schedule amounts for first and subsequent offences. Different levels apply for body corporate and 'any other case' **Section 19(1) Employer duty in relation to 'employees'** First offence: Division 1 fine $300 000(body corporate) Division 2 fine $100 000 (any other case) Subsequent offence: Division 1 fine $600 000 (body corporate) Division 2 fine $200 000 (any other case) **Section 22(2) Employer/sub-contractors duty in relation to 'other persons'** First offence: Division 1 fine $300 000(body corporate) Division 2 fine $100 000 (any other case) Subsequent offence: Division 1 fine $600 000 (body corporate) Division 2 fine $200 000 (any other case) **Section 59 offence to endanger persons in the workplace** $1 200 000	**Section 21(1a) Employee duty in relation to health and safety of 'other persons' at the workplace** Division 6 fine $10 000 **Section s21(1) Employee duty in relation to their own health and safety** Division 7 fine $5 000 **Section 59 offence to endanger persons in the workplace** $400 000 or 5 years imprisonment
Tas	Workplace Health and Safety Act 1995	**Section 9 Duty of employer to employee** 1 500 penalty units (body corporate) ($195 000) 500 penalty units (natural person) ($65 000)	**Employee—s 16 Duties of employees** 100 penalty units ($65 000)

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
		Section 9(3) Duty to any person other than employee 1 500 penalty units (body corporate) ($195 000) 500 penalty units (natural person) ($65 000) **Duty of self-employed person to 'other persons'** 500 penalty units (natural person) ($65 000) **Section 9(8) Duty of an employer or principal who is not an employer to visitors to the workplace** 100 penalty units (body corporate) ($13 000) 20 penalty units (natural person) ($2600) **Section 11 Duty of responsible officer, to perform duties under Act** 250 penalty units (natural person) Tas penalty scheme based on penalty units. *Penalty Units and Other Penalties Act 1987* sets penalty levels. Penalty unit at January 2012 is $130(s4A(7A)) but is indexed every financial year—s 4A	
ACT	Work Safety Act 2008 (Repealed)	**Section 21 Failure to comply with general duty** **Section 27 Failure to comply with worker duty to worker and 'other persons'** 5 different categories of offences: Ordinary—100 penalty units (s 30) ($11 000 / $55 000) Negligent exposure to substantial risk—1 000 penalty units imprisonment for 2 years or both (s 31) ($110 000 / $550 000) Reckless exposure to substantial risk of serious harm—1 500 penalty units, imprisonment for 5 years or both. (s 32) ($165 000 / $825 000) Negligently cause serious harm—1 500 penalty units, imprisonment for 3 years or both (s 33) ($165 000/$825 000) Recklessly cause serious harm—2 000 penalty units, imprisonment for 7 years or both (s 34) ($220 000 / $1 100 000) Section 133 of Legislation Act deals with penalty levels—s 5. Penalty unit is equivalent to • $110 (individual) • $550 (corporation) 'Worker' includes volunteers—s 9 Same penalty levels apply to employers and workers.	**Same penalty scale as in column 3** Same penalty levels apply to employers and workers.
NT	Workplace Health and Safety Act (Repealed)	**Section 55 General duty of care to workers, 'others' and themselves** 1 000 penalty units or imprisonment for 2 years or $137 000/$685 000 or both	**Section 59 Duty of workers to themselves and other** 1 000 penalty units or imprisonment for 2 years or $137 000 or both.

Jurisdiction	Legislation	Penalties—Employers/Persons conducting a business or undertaking	Penalties—Workers, third persons at the workplace
		Penalty Unit Act 2009 sets penalty level amounts. 1 penalty unit is equivalent to $130 unless otherwise prescribed **Section 82 Aggravated offences** Intentional breach causing death— imprisonment for 5 years or $342 500/$1 712 500 or both Reckless indifference or persistent disregard for duties— $1 986,500	Intentional breach causing death—$342 500 or 5 years imprisonment or both

TABLE 2 - Jurisdictional comparison of legislative provisions—application of pre-harmonised OHS laws to volunteers

See also p 39, 40 of the National OHS Review, 1st Report
Assessment re change assumes implementation

Pre-harmonisation	Commonwealth	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	ACT	NT
OHS legislation	Occupational Health and Safety Act 1991	Occupational Health and Safety Act 2000	Occupational Health and Safety Act 2004	Workplace Health and Safety Act 1995	Occupational Safety and Health Act 1984	Occupational Health, Safety and Welfare Act 1986	Workplace Health and Safety Act 1995	Work Safety Act 2008	Workplace Health and Safety Act
A) DUTIES OWED BY ORGANISATIONS	relevant Commonwealth bodies or non-Commonwealth licensees	employers	employers—persons who employ one or more other persons under contracts of employment or contracts of training	PCBUs	employers	employers	employers	PCBUs	employers—extended definition applies
Health and safety duties owed to	'Commonwealth employees' 'Commonwealth authority employees' 'Non Commonwealth licensee employees' Contractors of employer—see section 16(4) 'Third parties'—see section 17	'Employees' meaning individuals who work under a contract of employment or apprenticeship—section 4 definition Extended definition applies to cover contractors 'Others at workplace'—section 8(2)	'Employees' meaning persons employed under a contract of employment or contract of training —independent contractors engaged by an employer, any employees of the independent contractors—section 21(3) 'Other persons at workplace'—section 23	'Workers' meaning a person who does work other than under a contract for services for or at the direction of an employer; a person may be a worker even though the person is not paid for work done—section 11 'Other persons'—section 28(1)	'Employees' meaning a person by whom work is done under a contract of employment; or an apprentice—section 3 Contractors and any persons employed or engaged by the contractors—section 23D 'Other persons'—see section 21(2)	'Employees' meaning persons employed under a contract of service or working under a contract of service—see section 4 Contractors, any person employed or engaged by contractors—section 4(2) Volunteers of an employer—section 4(3) 'Other persons'—see section 22(2)	'Employee' meaning a natural person employed under a contract of service or a natural person who uses substances or plant in an educational or other training establishment Certain contractors and visitors to the workplace—see section 9	'Worker' meaning an individual who carries out work in relation to a business or undertaking whether for reward or otherwise under an arrangement with the PCBU The duty to ensure work safety extends to the health, safety and wellbeing of people in relation to work—see sections 7, 21	'Workers' of 'employers' The focus here is on the 'employer' as a duty holder, with duties being owed to workers (whether or not workers engaged in the business are or include employees)—see the definitions of 'employer' and 'worker' in section 4
Health and safety duties owed to volunteers in their capacity as	'third parties' at an employer's workplace	'others' at an employer's workplace	'others' at an employer's workplace	'others' at a workplace	'others' at an employer's workplace	volunteers of employers (i.e. who are deemed to be 'employees') 'others' at an employer's	unclear	workers	workers

Pre-harmonisation	Commonwealth	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	ACT	NT
						workplace			
Change re model WHS laws	Negligible—given the special nature of the Commonwealth jurisdiction (i.e. largely covering Commonwealth public servants)	Close alignment with pre-existing laws: —PCBUs (not just employers) directly owe duties to workers including volunteers who carry out 'work', not just employees —'volunteer associations' (whether incorporated or not) however are excluded from coverage if they are not employers.	as for New South Wales	volunteers of PCBUs were previously covered as 'workers' so no change to that extent new exemption for 'volunteer associations' that are not employers, whether incorporated or not	as for New South Wales	volunteers of employers were previously covered as 'employees' so no change to that extent	clearer duty for relevant duty holders	new exemption for certain 'volunteer associations'	technical changes to terms
B) DUTIES OWED BY VOLUNTEERS									
Volunteers owe specified duties in their capacity as	N/A—see section 21	persons at the workplace—i.e. to not intentionally hinder or obstruct or attempt to hinder or obstruct without reasonable excuse the doing of any act or thing to avoid or prevent a serious risk to health or safety—see sections 21, 24	persons at the workplace—i.e. not to recklessly endanger persons at workplaces—see section 32	persons at the workplace—i.e. to do certain things e.g. to comply with instructions given for health and safety at the workplace by the employer at the workplace etc., to not wilfully place at risk the work health and safety of any person at the workplace—see section 36	N/A—section 20	persons at the workplace—i.e. to (subject to certain defences): —not misuse or damage anything provided in the interests of health, safety or welfare, or —place at risk the health or safety of any other person while that person is at work—see section 25 Unclear whether volunteers engaged by employers are deemed to be	persons at the workplace—i.e. not intentionally, recklessly or without reasonable excuse do certain things e.g. place at risk the health or safety of any other person at work—see section 20	workers—i.e. not to expose the worker and other people who may be affected by the worker's work, to work safety risks —see section 27	Workers—e.g. to take reasonable care for the worker's own health and safety, and for the health and safety of others, while at work —see section 59 read together with the definition of 'worker' at section 4

Pre-harmonisation	Commonwealth	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	ACT	NT
						'employees' and owe the employee duties—see section 4(3)			
Change re model WHS laws	new worker duty under clause 28 of the model WHS laws based on a duty to take reasonable care e.g.: take reasonable care for their own health and safety and that that their acts or omissions do not adversely affect the health and safety of other persons.	shifts to 'reasonable care' model under clause 28 of the model WHS laws	shifts to 'reasonable care' model under clause 28 of the model WHS laws	shifts to 'reasonable care' model under clause 28 of the model WHS laws	new worker duty under clause 28	substantially similar in practice	shifts to 'reasonable care' model under clause 28 of the model WHS laws	substantially similar in practice although criminal laws under pre-harmonised laws may import mental elements	substantially similar in practice
C) OTHER RELEVANT LAWS									
Criminal	Crimes Act 1914	Crimes Act 1900	Crimes Act 1958	Criminal Code Act 1899	Criminal Code Act 1913	Criminal Law Consolidation Act 1935	Criminal Code Act 1924	Crimes Act 1900	Criminal Code Act
Common law (e.g. negligence)	N/A	Yes—but see below	Yes—but see below	Yes—but see below	Yes—but see below	Yes—but see below	Yes—but see below	Yes—but see below	Yes—but see below
Protection from <u>personal</u> <u>civil</u> liability in certain circumstances	Commonwealth Volunteers Protection Act 2003	Civil Liability Act 2002, Part 9	Wrongs Act 1958, Part IX	Civil Liability Act 2003. Chapter 2, Part 3	Volunteers and Food and Other Donors (Protection from Liability) Act 2002	Volunteers Protection Act 2001	Civil Liability Act 2002, Part 10	Civil Law (Wrongs) Act 2002, Part 2.2 of Chapter 2	Personal Injuries (Liabilities and Damages) Act, Part 2

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Appendix C

PREVENTING AND RESPONDING TO WORKPLACE BULLYING

Draft
Code of Practice

Table of Contents

FOREWORD

This Code of Practice for preventing and responding to workplace bullying is an approved code of practice under section 274 of the *Work Health and Safety Act* (the WHS Act).

An approved code of practice is a practical guide to achieving the standards of health, safety and welfare required under the WHS Act and the Work Health and Safety Regulations (the WHS Regulations).

A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Compliance with the WHS Act and Regulations may be achieved by following another method, such as a technical or an industry standard, if it provides an equivalent or higher standard of work health and safety than the code.

An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice.

This Code of Practice has been developed by Safe Work Australia as a model code of practice under the Council of Australian Governments' *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* for adoption by the Commonwealth, state and territory governments.

A draft of this Code of Practice was released for public consultation on 26 September 2011 and was endorsed by the Workplace Relations Ministers Council on *[to be completed]*.

SCOPE AND APPLICATION

This Code of Practice provides practical guidance on what bullying is, how to prevent bullying becoming a health and safety risk in the workplace and what to do if it does occur. This Code is applicable to any workplace and contains information that is relevant to all persons conducting a business or undertaking and their workers.

How to use this code of practice

In providing guidance, the word 'should' is used in this Code to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

This Code also includes various references to provisions of the WHS Act and Regulations which set out the legal requirements. These references are not exhaustive. The words 'must', 'requires' or 'mandatory' indicate that a legal requirement exists and must be complied with.

1. INTRODUCTION

Bullying can happen in all types of workplaces. Any person is capable of engaging in bullying behaviour in some circumstances and anyone could be a target of the behaviour.

Bullying is a hazard because it may affect the emotional, mental and physical health of workers. The risk of bullying is minimised in workplaces where everyone treats each other with dignity and respect.

1.1 Who has duties in relation to workplace bullying?

Everyone in the workplace has a legal responsibility in relation to preventing bullying.

A **person conducting a business or undertaking** has the primary duty under the WHS Act to ensure, so far as is reasonably practicable, that workers and other persons are not exposed to health and safety risks arising from the business or undertaking.

The duty includes a requirement to ensure, so far as is reasonably practicable,

- the provision and maintenance of a work environment that is without risk to health and safety
- the provision and maintenance of safe systems of work, and
- the health of workers and the conditions of the workplace are monitored for the purpose of preventing illness or injury.

The WHS Act defines 'health' as both physical and psychological health. This means the duty to ensure health and safety extends to ensuring the emotional and mental health of workers.

A person conducting a business or undertaking may be an employer, self-employed, a principal contractor, a person with management or control of a workplace, a designer, manufacturer, supplier, importer or installer.

Officers, such as company directors, must exercise due diligence to ensure the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure the business or undertaking has and uses appropriate resources and processes to eliminate or minimise risks associated with bullying.

Workers and other persons at the workplace must:

- take reasonable care for their own health and safety,
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons, and
- comply, so far as is reasonably practicable, with any reasonable instruction given by the person conducting the business or undertaking.

1.2 What is workplace bullying?

Workplace bullying is *repeated, unreasonable behaviour directed towards a worker or a group of workers, that creates a risk to health and safety*.

'Repeated behaviour' refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.

'Unreasonable behaviour' means behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening.

Direct or indirect bullying

Bullying can occur face-to-face, over the phone, via email, instant messaging or using mobile phone technologies including text messaging. Bullying can involve many different forms of unreasonable behaviour, which can be obvious (direct) or subtle (indirect).

Examples of direct bullying include:

- abusive, insulting or offensive language
- spreading misinformation or malicious rumours
- behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming
- displaying offensive material
- inappropriate comments about a person's appearance, lifestyle, or their family
- teasing or regularly making someone the brunt of pranks or practical jokes
- interfering with a person's personal property or work equipment, or
- harmful or offensive initiation practices.

Examples of indirect bullying include:

- unreasonably overloading a person with work or not providing enough work
- setting timelines that are difficult to achieve or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- deliberately excluding, isolating or marginalising a person from normal work activities
- withholding information that is vital for effective work performance
- deliberately denying access to information, consultation or resources
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers, or
- unfair treatment in relation to accessing workplace entitlements such as leave or training.

Intentional or unintentional bullying

Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect.

Bullying can also be unintentional, where actions which, although not intended to humiliate, offend, intimidate or distress, cause and should reasonably have been expected to cause that effect. Sometimes people do not realise that their behaviour can be harmful to others. In some situations, behaviours may unintentionally cause distress and be perceived as bullying.

Bullying can be directed at a single worker or a group of workers and be carried out by one or more workers. Bullying can be:

- **Downwards** from managers to workers – for example, a manager or supervisor in a position of power may have a management style that seems to be strict or disciplinary when in fact it is bullying.
- **Sideways** between workers or co-workers – for example, a co-worker seeking to enhance their position or sense of power in the workplace.
- **Upwards** from workers to supervisors or managers – for example, workers may bully their manager or supervisor to try and drive them from the workplace.

Impact of workplace bullying

Bullying can be harmful for the workers who experience it and those who witness it. Each individual will react differently to bullying and in response to different situations. Reactions may include any combination of the following:

- distress, anxiety, panic attacks or sleep disturbance
- physical illness, such as muscular tension, headaches and digestive problems
- reduced work performance
- loss of self-esteem and feelings of isolation
- deteriorating relationships with colleagues, family and friends
- depression and risk of suicide.

Those who witness bullying may experience guilt and fear because they cannot help or support the affected person in case they too get bullied. Witnesses may feel angry, unhappy or stressed with the workplace and may become unmotivated to work.

Bullying can also damage organisations. It can lead to:

- high staff turnover and associated recruitment and training costs
- low morale and motivation
- increased absenteeism
- lost productivity
- disruption to work when complex complaints are being investigated, and
- costly workers' compensation claims or legal action.

1.3 What is not considered to be workplace bullying?

Many things that happen at work are generally not considered to be bullying, although some experiences can be uncomfortable for those involved. Differences of opinion, performance management, conflicts and personality clashes can happen in any workplace, but usually they do not result in bullying.

A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying and therefore should not be ignored.

Reasonable management action, carried out in a fair way, is not bullying. Managers have a right to direct the way work is carried out and to monitor and give feedback on performance, but the way that this is done is a risk factor in determining the likelihood of bullying occurring.

Examples of reasonable management action include:

- setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience
- allocating work to a worker in a transparent way
- fairly rostering and allocating working hours
- transferring a worker for legitimate and explained operational reasons
- deciding not to select a worker for promotion, following a fair and documented process
- informing a worker about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring, and
- performance management processes.

Case study: Reasonable management action that is not bullying

Mira works in the purchasing department of a large organisation. She has been there for six months and works with six other staff. The department is busy and the work required is routine and shared evenly among the seven workers.

On a regular basis, Mira falls behind schedule with her tasks. To help develop her admin skills and improve her work performance, the purchasing manager asked Mira to attend a two-day training course. Mira feels humiliated and singled out, even though her manager assures her that her job is not under threat.

Case study: Unreasonable management action that is bullying

John provides IT support for an insurance company and works with three other staff. The IT section has experienced a high staff turnover. John finds that his workload continues to rise however, there does not appear to have been any change in the amount of work received by his colleagues.

John's manager has been criticising him a lot and ignores the fact that John has been working extra hours to try and keep up. John requests a performance review but his manager keeps postponing the meeting. John feels upset about the way he is being managed and lodges a grievance.

Harassment and discrimination

Harassment involves intimidating, offending or humiliating behaviour directed toward a person on the basis of a particular personal characteristic such as race, age or gender.

Discrimination involves the unfair treatment of a person based on a personal characteristic, for example not hiring or promoting a woman to a position because she may become pregnant or has children.

Unlike bullying, harassment and discrimination do not have to be repeated and have to be based on some characteristic of the target.

Discrimination and harassment are dealt with separately under anti-discrimination, industrial and human rights laws. The WHS Act includes specific protections against discriminatory conduct for persons raising health and safety concerns or performing legitimate safety-related functions.

A worker can be bullied, harassed and discriminated against at the same time.

Bullying and violence

Violence usually involves physical assault or the threat of physical assault. Bullying and violence can both result from conflict and can occur together. However, bullying does not always result in violence. Threats to harm someone, violence and damage to property are criminal matters that should be referred to the police.

1.4 What is involved in preventing workplace bullying?

A step by step process

Bullying is best dealt with by taking steps to prevent it long before it becomes a risk to health and safety. This can be achieved by following a risk management process which involves the following steps:

- **identify** bullying risk factors
- **assess** the likelihood of bullying occurring and its impact
- **control** the risks by eliminating them, or where that is not reasonably practicable, minimising the risk as far as reasonably practicable, and
- **review** the effectiveness of the control measures.

Further guidance on the risk management process generally is available in the *Code of Practice: How to Manage Work Health and Safety Risks.*

Consulting workers

Consultation involves sharing of information, giving workers a reasonable opportunity to express views and taking those views into account before making decisions on health and safety matters.

The WHS Act requires that you consult, so far as is reasonably practicable, with workers who carry out work for you who are (or are likely to be) directly affected by a work health and safety matter.

If the workers are represented by a health and safety representative, the consultation must involve that representative.

Consultation with workers and their health and safety representatives must occur at each step of the risk management process. Consultation must also be carried out in the development of any policies and procedures related to bullying, including complaints procedures. Consultation will help ensure that workers 'own' and engage with the policy and procedure and that these are tailored to suit the workplace circumstances.

Consulting, co-operating and co-ordinating activities with other duty holders

The WHS Act requires a person consult, co-operate and co-ordinate activities with all other persons who have a work health or safety duty in relation to the same matter, so far as is reasonably practicable.

In some situations, there may be a risk of bullying between workers engaged by different businesses who work together on the same job or at the same workplace. For example, an employee in a retail store may bully a cleaner who has been contracted by the shopping centre management to clean the premises. The business operators of the retail store, the shopping centre and the cleaning company each owe duties. They should communicate with each other and work together to prevent and respond to bullying in an effective way, for example by clearly defining roles and responsibilities in contracts, developing joint policies about not tolerating bullying behaviour and agreeing on how any incidents of bullying will be reported and resolved.

Further guidance on consultation is available in the *Code of Practice: Work Health and Safety Consultation, Co-operation and Co-ordination.*

2. IDENTIFYING AND ASSESSING THE RISK OF WORKPLACE BULLYING

Identifying hazards involves finding all of the things and situations that could potentially contribute to bullying in the workplace and cause harm to people. Although there may be no obvious signs of workplace bullying, this does not mean such behaviour or conduct does not exist.

Sources of information that can assist in identifying whether bullying is, or could be, a problem include:

- patterns of absenteeism, complaints, sick leave and staff turnover
- results from workforce surveys
- direct feedback from workers, managers or supervisors
- hazard reports
- exit interviews
- issues raised by health and safety representatives, and
- workers' compensation claims.

The presence of bullying in the workplace can be the result of a workplace culture and environment that allows or encourages such behaviours to occur. It can also be the product of poor people management skills and lack of supportive leadership. The risk factors that make it more likely for bullying to occur involve:

- organisational culture
- negative leadership styles
- inappropriate systems of work
- poor workplace relationships, and
- workforce characteristics.

2.1 Identifying risk factors

Organisational culture

The culture of an organisation is made up of shared values, beliefs and assumptions that define how an organisation views itself and its environment. These underlying values may encourage acts of bullying and expect targets to endure the behaviour or make it acceptable for management to ignore bullying complaints, for example, when bullying and aggressive behaviour is seen as necessary to get the job done or to 'toughen people up' for the rigours of the industry.

A group within an organisation can differentiate itself from the wider organisational culture, where attitudes and behaviours that are unacceptable in the wider organisation may be established and passed on to new workers in the group.

Leadership styles

Autocratic leadership styles are strict and directive, where workers are not involved in decision making and may have little control or flexibility over their work.

Conversely a leader may have a style that is too relaxed. A relaxed leadership style is characterised by a tendency to avoid making decisions, inadequate or absent supervision of workers, inappropriate delegation of tasks to subordinates and little or no guidance or performance feedback being provided to workers.

Systems of work

The way in which work is organised and designed can have a significant impact on stress and conflict in the workplace, which is related to the occurrence of workplace bullying. Inappropriate systems of work that may lead to incidents of bullying include:

- workload and excessive task demands (for example, through unreasonable performance measures or timeframes)
- role conflict (perception of contradictory demands and expectations to carry out the job)

- role ambiguity (being unsure about what tasks are part of one's own job, as opposed to someone else's job)
- uncertainty about the way work should be done (for example, through a lack of training)
- job insecurity and change (for example, due to restructuring, downsizing, outsourcing, new rosters or changes in work methods), and
- lack of support systems.

Workplace relationships

Poor workplace relationships may be characterised by:

- criticism and other negative interactions
- negative relationships between supervisors and workers
- poor communication or inadequate consultation
- interpersonal conflict, or
- workers being excluded or isolated.

Workforce characteristics

Although all workers are potentially at risk of being bullied, the following groups of workers may be at higher risk:

- young workers
- new workers
- apprentices
- injured workers and workers on return to work plans
- piece workers, and
- workers in a minority group because of ethnicity, religion, disability, gender or sexual preferences.

2.2 Assessing the risks

A risk assessment can help determine:

- the frequency and severity of bullying behaviours
- whether any existing control measures are effective
- what action should be taken to control the risk, and
- how urgently the action needs to be taken.

The risk indicator in *Appendix A* may help you assess whether factors in your work environment create a risk of bullying. It should be used in consultation with workers and their health and safety representatives. Areas of highest risk revealed in the risk assessment should be addressed first.

When assessing the likelihood of bullying occurring, it is important to recognise the risk factors can be interrelated and therefore should not be considered in isolation.

3. CONTROLLING THE RISK OF WORKPLACE BULLYING

The best way to control bullying risks is to eliminate the factors that can cause it. If that is not reasonably practicable, implement measures to minimise the risk. The following control measures should be considered:

- managing the risks in the work environment
- developing a workplace bullying policy
- developing effective complaints resolution procedures
- providing information and training on workplace bullying to workers, and
- encouraging reporting of workplace bullying incidents.

A number of control measures should be implemented together to manage the risks of bullying, as a single control used in isolation is likely to be ineffective or incomplete. Measures may need to be implemented across the whole organisation, as well as in a specific work area.

3.1 Managing the risks in the work environment

Organisational culture

Creating a culture where everyone in the workplace is treated with dignity and respect and where bullying is not tolerated involves:

- developing a code of conduct
- raising awareness of unacceptable behaviour and its damaging effects
- a management commitment to take reports of unacceptable behaviour seriously and ensure they are dealt with confidentially, fairly and in a timely manner
- developing appropriate human resource policies and procedures, for example relating to recruitment and performance management practices
- empowering supervisors and managers to respond effectively to bullying incidents
- discouraging exclusive 'clubs' and cliques
- facilitating teamwork and cooperation.

Leadership styles

- Recruit persons who are competent in people management into management roles
- Provide training for managers, particularly on how to:
    - Communicate effectively and engage workers in decision-making
    - Provide constructive feedback, formally and informally
    - Effectively manage workloads
- Mentor and support new and poor performing managers
- Implement and review performance improvement/development plans
- Provide regular feedback on management performance
- Provide regular leadership skills training
- Include leadership questions (e.g. conduct and performance of leaders) in exit interviews and worker opinion surveys

Systems of work

- Review and monitor workloads and staffing levels
- Allow workers to control their work and be involved in decision making
- Redesign and clearly define jobs
- Reduce excessive working hours
- Seek regular feedback from staff over concerns about roles and responsibilities
- Develop and implement standard operating procedures
- Plan all change and consult with workers affected as early as possible
- Develop and maintain effective communication throughout workplace change such restructuring or downsizing.

Workplace relationships

- Develop and implement an issue resolution process, in accordance with the requirements under the WHS Act and Regulations. This may include using mediation to resolve conflict.
- Provide training (e.g. interpersonal communication skills)
- Ensure supervisors act on inappropriate behaviour in a timely manner

Workforce characteristics

- Develop and implement systems to support and protect workers at higher risk of bullying, for example, a 'buddy' system for new workers
- Train line managers to support workers at higher risk
- Provide access to external employee support services or implement a contact officer system to provide support and advice

3.2 Workplace bullying policy

A bullying policy should be developed by the person conducting the business or undertaking in consultation with workers and their health and safety representatives. It should set out the standards of expected behaviour and make a clear statement that inappropriate behaviour will not be tolerated. A bullying policy should support other risk control measures.

The policy may be developed as a specific bullying policy or incorporated into an existing work health and safety policy or handbook. If the business has a human resources section, the policy may be included as a part of other human resources policies.

A workplace bullying policy should contain:

- a statement that the organisation is committed to preventing bullying
- the standards of appropriate behaviour,
- a process to encourage reporting, including contact points
- a definition of bullying with examples of bullying behaviour, and
- the consequences for not complying with the policy.

3.3 Complaints procedures

Developing effective procedures to resolve complaints will help ensure bullying incidents are dealt with in a consistent and fair way. The procedure should be used each time a complaint is made and should be flexible enough to fit the different circumstances of each incident.

The complaints procedure should provide a clear process for reporting and dealing with workplace bullying, including how complaints will be handled, investigated and resolved. It should also nominate the persons in the organisation who are responsible for receiving and investigating complaints.

Like the bullying policy, it must be developed in consultation with workers and their health and safety representatives. All workers should be made aware that procedures exist for resolving bullying in the workplace.

The complaints procedures should:

- be in plain English and, if necessary, available in other languages
- ensure there is no bias and there is a fair hearing
- ensure privacy and confidentiality
- aim to resolve the problem as quickly as possible
- provide the option to make an informal (verbal) complaint or a formal (written) complaint with mechanisms available to address these
- outline what is involved in the complaint handling process, both formal and informal
- include methods for ensuring people are not victimised as a result of lodging a complaint
- clearly state the roles of responsible individuals such as managers and supervisors, contact officers or grievance officers,
- contain review procedures and a process for appeal of outcomes, and

- identify external avenues available to workers where grievances have been unable to be resolved internally.

Using mediation to resolve conflict

In cases of conflict at work which have not yet escalated into bullying, mediation may be a useful tool. Mediation is a voluntary process where an impartial third party (preferably a trained mediator) assists the parties put their respective cases before each other. The role of a mediator is to assist both parties understand the perspective of the other and to find an agreement the parties are willing to abide by. Mediation is an example of early intervention that may prevent bullying.

3.4 Information and training

Information to raise awareness of bullying and its impacts in the workplace may be provided in various ways, for example:

- information sessions
- team meetings or toolbox talks
- newsletters, pamphlets
- payslip attachments
- posters
- intranet announcements, or
- email messages.

All workers, managers and supervisors should be trained to recognise and deal with bullying as it occurs. A training program should also cover:

- the workplace policy and procedures
- how to comply with the policy
- how to deal with bullying
- how to report bullying, and
- measures used in the workplace to prevent bullying.

Training may need to be tailored to meet the needs of particular worker groups. The training should suit the work experience, gender, disability, ethnicity and/or levels of literacy of the group.

Face-to-face training with facilitated role plays, group work and opportunities to ask questions are often most effective. When providing training about bullying, it is not appropriate to include specific examples of bullying incidents that have occurred in the workplace or details of investigation outcomes.

Bullying has been linked to situations of role conflict and ambiguity. Workers should understand their role and have the appropriate skills to do their job. This includes ensuring that workers who manage or supervise others have good communication and people management skills, or if necessary, providing training to acquire these skills before they start supervisory duties.

Workers who have a designated role in handling reports of bullying should undertake specific training to assist them to carry out their role effectively.

Information and training on workplace bullying, including any relevant policies and procedures, should be included in worker inductions.

3.5 Encourage reporting

Workers should be encouraged to report bullying incidents. This will help ensure intervention occurs as early as possible so prompt assistance and support can be provided to workers. It will also help assess whether bullying prevention measures are working.

Reporting can be encouraged by:

- supervisors and managers promoting reporting

- consistent and effective responses to reports
- regularly providing information (e.g. quarterly) to health and safety committees on numbers of reports made, how they were resolved and what control measures were put in place to address underlying risk factors, and
- making this information available to health and safety representatives and workers.

Contact officers

In some workplaces, it may be useful appointing a person within the workplace as a first point of contact for workers who believe they have been bullied at work. A contact officer should be suitably trained to provide workers with confidential information and support about how best to address an incident. They should have access to information about the options for complaints resolution both inside and outside the business and they should understand the bullying policy.

The contact officer's role involves:

- listening to the target and acting as a support person
- maintaining confidentiality and not taking sides
- explaining and providing information about what constitutes bullying
- providing information about the options available to deal with the issue and the likely results
- providing information on rights and duties under WHS Act and Regulations and other relevant laws, and
- referring the target to counselling or other support services if necessary.

4. RESPONDING TO WORKPLACE BULLYING

Dealing with bullying incidents quickly and impartially will lessen the impact on the workers involved and the business.

4.1 Principles for handling workplace bullying incidents

There are a number of principles that should guide a response to a bullying incident, outlined in the table below.

Table 1: Principles for dealing with bullying incidents

Treat all matters seriously	Take all complaints seriously. Assess all reports on their merits and facts.
Act promptly	Reports should be dealt with quickly, courteously, fairly and within established timelines. All relevant parties should be advised of how long it will take to deal with the report and should be kept informed of the progress (e.g. a regular update, even if there has been little progress, to provide reassurance that the complaint has not been forgotten or ignored). If additional time is required to address the issues, all relevant parties should be advised of the additional time required and the reasons for the delay.
Do not victimise	It is important to ensure anyone who raises an issue of bullying is not victimised for doing so. The person accused of bullying and any witnesses should also be protected from victimisation.
Support all parties	Once a complaint has been made, the workers involved should be told what support is available (e.g. worker assistance programs and peer support systems) and allowed to have a support person present at interviews or meetings (e.g. health and safety representative, union representative or friend).
Be neutral	Impartiality towards everyone involved is critical. This includes the way people are treated in any process. The person in charge of an investigation or resolution process should never have been directly involved in the incident they are investigating or attempting to address. They should also avoid any personal or professional bias.
Communicate process and outcomes	All parties should be informed of the process, how long it will take and what they can expect will happen during the process and at the end. Provide all parties with clear reasons for any actions that have been taken and, in some circumstances, not taken.
Maintain confidentiality	The process should ensure confidentiality for the target and also ensure confidentiality for other parties involved. Details of the matter should only be known by those directly concerned.
Keep records	Documentation is important to any formal investigation. Even if the matter is not formally investigated, a record should be made of all meetings and interviews detailing who was present and the agreed outcomes.

4.2 Resolving bullying complaints

Bullying complaints can be resolved using an informal resolution and/or a formal investigation approach. The aim of a complaints resolution process is to ensure workers are able to return to a productive working relationship as quickly as possible. At times, all that may be needed is for the person engaging in bullying behaviour to be told how their behaviour is impacting on others. Where the person denies wrong doing or is not open to change a more formal process may be required.

The approach taken should reflect the seriousness of the situation. It is important that the worker who reported the situation agrees with the proposed approach or combination of approaches that

will be used.

4.3 Informal resolution

The informal options open to a worker who believes they are experiencing bullying at work include:

- reporting it to their manager but doing nothing themselves. The manager is then responsible for identifying and minimising any risk without implicating the person
- speaking to a contact officer, union representative, manager or human resource for advice and support, or
- speaking to the person engaging in bullying behaviour directly, being mindful of personal safety and the possibility of reprisals.

If a worker chooses to speak directly to the person engaging in bullying behaviour, the procedures should advise them to keep a record of that conversation. If a worker chooses to resolve the issue themselves their manager or supervisor is responsible for ensuring they are protected from any reprisals.

Although a worker has the right to make either a formal or an informal complaint, the procedure should encourage them to consider the informal process first, as this can often achieve a better result for both parties.

The informal approach should not include an investigation or disciplinary action. Instead, a 'no-blame' approach should be used. The main focus in an informal process is to return the individuals to productive work as soon as possible without further bullying behaviour.

A record of the incident should be made for use in the risk management process and when the control measures are next reviewed. The information recorded should cover the nature of the incident, its impact on the work area and the outcome of the informal process. The parties to the incident do not need to be identified in these records. There is no need to include details of the incident in the personnel files of those involved, as this is only necessary once a formal process is initiated.

4.4 Formal resolution

The formal process involves the target of the bullying making a formal complaint in writing which is then formally investigated.

It is important workers clearly understand what to expect from making a formal complaint. For example, workers should be told that:

- the investigation procedures will ensure fairness for all concerned
- an investigation will occur as soon as possible after the complaint is received,
- an impartial and independent (preferably external) person will conduct the investigation.

A formal complaints procedure will differ depending on the size of the business. Some businesses may not need to use all of the steps in the formal process. In such cases the process may involve interviewing each person involved and making a determination based on the information received. In businesses with a human resources section, the process may include all of the steps in the formal process.

The formal process is made up of:

- lodging a complaint
- initial response to the incident by the manager
- a formal investigation
- outcomes of the investigation, including any disciplinary action
- possible appeals process, if necessary, and
- monitoring the situation following the investigation.

Principles of natural justice

Principles of natural justice should be followed in all formal investigations. These principles are designed to protect all parties.

- The person who is alleged to have committed the bullying should be treated as innocent unless the allegations are proved to be true.
- Allegations should be investigated promptly.
- All allegations need to be put to the person they are made against.
- The person the allegations are made against must be given a chance to explain his or her version of events.
- If the complaint is upheld, any disciplinary action that is taken needs to reflect the seriousness of the matter.
- Right of appeal is explained.
- Mitigating factors should be taken into account when assessing if disciplinary action is necessary.

Step 1 - Lodging the complaint

The first step involves the target of the bullying behaviour informing their supervisor or owner of the business they wish to lodge a formal complaint. If the target's manager or supervisor is the person engaging in the bullying behaviour, then the complaint should be received by the next person of seniority in the hierarchy. The bullying contact officer may also receive bullying complaints.

It is the responsibility of the person who receives the verbal notification to:

- protect the target from reprisals
- ensure confidentiality is maintained
- ensure adequate support is provided to both parties
- ask the human resource team (if there is one) to organise the investigation process, and
- provide assistance to the target to submit the written complaint.

The complaint should be in writing with specific allegations including dates, times and names of any witnesses. A template may be included as a part of the complaint procedure to make the reporting process easier.

Step 2 - Initial Response

A suitable manager should meet separately with both parties as soon as possible and explain the formal process and their rights and responsibilities. The discussion should include:

- the expected timetable for investigation and resolution of the complaint
- how the complaint will be investigated (e.g. interviews with the target, the person accused of bullying behaviour and any witnesses; viewing documentary evidence)
- who will receive copies of any statements and records of interview, if obtained
- who can be present at interviews
- whether parties can refuse to participate
- what support mechanisms will be in place for each party, and
- what interim measures will be taken to ensure the safety and welfare of the target during the investigation (interim measures may include suspension of the person accused of bullying behaviour pending the outcome of the investigation, or assignment to other duties until the investigation is complete).

Step 3 - The Investigation

An independent investigator should investigate the complaint. The investigator may be a manager from another work area or someone external to the business. Either party should have the right to challenge the independence and impartiality of the investigator, providing they present reasonable grounds for doing so.

The investigator should notify the person accused of bullying behaviour in writing about:

- the details of the complaint
- the interview time
- the process and their rights (including the right to have a representative)
- time frames for the investigation
- requirements for confidentiality, and
- the possible consequences of the investigation.

The investigator should then interview the person accused of bullying behaviour. If they admit to the behaviour, the matter can be referred back to their supervisor or manager for appropriate action. This may include disciplinary action and/or referral to counselling and training services. The admission of the behaviour and any remorse expressed should be viewed positively and should be taken into account when determining what disciplinary action should be taken, if any.

If the person accused of bullying behaviour disputes the allegations, further enquiries should be carried out in an attempt to determine the facts. This may involve speaking to the target, the person accused of bullying behaviour and any witnesses and may also involve considering relevant documentation.

Step 4 - Investigation outcomes

The investigator should provide a report on the outcomes of the investigation. The findings should be communicated to the parties in writing.

If the allegation cannot be substantiated, this does not mean the bullying did not occur and assistance should be provided to remedy the conflict. This may involve mediation, counselling, changed working arrangements or addressing other organisational issues that may have contributed to the circumstances of the complaint.

If the complaint is found to be vexatious or malicious, counselling should be provided for the target. This action should be considered very seriously and should only be undertaken in the rarest of circumstances.

If the allegation is found to be substantiated, disciplinary action should be taken. The action will depend on the severity of the bullying and may include:

- an apology (if the target requests it and an apology can be sincerely given)
- a verbal or written warning
- professional counselling
- remedial training (i.e. leadership training or communication training)
- an undertaking that the behaviour will not be repeated, with regular monitoring and/or inclusion in performance agreements
- transfer to another work area
- demotion, or
- dismissal (this should only occur in the most severe cases or if it is a repeated case of bullying, and is subject to industrial laws).

Assistance should also be provided for the target, such as:

- offering professional counselling
- redressing any inequality resulting from the bullying behaviour
- re-instating of any lost privileges resulting from the bullying behaviour (e.g. re-crediting leave)
- mentoring and support from a senior manager
- providing training (i.e. resilience training, assertive communication or self-esteem programs), or

- organising an opportunity to work in a new area (this should only be done if the victim agrees and if there is no risk of bullying in the new area).

Note that mediation is not an appropriate intervention if an allegation of bullying has been substantiated. Expecting a person who has been targeted by bullying behaviour to enter into agreements with their abuser may constitute a form of punishment for the target.

Step 5 – Post investigation

The procedures should provide mechanisms to enable both parties to appeal against the decision if they feel they have a reason to do so.

There should also be a follow-up review to ensure the wellbeing of the parties involved and actions taken to stop the bullying have been effective.

5. MONITORING AND REVIEWING CONTROL MEASURES

Once control measures have been implemented, you should be checking and reviewing them to ensure they are effective in preventing and managing bullying behaviour.
The review must be carried out in consultation with workers and their health and safety representatives. Information for the review can be obtained from the same sources used in the hazard identification stage, including:

- confidential surveys
- exit interviews
- records of sick leave and complaints.

The following questions may assist in the review:

- Are supervisors and managers trained to recognise and deal with workplace bullying? Has the training been effective?
- Has awareness been raised amongst staff about bullying in the workplace?
- Are workers not afraid to speak up about unacceptable behaviour?
- Has there been a noticeable change in workplace morale and behaviour over time?
- Are complaints being dealt with quickly and effectively?

The risk management process should be a continual cycle in order to prevent workplace bullying from recurring. If the strategies have not been effective, it is important to analyse the situation further to determine how to fix the problem.

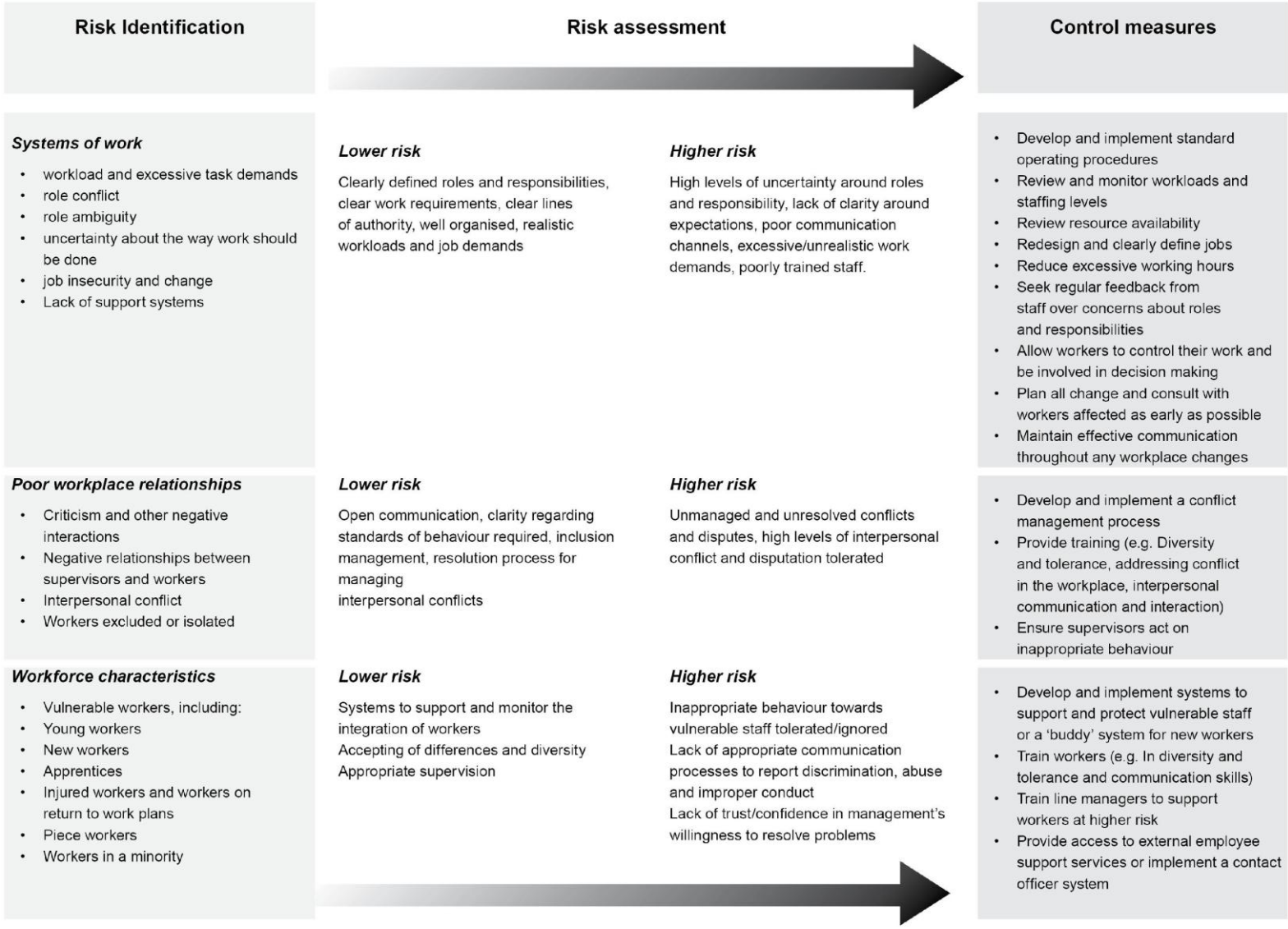
The review can be conducted at any time, but is recommended:

- when an incident of bullying has been substantiated
- at the request of an WHS representative or WHS committee
- when new or additional information about bullying becomes available, and
- according to a scheduled review date.

Results of reviews should be reported to managers, health and safety representatives and health and safety committees.

APPENDIX A – IDENTIFYING, ASSESSING AND CONTROLLING BULLYING RISKS

Risk identification	Risk assessment	Control measures
Organisational culture Bullying and aggressive behaviour is seen as necessary to get the job done or to 'toughen people up' for the rigours of the industry.	***Lower risk*** Code of conduct in place, training is provided to all workers about unacceptable behaviour and its consequences, action is taken in response to complaints.	***Higher risk*** Managers display bullying behaviour themselves or ignore incidents of bullying between workers, high staff turnover and low morale, workers are fearful of making a complaint.	• Develop a code of conduct • Raise awareness of unacceptable behaviour and its damaging effects • Take reports of unacceptable behaviour seriously and ensure they are dealt with confidentially, fairly and in a timely manner • Develop appropriate human resource policies and procedures • Empower supervisors and managers to respond effectively to bullying incidents • Facilitate teamwork and cooperation.
Leadership styles ***Strict Leadership*** Characterised by styles that are strict and directive, workers not involved in decision making, not allowing flexibility. ***Relaxed leadership*** Characterised by inadequate or absent supervision, responsibilities inappropriately and informally delegated to subordinate, little or no guidance provided to subordinates	***Lower risk*** Democratic, collaborative, consultative, treats staff fairly, interpersonal interactions supportive and positive, accessible and communicates effectively.	***Higher risk*** Strict - task emphasis, lack of involvement of workers with decision making, strict, directive, lacks trust, poor delegation, tight control, poor interpersonal skills. Relaxed - lack of direction, lack of supervision, absence of role clarity, lack of responsibility, lack of support/systems/ procedures.	• Recruit persons who are competent in people management into management roles • Leadership coaching, including providing constructive feedback, communication skills • Mentoring and supporting new and poor performing managers • Provision of regular feedback on management performance and feedback acted on • Implement and review performance improvement/development plans • Provide regular leadership skills training and update training (e.g. once a year) • Include leadership questions (e.g. conduct and performance of leaders) in exit interviews and worker opinion surveys


Risk Identification
Risk assessment
Control measures
Systems of work
workload and excessive task demands
role conflict
role ambiguity
uncertainty about the way work should be done
job insecurity and change
Lack of support systems
Lower risk
Clearly defined roles and responsibilities, clear work requirements, clear lines of authority, well organised, realistic workloads and job demands
Higher risk
High levels of uncertainty around roles and responsibility, lack of clarity around expectations, poor communication channels, excessive/unrealistic work demands, poorly trained staff.
Develop and implement standard operating procedures
Review and monitor workloads and staffing levels
Review resource availability
Redesign and clearly define jobs
Reduce excessive working hours
Seek regular feedback from staff over concerns about roles and responsibilities
Allow workers to control their work and be involved in decision making
Plan all change and consult with workers affected as early as possible
Maintain effective communication throughout any workplace changes
Poor workplace relationships
Criticism and other negative interactions
Negative relationships between supervisors and workers
Interpersonal conflict
Workers excluded or isolated
Lower risk
Open communication, clarity regarding standards of behaviour required, inclusion management, resolution process for managing interpersonal conflicts
Higher risk
Unmanaged and unresolved conflicts and disputes, high levels of interpersonal conflict and disputation tolerated
Develop and implement a conflict management process
Provide training (e.g. Diversity and tolerance, addressing conflict in the workplace, interpersonal communication and interaction)
Ensure supervisors act on inappropriate behaviour
Workforce characteristics
Vulnerable workers, including:
Young workers
New workers
Apprentices
Injured workers and workers on return to work plans
Piece workers
Workers in a minority
Lower risk
Systems to support and monitor the integration of workers
Accepting of differences and diversity
Appropriate supervision
Higher risk
Inappropriate behaviour towards vulnerable staff tolerated/ignored
Lack of appropriate communication processes to report discrimination, abuse and improper conduct
Lack of trust/confidence in management's willingness to resolve problems
Develop and implement systems to support and protect vulnerable staff or a 'buddy' system for new workers
Train workers (e.g. In diversity and tolerance and communication skills)
Train line managers to support workers at higher risk
Provide access to external employee support services or implement a contact officer system

safe work australia

Appendix D - Jurisdictional comparison of bullying / harassment definitions

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
Australian Capital Territory *Code of Practice for Preventing and Responding to Bullying at Work 2010*	Bullying is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Bullying can occur wherever people work together. Under certain conditions, most people are capable of bullying. Whether it is intended or not, bullying is an OHS hazard. A broad range of behaviours can be bullying, and these behaviours can be direct or indirect. Examples of direct forms of bullying include: • verbal abuse • putting someone down • spreading rumours or innuendo about someone • interfering with someone's personal property or work equipment.	Single incidents A single incident of unreasonable behaviour may have the potential to escalate into bullying and therefore should not be ignored. Single incidents can still create a risk to health and safety. The measures set out in section 4 can be used to address single incidents 2.1 What isn't bullying? Reasonable management actions carried out in a fair way are not bullying. For example: • setting performance goals, standards and deadlines • allocating work to a worker • rostering and allocating working hours • deciding not to select a worker for promotion • informing a worker about unsatisfactory work performance • informing a worker about inappropriate behaviour • implementing organisational changes • performance management processes • constructive feedback • downsizing. • transferring a worker
Commonwealth Guidance Note: *Preventing and managing bullying at work - a guide for employers 2010*	2.1 DEFINITION *Bullying is repeated unreasonable behaviour that could reasonably be considered to be humiliating, intimidating, threatening or demeaning to a person, or group of persons, which creates a risk to health and safety.* Repeated—refers to the persistent or ongoing nature of the behaviour. It does not refer to the specific type of behaviour, which may vary. Bullying may comprise a combination of behaviours including:	2.2 WHAT IS NOT BULLYING? Reasonable management action It is important to distinguish between a person reasonably exercising their legitimate authority at work in a proper and reasonable way, and instances of bullying. Managers and supervisors have a broad range of responsibilities including directing and controlling how work is performed. They are responsible for monitoring workflow and providing feedback to employees on their work performance. Feedback provided properly with the intention of assisting staff to improve performance or behaviour does not constitute bullying. Care

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	• unwarranted criticism or insults • spreading malicious rumours • deliberately withholding information or resources • influencing others to exclude or isolate the targeted person or group. In many instances bullying appears to begin as discreet and indirect behaviours escalating over time into more open and direct behaviours. Unreasonable behaviour—means behaviour that a reasonable person, having regard to the circumstances, would see as victimising, humiliating, undermining or threatening. It includes direct and indirect types of behaviour. Reasonable management action undertaken properly is not unreasonable behaviour. (Refer to section 2.2 for further information on reasonable management action) Risk to health and safety—includes the risk to the emotional, mental or physical health of the person(s) in the workplace. Workplace bullying can be: • intended—where actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did in fact have that effect • unintended—which although not intended to humiliate, offend, intimidate or distress, did cause and should reasonably have been expected to cause that effect. Bullying can be direct or indirect, inflicted by one person or groups. Abusive group behaviour or 'ganging up' against one or more individuals is a form of bullying that is sometimes called workplace 'mobbing'[6]. **Examples of bullying behaviour:**	should be taken, however, to ensure that any performance problems are identified and dealt with in an objective and constructive way that is neither humiliating nor threatening. Examples of reasonable management action include: • performance management processes • action taken to transfer or retrench an employee • a decision not to provide a promotion in connection with an employee's employment • disciplinary actions • allocated work in compliance with systems and policies • managing an employee's injury or illness • business processes, such as workplace change or restructuring. Examples of behaviours that are not bullying, if undertaken in a reasonable and proper way, include: • expressing differences of opinion • constructive and courteous feedback, counselling or advice about work-related behaviour and performance • making a complaint about a manager's or another employee's conduct. Single incidents A single incident does not constitute bullying, although it may be distressing or harmful to the affected individual and should not be tolerated. A single incident of harassment may be a warning sign for bullying and steps should be taken to prevent a reoccurrence. Be aware that harassment, whether a single incident or repeated occurrences, may breach: • the APS Code of Conduct • the OHS Act • industry or organisation codes of conduct • Commonwealth anti-discrimination legislation • the Fair Work Act 2009.

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	Direct bullying • abusive, insulting or offensive language • spreading misinformation or malicious rumours • displaying offensive material • behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming • inappropriate comments about a person's appearance, lifestyle or their family • teasing or regularly making someone the brunt of pranks or practical jokes • interfering with a person's personal effects or work equipment • harmful or offensive initiation practices • physical assault or threats. Indirect bullying • unreasonably overloading a person with work • setting timelines that are difficult to achieve or constantly changing deadlines • setting tasks beyond a person's skill level, setting meaningless tasks, or unfairly assigning unpleasant tasks • excluding, marginalising, ignoring or isolating a person • deliberately denying access to information, consultation or resources • unfair treatment relating to work rosters or accessing entitlements such as leave or training.	
New South Wales **Guidance Note: *Preventing and responding to bullying at work 2009***	**2. WHAT IS BULLYING?** Bullying is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Bullying can occur wherever people work together. Under certain conditions, most people are capable of bullying. Whether it is intended or not, bullying is an OHS hazard.	Single incidents A single incident of unreasonable behaviour may have the potential to escalate into bullying and therefore should not be ignored. Single incidents can still create a risk to health and safety. The measures set out in section 4 can be used to address single incidents. 2.1 WHAT ISN'T BULLYING?

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	A broad range of behaviours can be bullying, and these behaviours can be direct or indirect. Examples of direct forms of bullying include: • verbal abuse • putting someone down • spreading rumours or innuendo about someone • interfering with someone's personal property or work equipment.	Reasonable management actions carried out in a fair way are not bullying. For example: • setting performance goals, standards and deadlines • allocating work to a worker • rostering and allocating working hours • transferring a worker • deciding not to select a worker for promotion • informing a worker about unsatisfactory work performance • informing a worker about inappropriate behaviour • implementing organisational changes • performance management processes • constructive feedback • downsizing
Northern Territory **Bulletin:** ***Dealing with bullying at work 2010***	Bullying at work can be defined as repeated, unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety. While some workplace bullying may involve verbal abuse and physical violence, bullying can also involve subtle intimidation. Workplace bullying can be carried out indirectly, for example via letters, emails or telephone text messages. Initiation practices are also a form of bullying. An individual or a group may instigate bullying. The term workplace mobbing is sometimes used to refer to abusive group behaviour that is prolonged or systematic in nature, and may include upward bullying, where a group of workers exhibit bullying behaviour towards a manager or person in authority. The intent is usually to try to drive a worker from the workplace. Workplace bullying can take place between workers and other workers, managers or supervisors, customers or clients, students, contractors, or visitors.	What isn't bullying? All employers have a legal right to direct and control how work is done, and managers have a responsibility to monitor workflow and give feedback on performance. If a worker has obvious performance problems, these should be identified and dealt with in a constructive and objective way that does not involve personal insults or derogatory remarks. In situations where a worker is dissatisfied with management practices, the problems should also be raised in a manner that remains professional and objective. There should be grievance or complaint procedures that can be utilised to resolve such matters.
Victoria **Guidance Note:** ***Preventing and***	2. What is workplace bullying? Bullying is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and	Single incidents A single incident of unreasonable behaviour may have the potential to escalate into bullying and therefore should not be ignored. Single

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
responding to bullying at work 2009	safety. Bullying can occur wherever people work together. Under certain conditions, most people are capable of bullying. Whether it is intended or not, bullying is an OHS hazard. A broad range of behaviours can be bullying, and these behaviours can be direct or indirect. Examples of direct forms of bullying include: • verbal abuse • putting someone down • spreading rumours or innuendo about someone • interfering with someone's personal property or work equipment.	incidents can still create a risk to health and safety. The measures set out in section 4 can be used to address single incidents 2.1 What isn't bullying? Reasonable management actions carried out in a fair way are not bullying. For example: • setting performance goals, standards and deadlines • allocating work to a worker • rostering and allocating working hours • transferring a worker • deciding not to select a worker for promotion • informing a worker about unsatisfactory work performance • informing a worker about inappropriate behaviour • implementing organisational changes • performance management processes • constructive feedback • downsizing
Queensland ***Code of Practice Prevention of Workplace Harassment 2004***	1.1 Meaning of 'workplace harassment' A person is subjected to 'workplace harassment' if the person is subjected to repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person's employer or a co-worker or group of co-workers of the person that: (a) is unwelcome and unsolicited (b) the person considers to be offensive, intimidating, humiliating or threatening (c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening. 'Workplace harassment' does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment. In this section: 'sexual harassment' see the *Anti-*	1.4 What is not workplace harassment? According to the definition, the following situations are not considered to be workplace harassment. 1.4.1 Single incidents A single incident of harassing type behaviour is not considered to be workplace harassment. Nevertheless, single incidents of harassing type behaviour should not be ignored or allowed. Well-managed intervention in response to single incidents will help prevent the situation from escalating. 1.4.2 Managerial actions This code of practice does not cover situations where a worker has a grievance about reasonable management actions, taken in a reasonable way. Reasonable management actions include legitimate: • performance management processes • action taken to transfer or retrench a worker • a decision not to provide a promotion in connection with the worker's employment • disciplinary actions

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	Discrimination Act 1991, section 119. This definition is intended to cover a wide range of behaviours that can have an adverse impact on the health and safety of workers and other persons where work is being done. Harassing behaviours can range from subtle intimidation to more obvious aggressive tactics. Detailed below are examples of behaviours that may be regarded as workplace harassment, if the behaviour is repeated or occurs as part of a pattern of behaviour. This is not an exhaustive list – however, it does outline some of the more common types of harassing behaviours. Examples include: • abusing a person loudly, usually when others are present • repeated threats of dismissal or other severe punishment for no reason • constant ridicule and being put down • leaving offensive messages on email or the telephone • sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways • maliciously excluding and isolating a person from workplace activities • persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters • humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers • spreading gossip or false, malicious rumours about a person with an intent to cause the person harm. There are bound to be occasional differences of opinion, conflicts and problems in working relationships – these are part of working life. However, if the workplace behaviour is repeated, unwelcomed and unsolicited, and offends,	• allocated work in compliance with systems and policies • injury and illness processes • business processes, such as, workplace change or restructuring. • However, these management actions may still be relevant to the code of practice where: • managerial actions are primarily used to offend, intimidate, humiliate or threaten workers • processes create an environment where workplace harassment is more likely to occur. 1.4.3 Discrimination and sexual harassment Acts of unlawful discrimination, vilification or sexual harassment are not covered under this code of practice. In situations where such acts are involved, a complaint may be made to the: • Anti-Discrimination Commission Queensland under the *Anti-Discrimination Act 1991* • Australian Human Rights Commission under the Commonwealth *Disability Discrimination Act 1992, Racial Discrimination Act 1975* or *Sex Discrimination Act 1984*.

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	intimidates, humiliates or threatens a person, then workplace harassment exists and action must be taken to stop the behaviour.	
South Australia **Section 55A, *Occupational Health, Safety and Welfare Act 1986***	55A—Inappropriate behaviour towards an employee (1) For the purposes of this section, bullying is behaviour— (a) that is directed towards an employee or a group of employees, that is repeated and systematic, and that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed; and (b) that creates a risk to health or safety.	(2) However, bullying does not include— (a) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee; or (b) a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment; or (c) reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment; or (d) reasonable action taken in a reasonable manner under an Act affecting an employee.
Tasmania **Guidance Note: *Bullying: A guide for employers and workers 2010***	What is bullying? Bullying is repeated, unreasonable behaviour directed towards a worker or group of workers. It creates a risk to personal and workplace health and safety. Differences of opinion, conflicts and personality clashes can happen in the workplace and they are not bullying (see also *What isn't bullying?* on page 3). If the behaviour goes beyond a one-off disagreement, if it increases in intensity or becomes offensive or harmful to someone, it is bullying. Bullying can be verbal, physical, written or electronic (such as emails and texting). It can include: • insults and constant criticism that makes you feel • humiliated or intimidated • cruel and malicious rumours, gossip and innuendo • deliberately and repeatedly being ignored, excluded or • undermined • behaviour or language that frightens or degrades you. This might include swearing, threats, yelling.	What isn't bullying? Reasonable management actions carried out in a fair and reasonable way are not bullying. For example, bullying is not: • setting standards and deadlines • allocating work to a worker • transferring a worker • deciding not to select a worker for promotion • informing a worker about unsatisfactory work performance or inappropriate behaviours • providing constructive feedback. Even poor management practices don't necessarily constitute bullying. Differences of opinion or personality clashes, provided they don't interfere with work, aren't bullying either.

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	Bullying may be linked to work tasks and duties. For example, as an employer or manager, you are bullying a worker if you deliberately: • give them work that is unreasonably above or below their • ability • give them meaningless work that is unrelated to their job • give them inconvenient rosters, or change their hours on a whim or to inconvenience them • deny them information or resources to do their job • scrutinise their work excessively and unreasonably. In some cases, bullying may be part of the workplace culture, continued (and wrongly accepted) over time as "the way things are done here".	
Western Australia ***Code of Practice Violence, aggression and bullying at work 2010***	7. What is bullying? Bullying at work can be defined as repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety. Due to the effect on the safety and health of employees and others at the workplace, bullying is unlawful under the Act. Any behaviour that has the potential to harm or offend someone should be identified as a hazard and assessed for its risk to safety and health. Unless addressed, bullying can develop into a repeated pattern that becomes part of the culture at the workplace. Not every bullying incident has a reason that can be easily identified, and sometimes there are multiple reasons with a combination of factors working together. Reasons for bullying may include: • the general culture of the workplace that tolerates or condones behaviour such as intimidation, harassment, initiation ceremonies or the use of strong abusive language; • changes at the workplace;	7.3 What isn't bullying? It is important to differentiate between a person's legitimate authority at work and bullying. All employers have a legal right to direct and control how work is done, and managers have a responsibility to monitor workflow and give feedback on performance. If a worker has performance problems, these should be identified and dealt with in a constructive and objective way that does not involve personal insults or derogatory remarks. In situations where a worker is dissatisfied with management practices, the problems should also be raised in a manner that remains professional and objective.

Jurisdiction	What is bullying/harassment	What is not bullying/harassment
	• workloads; • bias against minority groups; • prejudice because of cultural, religious or political differences between groups in society; • poor interpersonal skills; • poor communication skills; • mental health problems; • the influence of alcohol or other drugs; • a build up of feelings of rage or anger; and • feelings of loss of control.	

Appendix E

Comparison of workers' compensation arrangements in Australia and New Zealand

April 2012

Creative Commons

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Foreword

The Comparison of Workers' Compensation Arrangements in Australia and New Zealand provides information on the operation of workers' compensation schemes in each of the jurisdictions in Australia and New Zealand.

This edition of the Comparison report has been substantially revised and reformatted. The main changes are that:

- Chapter 1 only includes recent developments and the information on the history and evolution of workers' compensation schemes has been moved to Appendix 1.
- Chapter 2 on Schemes at a Glance has been expanded to include all information of most interest to employers, workers and their representatives.
- The sections on administrative arrangements and scheme funding arrangements have been combined into a single chapter and moved to the back of the report at Chapter 7.
- The comparative table of deemed diseases has been moved to Appendix 2.
- Chapter 5 on Return to Work has been substantially revised to provide briefer, more comparable data, and
- The section on Self-insurer arrangements has been separated from the scheme funding arrangements and provided in a separate chapter (Chapter 6).

The Comparison provides 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 majority of tables contained in this report provide a snapshot of workers' compensation arrangements as at 30 September 2011. Note that the ACT has arrangements as at 30 June 2011. Information taken from the 13th edition of the Comparative Performance Monitoring report covers the 2009-10 financial year and some jurisdictions have reported recent developments to the end of December 2011. 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 more up to date information should check with the relevant authority.

On behalf of the Heads of Workers' Compensation Authorities (HWCA), the Victorian Workcover Authority produced this publication from 1993 to 2005. The Australian Safety and Compensation Council took over responsibility for the report in 2006 and produced it in 2006 and 2007. Safe Work Australia has been producing the report since 2008. The work of the Victorian Workcover Authority and the Australian Safety and Compensation Council is acknowledged. Safe Work Australia thanks the representatives from each jurisdiction for the valuable assistance they have provided in producing this edition of the Comparison.

Contents

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

In Australia, there are 11 main workers' compensation systems. Over time, each of the eight Australian States and Territories has developed their own workers' compensation laws. There are also three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self insurers under the Safety, Rehabilitation and Compensation Act 1988; the second is for certain seafarers under the Seafarers Rehabilitation and Compensation Act 1992; and the third is for Australian Defence Force personnel with service on or after 1 July 2004 under the Military Rehabilitation and Compensation Act 2004.

This chapter will focus on recent developments that came into effect between July 2010 and September 2011 or which will come into effect after that time. The historical section on the evolution of the workers' compensation schemes can be found in Appendix 1.

Victoria

New return to work rights and obligations commenced from 1 July 2010 which replaced prescriptive return to work requirements with a performance based regulatory framework. These changes were part of extensive amendments to the Accident Compensation Act 1985 assented to in March and October 2010, with the majority of changes commencing on 5 April 2010. Further information on Return to Work can be found at WorkSafe Victoria.

On 7 April 2011 WorkSafe Victoria announced its new panel of Agents to manage premium and claims from 1 July 2011 following a comprehensive expression-of-interest and tender process which began in July 2010.

As part of the tender process, WorkSafe Victoria outlined at a high level its intent to continue to make enhancements to the claims model to further improve services to Victorian employers and injured workers while ensuring scheme viability. The enhanced claims model extends the specialist model, incorporating two new specialist roles and modifications to segmentation:

- Eligibility Officer
- RTW Specialist

In addition WorkSafe Victoria will take an active role in training and capability development and lead industry-wide training in critical areas of RTW and entitlement.

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

Queensland

Amendments to the Workers' Compensation and Rehabilitation Act 2003 (the Act) commenced on 1 July 2010 to ensure WorkCover Queensland's ongoing financial viability, while maintaining full access to common law for injured workers. Amendments included:

- aligning common law claims brought under the Workers' Compensation and Rehabilitation Act 2003 with those brought under the Civil Liability Act 2003, with modifications to take account of the workplace context. For example, voluntary assumption of risk provisions do not apply because the courts have recognised that it is inappropriate in employment situations
- abolishing the notion of strict liability attaching to employers because of the Queensland Court of Appeal decision in Bourk v Power Serve Pty Ltd & Anor [2008] QCA 225
- increasing obligations on third party tortfeasors to participate meaningfully in pre-court processes
- confirming the ability of a court to award costs against plaintiffs whose claims are dismissed
- increasing the employer excess to one week's compensation or 100 per cent of Queensland Ordinary Time Earnings, whichever is less
- removing the option for employers to insure against the excess, and
- allowing self-insurers to take on a higher statutory reinsurance excess in order to lower reinsurance premium.

On 1 November 2010 the Act was further amended giving the Queensland Industrial Relations Commission responsibility for the bulk of appeals against Review Decisions of Q-COMP

Additional amendments came into effect from 6 June 2011, which included:

- providing that a worker will continue to accrue annual leave, sick leave and long service leave while they are receiving workers' compensation
- introducing information provisions for the building and construction industry, allowing the release of project-specific injury data to principal contractors in charge of construction projects. The purpose of the amendments is to strengthen insurance and data collection arrangements in the construction industry, with the data able to be used internally to monitor project safety performance.
- requiring the Minister to ensure the workers' compensation scheme is reviewed at least once every 5 years.

Western Australia

Revised fees for medical and allied health treatment costs

Revised fees for medical and allied health treatment services in the WA workers' compensation system came into effect from 1 November 2011. The revisions brought about a 3.55% increase to fees derived through application of the medical and allied health fees composite index, which is used by WorkCover WA for annual indexation purposes.

Legislative Review

The Workers' Compensation and Injury Management Amendment Act 2011 (the Amendment Act) came into effect in 2011.

The changes effective from 1 October 2011 include:

- the removal of all aged based limits on workers' compensation entitlements
- extention of the safety net arrangement for workers awarded common law damages against uninsured employers

- various amendments of an administrative nature.

In addition, a new Concilliation and Arbitration Service was established on 1 December 2011, replacing the Dispute Resolution Directorate.

Removal of age based entitlement limits

Prior to the 2011 legislative changes injured workers in Western Australia aged 64 years or more had an entitlement to only 12 months of weekly income payments. In addition, compensation was not payable for workers who suffered noise-induced hearing loss after age 65.

The State's workforce has changed and includes an increasing number of workers over the age of 65 years. The skills held by older workers are important to the State's economic and social life. In recognition of this the Government has removed age based limitations from the Workers' Compensation and Injury Management Act 1981. The new arrangements will not operate retrospectively.

New provisions for a common law safety net

Prior to the 2011 changes to the Act, claims for statutory benefits made by injured workers whose employers were uninsured were able to be met from WorkCover WA's General Account. However there was no ability for WorkCover WA to meet the costs of common law damages when an employer was uninsured.

The 2011 amendments enable common law awards against uninsured employers to be met by the WorkCover WA General Account, under certain circumstances from 1 October 2011. The amendments also make it mandatory for all employers to have insurance covering both statutory and common law liabilities.

The common law safety net provisions do not operate retrospectively.

Other legislative amendments

Other legislative amendments to the Workers' Compensation and Injury Management Act 1981 include:

- an extension in time to lodge a claim with insurer ($1000 penalty applies)
- new penalty for failure to make weekly payments
- clarification of the effective date of redemptions
- removal of time limit to issue writ after common law election (Limitations Act applies)
- ability to define "remuneration" in regulations
- removal of exclusion of family member from definition of worker, and
- inclusion of "diffuse pleural fibrosis" as an asbestos related disease.

New Concilation And Arbitration Services Division

WorkCover WA's Dispute Resolution Directorate (DRD) was replaced by the new Conciliation and Arbitration Services (CAS) Division from 1 December 2011.

The new dispute resolution system has established:

- the Conciliation Service headed by a Director
- firm timeframes governing process and certain powers for conciliation officers to make directions for the payment, suspension and temporary reduction of benefits
- the Arbitration Service headed by a Registrar in which arbitrators and the Registrar are legal practitioners. The sole focus of the Arbitration Service will be the determination of matters not resolved by the Conciliation Service
- clear rules to govern procedure in both services, with a focus on timeliness
- simplified access to the process of conciliation by the removal of the requirement to provide all documentation at the commencement of the process (i.e. no front loading)
- retention of legal representation and costs at both stages (conciliation and arbitration), and
- transfer of appellate jurisdiction to the District Court of Western Australia.

South Australia

Claims management and claims legal services

On the 23 May 2011, WorkCoverSA announced its intention to commence a procurement process for the provision of future claims management services and claims legal services for the WorkCover Scheme.

Current contracts for claims management services and claims legal services expire in December 2012.

Employer Payments

The Workers Rehabilitation and Compensation (Employer Payments) Amendment Act 2011 (No 48 of 2011) is expected to commence on 1 July 2012. The Act will amend the Workers Rehabilitation and Compensation Act 1986; and make consequential amendments to the Occupational Health, Safety and Welfare Act 1986, the Stamp Duties Act 1923 and the WorkCover Corporation Act 1994.

The Act will enable a new approach to employer payments in the South Australian workers compensation scheme which will provide a financial incentive for employers to achieve the best possible work health and safety practices leading to fewer workplaces injuries. Where workplace injuries do occur, the system will provide a financial incentive to employers to support injured workers to stay at work wherever possible or to achieve an early and safe return to work.

The new approach to employer payments includes.:

- a mandatory Experience Rating System for medium and large employers registered with the Scheme
- an optional Retro Paid Loss arrangement for large employers registered with the Scheme
- minimal change to private and Crown self insured arrangements, and
- changes to terminology, definitions and practices within the Scheme, aimed at achieving cultural change.

Definition of worker

Currently volunteer fire-fighters are prescribed as volunteers under section 103A of the Workers Rehabilitation and Compensation Act, 1986. At the time of preparing this report the South Australian Government is in the process of considering broadening the provision of workers compensation cover to include South Australian State Emergency Service and South Australian Volunteer Marine Rescue volunteers.

This change, if approved is intended to come into effect on 1 February 2012.

Revised training for Rehabilitation and Return to Work Coordinators

At the time of preparing this report, a revised 1 day and 2 day (previously 3 day) training program was being developed through Deakin Prime. The program is scheduled to be released on Monday 2 July 2012.

Tasmania

Workers Rehabilitation and Compensation Amendment Act 2009

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

1. to implement the Government's response to the Clayton report;

2. to establish the legal framework for the WorkCover Return to Work and Injury Management Model

3. to amend the timing and level of weekly payment step-downs; and

4. to reduce the common law threshold from 30% whole person impairment to 20%.

The amendments:

- introduced a statement of scheme goals;
- encourage early reporting by holding the employer liable for claims expenses until the claim is reported;
- provide for the payment of counselling services for families of deceased workers;
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation (with the possibility of extension on application to the Tribunal);
- increase the maximum lump sum payable to a dependent on the death of a worker to 415 units. At September 2011, this was $289 192.75;
- increase weekly payments payable to a dependent child of a deceased worker from 10% basic salary to 15% basic salary;
- increase the maximum lump sum payable for permanent impairment to 415 units. At September 2011, this was $289 192.75;
- provide for the extension of weekly payments from nine years to 12 years for workers with a whole person impairment (WPI) between 15 per cent and 19 per cent; to 20 years for workers with a WPI of between 20 per cent and 29 per cent and until the age of retirement for workers with a WPI of 30 per cent or more;
- amend the first step-down to 90 per cent of normal weekly earnings rather than 85 per cent of normal weekly earnings;

- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks;
- provide that the step-downs are not to apply where a worker has returned to work for at least 50 per cent of his or her pre-injury hours or duties;
- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties;
- reduce the threshold for access to common law damages from 30 per cent whole person impairment to 20 per cent whole person impairment;
- repeal section 138AB requiring a worker to make an election to pursue common law damages.

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

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

Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011

The Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011 commenced on 31 October 2011.

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

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

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

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

Compensation under the Act:

Where the worker has an imminently fatal compensable ARD (less than 2 years' life expectancy from the date of correct diagnosis):

- The worker is entitled to lump sum compensation of 360 compensation units (as at 31 October 2011, a compensation unit was $696.85, on 1 January 2012, a compensation unit increased to $737.77) plus a further age-based payment (if under 80 years of age).
- The worker is also entitled to have their reasonable medical expenses paid for by the scheme. However, when total medical expenses reach $87,000 a review is to be held to ensure that the worker is receiving the correct treatment.

Where the worker has a non-imminently fatal compensable ARD (more than 2 years' life expectancy from the date of correct diagnosis):

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

Members of the family:

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

Further information can be found at www.asbestos.tas.gov.au and in the publications: Tasmanian Asbestos Compensation Information Brochure and Asbestos Compensation in Tasmania - A Guide

Northern Territory

The Northern Territory Government is currently considering changes to the definition of worker. For many years the Northern Territory has used the provision of an ABN to identify independent contractors from workers who are covered by the scheme. The proposed change is to adopt the results test in line with the test used by the Australian Taxation Office. Enquiries should be made in the Northern Territory for information on the latest arrangement www.worksafe.nt.gov.au.

Comcare

On 7 December 2011 a number of changes to the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) came into effect:

- the reintroduction of the ability to claim for off-site recess breaks - employees may claim for an injury which occurs off site during an ordinary recess from their place of employment, such as a lunch break
- the introduction of continuous coverage for certain employees working outside Australia where the Minister declares—by legislative instrument—the country or class of employees covered

- continuing the rights of an injured worker to claim compensation for medical expenses even where other forms of compensation are suspended
- enabling Comcare to access the Consolidated Revenue Fund to pay compensation to an injured worker with a long latency disease, where their employment was prior to 1 December 1988 but the disease manifested after that date
- enabling the development of regulations that prescribe time limits for claim determinations and reconsiderations

Firefighter amendments

Also on 7 December 2011, the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 came into effect. This Act introduced the presumption that, where a claimant has undertaken firefighting duties for certain periods and has acquired a prescribed cancer, the cancer is presumed to be the result of the firefighting employment. The resulting changes to the SRC Act apply to claims with a date of injury on or after 4 July 2011.

Chapter 2 - Schemes at a glance

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

2.1 Jurisdictional contacts

2.2 Agencies responsible for overseeing workers' compensation in each jurisdiction

2.3 Key features of schemes – provides a summary of some of the key features including the number of employees covered, the number and rate of serious claims and the standardised average premium rates.

2.4 Summary of coverage - Tables 2.4 a to 2.4 d provide a summary of coverage including who is covered (coverage of employees and coverage of contractors and labour hire workers), whether coverage is extended to injuries which occur during journeys and breaks and what is covered (definition of injury and employment contribution) and retirement provisions. More detailed information on these topics can be found in Chapter 3.

2.5 Summary of benefits – provides a summary of weekly payments, medical and hospital payments, lump sum payments for permanent impairment and death entitlements. More detail is provided in Chapter 4.

2.6 Prescribed time periods for injury notification - early intervention is essential for successful outcomes in Return to Work. Table 2.6 shows the timeframes for injury notification, claims submissions etc. that are prescribed in most jurisdictions.

2.7 Prescribed time periods for claim submission

2.8 Prescribed time periods for payments - Table 2.7 summarises when eligibility for payments begin, when payments start, when the employer passes on payments to injured workers, period specified for medical invoices to be sent to insurers, and when medical expenses are accepted and paid.

2.9 Dispute resolution process - Table 2.8 outlines the procedures followed by each jurisdiction. The process helps injured workers and their employers resolve issues arising from workers' compensation claims at an early stage to prevent the issues going to court.

2.10 Remuneration for the purposes of premium calculation - Table 2.9 summarises the basis for insurers to quantify workers' compensation premiums, which are paid by employers annually. Premiums are expressed as a percentage of an employer's total payroll.

2.11 Employer excess - Some schemes require employers to pay an excess before the workers' compensation insurer begins making payments. In some cases, employers may 'buy out' their excess. Table 2.10 outlines the type and amount of excess payable in each jurisdiction.

2.12 Uninsured employer provisions - In all jurisdictions it is compulsory for employers to have workers' compensation insurance for their workers however for a variety of reasons some workers may not be covered. Table 2.11 outlines the provisions in place in each jurisdiction to ensure that workers of uninsured employers receive the same benefits as those covered.

2.13 Leave accrual while on workers' compensation. Normal leave arrangements such as sick, recreation and long service leave may be affected when a worker is receiving workers' compensation payments. Table 2.12 outlines provisions in workers' compensation or other legislation relating to leave accrual while on workers' compensation.

2.14 Superannuation and workers' compensation. Table 2.13 provides information on whether the schemes include superannuation as wages for premium calculations and as part of income replacement payments.

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

Table 2.1: Jurisdictional contacts

	Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
New South Wales	Michael Young	Director, Business Analysis and Strategy.	13 10 50 (general enquiries) (02) 4321 5160 (specific)	(02) 9287 5160	michael.young@workcover.nsw.gov.au	Workers' Compensation Division WorkCover NSW Locked Bag 2906 LISAROW NSW 2252	www.workcover.nsw.gov.au
Victoria	Rachel Cubela	Director, Corporate Legal Services.	1800 136 089 (general) (03) 9641 1064 (specific)	(03) 9641 1769	rachel_cubela@worksafe.vic.gov.au	WorkSafe Victoria GPO Box 4306 MELBOURNE VIC 3001	www.worksafe.vic.gov.au
Queensland	Bradley Bick	Director, Safety and Compensation Branch, Department of Justice and Attorney-General.	(07) 3234 1809 (specific) 1300 361 235 (Q-COMP) 1300 362 128 (WorkCover Queensland)	(07) 3404 3550	bradley.bick@justice.qld.gov.au	Department of Justice and Attorney-General, WHSQ, GPO Box 69, BRISBANE QLD 4001	www.justice.qld.gov.au
Western Australia	Chris White	General Manager, Legislation and Scheme Information.	(08) 9388 5555 (general enquiries) (08) 9388 5512 (specific)	(08) 9388 5550	Chris.White@workcover.wa.gov.au	Policy and Performance Division WorkCover WA 2 Bedbrook Place SHENTON PARK WA 6008	www.workcover.wa.gov.au
South Australia	Emma Siami	Director, Strategy and Government Relations, Strategy and Policy, WorkCoverSA	131 855 (general enquiries) (08) 8233 2267 (specific enquiries)	(08) 8233 2044	esiami@workcover.com	Strategy and Government Relations, WorkCoverSA, GPO Box 2668, ADELAIDE SA 5000	www.workcover.com
Tasmania	Rod Lethborg	Acting Assistant Director, Policy and Planning Branch, Workplace Standards, Tasmania	(03) 6233 3182 (general enquiries outside Tasmania) 1300 366 322 (general enquiries within Tasmania)	(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	Bevan Pratt	A/Director, Rehabilitation and Compensation, .	(08) 8999 5018 1800 250 713 (general enquiries)	(08) 8999 5141	bevan.pratt@nt.gov.au ntworksafe@nt.gov.au	Rehabilitation and Compensation Unit, NT WorkSafe, GPO Box 1722, DARWIN NT 0801	www.worksafe.nt.gov.au
Australian Capital Territory	Mark McCabe (operations) Meg Brighton (policy)	Work Safety Commissioner & Senior Director, WorkSafe ACT, Dept of Justice and Community Services. Director, Continuous Improvement & Workers' Compensation Branch, Chief	(02) 6207 3000 13 22 81	(02) 6205 0336	mark.mccabe@act.gov.au meg.brighton@act.gov.au	GPO Box 158, CANBERRA ACT 2601	www.worksafe.act.gov.au/ www.cmd.act.gov.au

	Contact	Position	Phone No.	Fax No.	Email	Postal Address	Internet
		Minister & Cabinet Directorate.					
C'wealth Comcare	Denise Lowe-Carlus	Director, Compensation Policy	1300 366 979	(02) 6274 8576	lowe-carlus.denise@comcare.gov.au	Compensation Policy, Comcare, GPO Box 9905, CANBERRA ACT 2601	www.comcare.gov.au
C'wealth Seacare	Gerard Newman	Director, Seacare Management Section	(02) 6275 0070	(02) 6275 0067	newman.gerard@comcare.gov.au	GPO Box 9905, Canberra ACT 2601	www.seacare.gov.au
C'wealth DVA	Mike Armitage	Director, Rehabilitation, External Liaison and Communication Section	(02) 6289 4899	(02) 6289 4854	Mike.armitage@dva.gov.au	Rehabilitation and Entitlements Policy Branch, Department of Veterans' Affairs, PO Box 9998, WODEN ACT 2606	www.dva.gov.au
New Zealand	Keith McLea	General Manager, Insurance & Prevention Services.	+64 4 918 7700 (general) +64 4 816 7365 (specific)	+64 4 816 7051	keith.mclea@acc.co.nz	Accident Compensation Corporation, P O Box 242, Wellington, New Zealand	www.acc.co.nz

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

	Policy	Premium	Claims	Current legislation	Disputes
New South Wales	WorkCover NSW.	WorkCover NSW.	7 private sector agents, 60 self-insurers and 7 specialised insurers.	Workplace Injury Management and Workers Compensation Act 1998 and Workers Compensation Act 1987.	Workers Compensation Commission.
Victoria	WorkSafe Victoria (Victorian WorkCover Authority.	WorkSafe Victoria.	5 private sector agents and 37 self insurers.	Accident Compensation Act 1985 and Accident Compensation (WorkCover Insurance) Act 1993.	WorkSafe. Accident Compensation Conciliation Service (ACCS), Medical Panels, Magistrates' or County Court.
Queensland	Department of Justice and Attorney-General.	WorkCover Queensland.	WorkCover Queensland and self insurers.	Workers' Compensation and Rehabilitation Act 2003.	**Q-COMP,** Queensland Industrial Relations Commission or Industrial Magistrate, Industrial Court
Western Australia	WorkCover WA.	Insurers subject to WorkCover WA oversight.	8 private sector insurers, 27 self-insurers (exempt employers) and the Insurance Commission of Western Australia.	Workers' Compensation and Injury Management Act 1981.	Concilliation and Arbitration Services (from 1 December 2011).
South Australia	WorkCoverSA.	WorkCoverSA.	1 private sector agent 67 private self-insurers Crown self-insurers	Workers' Rehabilitation and Compensation Act 1986 and WorkCover Corporation Act 1994.	Workers Compensation Tribunal.
Tasmania	Department of Justice and WorkCover Tasmania.	Licensed private sector insurers subject to WorkCover Tas oversight.	7 private sector insurers. 11 self-insurers	Workers' Rehabilitation and Compensation Act 1988.	Workers Rehabilitation and Compensation Tribunal, Supreme Court
Northern Territory	Department of Justice. NT WorkSafe.	Private sector insurers.	5 private sector insurers.	Workers Rehabilitation and Compensation Act	Mediation coordinated by NT WorkSafe. Work Health Court.
Australian Capital Territory	Chief Minister's Department – Continuous Improvement & Workers' Compensation Branch	Private sector insurers	7 approved insurers. 8 self-insurers.	Workers' Compensation Act 1951	Conciliation, arbitration, Magistrates Court, Supreme Court
C'wealth Comcare	Department of Education, Employment and Workplace Relations.	Comcare.	Comcare/Self-insurers and their agents. DVA for claims relating to military service rendered before 1 July 2004.	Safety, Rehabilitation and Compensation Act 1988.	AAT, Federal Court
C'wealth Seacare	Department of Education, Employment and Workplace Relations.	Private sector insurers.	Employers/ insurers.	Seafarers Rehabilitation and Compensation Act 1992.	AAT, Federal Court.

	Policy	Premium	Claims	Current legislation	Disputes
C'wealth DVA	Military Rehabilitation and Compensation Commission	N/A	DVA	Military Rehabilitation and Compensation Act 2004	Veterans' Review Board, AAT, Federal Court.
New Zealand	Department of Labour.	Accident Compensation Corporation.	Accident Compensation Corporation.	Accident Compensation Act 2001.	Accident Compensation Corporation, mediation, Dispute Resolution Services Limited, court system.

Table 2.3: Key features of schemes

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth	New Zealand
Employees covered for workers' compensation	3 089 100	2 535 200	1 892 100	1 070 500	710 400	205 300	112 900	130 600	364 400	1 795 600
Number of serious claims with one week or more incapacity (2009-10)	43 950	23 990	29 380	12 330	8 850	3 160	1 340	1 710	2 720	19 190
Number of serious claims per 1000 employees (2009-10)	14.2	9.5	15.5	11.5	12.5	15.4	11.9	13.1	7.5	10.7
Compensated deaths per 100 000 employeees (2009-10)	1.4	1.5	2.3	1.7	1.0	1.9	3.5	2.7 (ACT Private Sector only)	8.5	5.6

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth	New Zealand
Scheme funding	Managed	Central	Central	Private insurers	Central	Private insurers	Private insurers	Private insurers	Central	Central
Standardised Average Premium rate (% of payroll)	1.82 2009–10 1.83 (2008–09)	1.39 2009–10 1.38 (2008–09)	1.12 2009–10 1.06 (2008–09)	1.22 2009–10 1.14 (2008–09)	2.76 2009–10 2.82 (2008–09)	1.40 2009–10 1.38 (2008–09)	1.82 2009–10 1.74 (2008–09)	2.03 2009–10 2.13 (2008–09)	0.93 2009–10 0.95 (2008–09)	
Standardised Funding Ratio (%)	100 2009–10	121 2009–10	130 2009–10	122 2009–10	62 2009–10	118 2009–10	102 2009–10	not available	100 2009–10	
Excess/ Unfunded (30 June 2011)	$2363m unfunded.	$671m excess	$343m (funded)	Not available	(nothing provided)	(nothing provided)	Nil	not available	(nothing provided)	$288m Unfunded Work Account Only
Access to Common Law	Yes	Yes - limited	Yes	Yes	No	Yes	No	Yes	Yes - limited	

Coverage of workers — Determining what type of workers should be covered for workers' compensation is very important as penalties can apply if an employer does not insure its workers. A number of jurisdictions apply tests to determine if a worker requires coverage. Table 2.4a provides a summary of coverage and Table 2.4b provides information to help to determine whether a worker is covered. Employers should contact their workers' compensation authority if they are unclear whether a worker is covered or not.

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

	Coverage of employees	Coverage of independent contractors	Coverage of labour hire workers
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)	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act.	Yes, labour hire firm held to be employer. S.5.
Victoria	''worker means an individual- (a) who- (i) peforms work for an employer; or (ii) agrees with an employer to perform work- at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or (b) who is deemed to be a worker under this Act;': s5(1)	No, if employed under contract for service; they are covered if enter into any form of contract of employment (definition of 'worker' in s5(1))	Yes, labour hire firm held to be employer (definition of 'worker' in s 5(1)
Queensland	A worker is an individual who works under a contract of service (s11 Workers' Compensation and Rehabilitation Act 2003). A person who works under a contract, or at piecework rates, for labour only or substantially for labour only is a worker (Schedule 2 (1.1), Workers' Compensation and Rehabilitation Act 2003).	No, if employed under contract for services. The following guidance for determining whether a person is a worker is provided:	Yes, labour hire firm held to be employer
Western Australia	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: a) any person to whose service any industrial award or industrial agreement applies, and any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services – s5(1).	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.	Yes, labour hire firm held to be employer
South Australia	a) a person by whom work is done under a contract of service (whether or not as an employee) b) a person who is a worker by virtue of section 103A c) a self-employed worker and includes a former worker and the legal personal representative of a deceased worker. S3(1)	Yes, if undertake prescribed work or work of a prescribed class. S3(6)	Yes, labour hire firm held to be employer
Tasmania	• 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).	Persons engaged under a contract for services are not covered UNLESS the contract is for work exceeding $100 that is not incidental to a trade or business regularly	Labour hire workers are generally covered with the labour hire company taken to be the employer.

	Coverage of employees	Coverage of independent contractors	Coverage of labour hire workers
		carrried out by the contractor (S.4B).	
Northern Territory	Contract or agreement of any kind to perform work or a service, unless an ABN is supplied in writing.	Not if an ABN is supplied in writing, otherwise yes	If the individual's contract or agreement is with the Labour Hire business they are the employer.
Australian Capital Territory	Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written – s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a-c) OR has a personal services business determination s8(1)(ii)	No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.	Yes , where the individual is not an executive officer of the corporation and: • 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
C'wealth Comcare	A Employee – a person employed by the Commonwealth or by a Commonwealth Authority whether the person is so employed under a law of the Commonwealth or a Territory or under a contract of service or apprenticeship	No, if employed under contract for service	Possibly, according to definition of nature of contract
C'wealth Seacare	Seafarer (person employed in any capacity on a prescribed ship or the business of the ship, other than: a pilot, a person temporarily employed on the ship in port, or a person defined as a special personnel in s283 of the Navigation Act), trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship – s4	No, compensation only through employment of employees	Possibly, according to definition of nature of contract
C'wealth DVA	Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 – MRCA s5.	Only if a "declared member" - s8	Only if a "declared member" - s8
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)	Yes	Yes, labour hire firm held to be employer

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

	Guides and information
New South Wales	The final arbiter of whether a contractor is a deemed worker is the Workers' Compensation Commission and this is decided on the individual facts of each case. WorkCover may also apply tests determined by other Courts. One relevant test is whether the contract can be construed as a 'contract of service' (which would usually result in a finding that the person is a worker) or a 'contract for services' (which would usually result in a finding that the person supplying the services is not a worker Worker or Contractor?
Victoria	Contractors and workers Workers' rights and responsibilities
Queensland	Worker's guidelines Worker determination
Western Australia	Who do I need to Cover? Important Information for Employers Contractors and Workers' Compensation (Are you a Worker?) Contractors and workers' compensation (Technical Note 1)
South Australia	'A Guide to the Definition of Worker'.
Tasmania	A person who is engaged under a contract of service would be regarded at common law as being an employee whereas a person who is engaged under a contract for service is regarded as being an independent contractor.) Exception where contract is for work not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name - s4B
Northern Territory	N/A
Australian Capital Territory	Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written – s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a-c) OR has a personal services business determination s8(1)(ii)
C'wealth Comcare	N/A
C'wealth Seacare	N/A
C'wealth DVA	Military Rehabilitation and Compensation Information Booklet
New Zealand	N/A

Table 2.4c: Coverage of journeys and breaks

	Journeys to and from work	Work-related travel	Breaks - onsite	Breaks - offsite
New South Wales	Yes, some restrictions – 1987 Act, s10.	Yes, covered by s4 definition of 'personal injury arising out of or in the course of employment' - 1987 Act.	Yes – 1987 Act, s11	Yes – 1987 Act, s11
Victoria	No – s83.	Yes, some restrictions – s83.	Yes – s83.	Yes – s83.
Queensland	Yes, some restrictions – s35.	Yes – s34.	Yes – s34(1)(c).	Yes – s34(1)(c).
Western Australia	No – s19(2).	Yes – s19(1).	Yes.	No reference in the Act. Coverage depends on factual circumstances or common law.
South Australia	No – s30(5).	Yes – s30.	Yes, if the break is authorised – s30(3).	No.
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.
C'wealth Comcare	No, some exceptions – s6(1C).	Yes – s6(1)(d).	Yes - s6(1)(b).	No
C'wealth Seacare	Yes – s9(e).	Yes – s9(e).	Yes – s9(b).	Yes – s9(b).
C'wealth DVA	Yes - s.27; exceptions - s.35.	Yes - s.27; exceptions - s.35.	Yes - s.27.	Yes - s.27.
New Zealand	Yes, some restrictions - s28(1)(b).	Yes – s28(1)(a).	Yes – s28(1)(b).	Yes, some restrictions.

Table 2.4d: Definition of injury and employment contribution

	Definition of injury and relationship to employment	Contribution of employment to injury
New South Wales	" . . . personal injury arising out of or in the course of employment . . ." – 1998 Act, s4.	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury – 1987 Act, s9A(1).
Victoria	" . . . an injury arising out of, or in the course of, any employment . . ." – s82(1).	Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment) c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease – s82(2B) & s82(2C).
Queensland	" . . . a personal injury arising out of, or in the course of, employment . . ." – s32(1).	A significant contributing factor – s32(1).
Western Australia	" . . . a personal injury by accident arising out of or in the course of the employment . . ." – s5.	Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree – s5.
South Australia	" . . . disability arises out of, or in the course of employment . . ." – s30.	A substantial cause (for psychiatric disabilities only) – s30A(a).
Tasmania	"An injury, not being a disease, arising out of, or in the course of employment" – s25(1)(a). "an injury, which is a disease, to which his employment contributed to a substantial degree"- s25(1)(b).	To a substantial degree, that is, employment is the 'major or most significant factor ' (for diseases only) – s3(2A). Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (section 3(1) – in definition of "injury").
Northern Territory	" . . . a physical or mental injury . . . out of or in the course of employment . . ." – s3 & s4.	To a material degree, (for diseases – s4(6) and gradual process – (s4(5)) that is employment was the real proximate or effective cause (S4(8)).
Australian Capital Territory	"a physical or mental injury (including stress) . . . includes aggravation, acceleration or recurrence of a pre-existing injury . . . arising out of, or in the course of, the worker's employment . . ." – s4 & s31.	A substantial contributing factor – s31(2).
C'wealth Comcare	" . . . a physical or mental injury arising out of, or in the course of, the employee's employment . . .', or '... an aggravation of a physical or mental injury (other than a disease) ...'" - s5A.	Comcare: To a significant degree (for diseases) – s5B, with matter to be taken into account being set out in a non-exclusive list and with 'significant' being defined as "substantially more than material".
C'wealth Seacare	" . . . a physical or mental injury arising out of, or in the course of, the employee's employment . . .', or '... an aggravation of a physical or mental injury (other than a disease) ...'" - s3.	To a material degree (for diseases) – s10(1).

	Definition of injury and relationship to employment	Contribution of employment to injury
C'wealth DVA	Refer ss27, 29(1), 29(2) and 30 of MRCA. 1. '...any physical or mental injury (including the recurrence of a physical or mental injury).' or (being a disease)'...(a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or (b) the recurrence of such an ailment, disorder, defect or morbid condition;': - resulted from an occurrence that happened whilst rendering service; - arose out of, or was attributable to, any service rendered.	De minimis material contribution required ("arose out of, or was attributable to") - MRCA ss27b &27c In a material degree (for aggravations only) - MRCA, ss27d & 30.
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.	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.

Table 2.4e: Coverage of retirement provisions

	Retirement provisions
New South Wales	'Retiring age' means the age the person would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the Commonwealth Social Security Act 1991. If injury occurs before retiring age: weekly compensation made until first anniversary of date on which worker reaches retiring age. If the injury occurs on or after retiring age: weekly payments made for the first 12 months of injury. Eligibility for other benefits is ongoing – Workers Compensation Act 1987, s52. Workers' receiving compensation benefits under the Workers' Compensation (Dust Diseases) Act 1942 are not subject to retirement provisions and may apply for and continue to receive compensation benefits up until their death - Workers' Compensation (Dust Diseases) Act 1942, s8(3).
Victoria	Under s93F, normally, the earlier of age 65 or normal retirement age for the worker's occupation except in the following circumstances: 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. If worker's incapacity after reaching retirement age relates to an injury suffered within the preceding 10 years and if the incapacity is due to inpatient treatment, the worker is entitled to weekly payments for a limited period of up to 13 weeks - s93EA.
Queensland	No retirement provision referred to in the Act.
Western Australia	Under the recent legislative changes to the Workers' Compensation and Injury Management Act 1981, age based entitlement limitations have been removed. As a result, injured workers aged 65 years or older are able to access weekly income payments on the same terms as all other injured workers. This change took effect from 1 October 2011.
South Australia	Weekly compensation payments are not payable after the worker reaches retirement age unless worker is within 2 years of retirement age or above retirement age in which case weekly payments are payable for a period of incapacity falling within 2 years after the commencement of the incapacity - ss35(2) and (3). See the FAQ's on **WorkCoverSA's website** about compensation for older workers.
Tasmania	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.
Northern Territory	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.
Australian Capital Territory	If the worker was, on the intitial incapacity date for the injury, younger than 63 years old, compensation for incapacity is not payable for any period after the worker reaches 65 years of age – s 39(3)(b); s 40(4)(a) If the worker was, on the initial incapacity date for the injury, at least 63 years of age, compensation for incapacity is not payable for any period more than 2 years after the initial incapacity date – s 39(3)(c); s 40(4)(b)
C'wealth 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 (whether consecutive or not) during which the employee is incapacitated – s23
C'wealth 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.

	Retirement provisions
C'wealth DVA	Compensation in the form of income replacement is not payable to a person who has reached 65, however if a person who has reached 63 suffers an injury, compensation is payable for a maximum of 104 weeks – MRCA s121.
New Zealand	Not required, except for work-related gradual process, disease, or infection suffered by the person – s20(2)(e).

Table 2.5: Summary of entitlements as at 30 September 2011

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
What pre-injury weekly earning includes										
Overtime	No	Yes for 52 weeks of weekly payments	Yes (NWE)	Yes for the first 13 weeks. No from week 14 onward	Yes	No, with some exceptions (see note)	Yes if regular	-	Yes	Yes
Bonuses	No	No	Yes	Yes for the first 13 weeks. No from week 14 onward	Yes	No (section 70(2)(ac))	No	-	No (some allowances are payable)	No (some allowances are payable)
Entitlements expressed as a percentage of pre-injury earnings for award wage earners[a]										
0-13 weeks (total incapacity)	100%	95% up to max	85% of NWE[c] (or 100% under industrial agreement)	100%	100%	100%	100%	100%	100%	100%
14-26 weeks (total incapacity)	100%	80% up to max	85% of NWE[c] (or 100% under industrial agreement)	100%	90%	100%	100%	100%	100%	100%
27-52 weeks (total incapacity)	90% of AWE or the statutory rate of $417.40, + additional amount for spouse and/or dependent children spouse: $110.00, 1 child: $78.60, 2 children:$175.80, 3 children: $291.30, 4 children: $409.70. For each additional	80% up to max	75% NWE or 70% QOTE[c]	100%	80%	90%	75-90%	65% or Stat Floor	27-45 wks 100% 46-52 wks 75%	27-45 wks 100% 46-52 wks 75%

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
	dependent child in excess of 4: $118.20.[b]									
53-104 weeks (total incapacity)	90% of AWE or the statutory rate of $417.40, + additional amount for spouse and/or dependent child spouse: $110.00, 1 child: $78.60, 2 children:$175.80, 3 children: $291.30, 4 children: $409.70. For each additional dependent child in excess of 4: $118.20.[b]	80% up to max	75% NWE or 70% QOTE[c]	100%	80%	53-78 weeks 90%, 79-104 weeks 80%	75-90%	65% or Stat Floor	75%	75%
104+ weeks (total incapacity)	90% of AWE or the statutory rate of $417.40, + tadditional amount for spouse and/or dependent children spouse: $110.00, 1 child: $78.60, 2 children:$175.80, 3 children: $291.30, 4 children: $409.70. For each additional dependent child in excess of 4: $118.20.[b]	80% (up to max., subject to work capacity test after 130 weeks)	QOTE if > 15% Work-Related Impairment, equal to single pension rate[c]	100%	80% (ongoing entitlement after 130 weeks is subject to capacity review	80%	75-90%	65% or Stat Floor	75%	75%

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	Australian Government	C'wealth DVA
Other entitlements										
Permanent impairment	>75% impairment: $220 000 for multiple injuries or $231 000 for back impairment + $50 000 pain & suffering	$527 610	$273 055 permanent impairment + $309 315 gratuitous care.	$190 701 + $143 025 in special circumstances[d]	$437 401	$289 193	$278 969.60 permanent impairment	$131,785 (single) $197,677.(multiple)	$163 535 (Economic) $61 326 (non economic loss)	a) $397 790.28 max. PI limit for combination of initial and additional compensation; b) $77 222.06 foe each dependent child if receiving max. PI compensation.
Limits- medical and hospital	$50 000 or greater amount prescribed or directed by WC Commission	52 weeks from cessation of weekly payments[e]	Medical - no limit. Hospital - 4 days (>4 days if reasonable)	$57 210 + $50 000 in special circumstances	No limit	No limits, but entitlements cease either after 1 year of weekly benefits cessation or 1 year after claim	No limit	No limit	No limit	No limit.
Death entitlements (all jurisdictions pay funeral expenses to differing amounts)[f]	$465 100 + $118.20 pw for each dependant child	$527 610 (shared) + pre-injury earnings-related pensions to a maximum of $1 930 pw for dependent partner/s and children	$511 460 + $13 665 to dep. spouse + $27 320 for each dep. family member under 16 or student + $98.25pw per child to spouse while children are under 6 yrs + $122.80pw per dep. child/family member while children/family members under 16 yrs or a student	$261 429 + $50pw for each dependant child + max of $55 018 for medical expenses[d]	$437 401 + 50% worker's NWE for totally dep. spouse 25% worker's NWE for totally dep. orphaned child. 12.5% worker's NWE for totally dep. non-orphaned child	$289 193 + 100% weekly payment 0-26 weeks, 90% weekly payment 27-78 weeks, 80% weekly payment 79-104 weeks + $104.53pw for each dependant child	$348 712 + $134.12pw for each dependant child to max of 10 children	$197 677 cpi indexed + $565.89pw cpi indexed pw for each dependant child	$458 980.51 + lump sum + $10 138.75 funeral + $126.22pw for each dependant child	a) $379.35 per week or $638 787.47 for partner b) $77 222.06 for each dep child c) $84.94 pw +$3.00 MRCA supplement for each dep child d) 41 544.43 financial advice.

Table 2.6: Prescribed time periods for injury notification

	Injured worker notifies employer/ insurer of injury	Employer notifies insurer/ authority of injury to worker	Insurer notifies authority of injury to worker	Authority notifies insurer of injury to worker
New South Wales	As soon as possible - 1998 Act, s44(1).	48 hrs of becoming aware - 1998 Act, s44(2).	No time specified - 1998 Act, s44(3).	As soon as practicable - 1998 Act, s44(3A).
Victoria	30 days after becoming aware of injury - s102(1). Beyond 30 days after becoming aware of injury in certain conditions - s102(6).	N/A - only obligation to forward claim.	N/A	N/A
Queensland	-	8 business days - s133(3).	N/A	N/A
Western Australia	As soon as practicable - s178(1)(a). Claim within 12 months of injury - s178(1)(b).	5 days after claim is made - s57A(2A).	-	-
South Australia	Within 24 hours or as soon as practicable - s51(2).	5 business days - s51(6).	N/A	N/A
Tasmania	As soon as practicable - s32(1)(a).	3 working days after becoming aware that worker has suffered a workplace injury - s143A.	-	-
Northern Territory	As soon as practicable - s80(1).	s65 of the Workplace Health and Safety Act 2007 requires verbal reporting as soon a practicable and written reporting within 48 hours of occurrence.	Copy of claim form supplied to NT WorkSafe within 10 days of insurers initial decision of claim.	N/A.
Australian Capital Territory	As soon as possible - s93(1).	48 hrs of becoming aware - S93(2).	N/A	N/A
C'wealth Comcare	As soon as practicable - s53(1)(a).	-	-	-
C'wealth Seacare	As soon as practicable - s62(1)(a).	-	-	-
C'wealth DVA	N/A-	N/A-	N/A	N/A
New Zealand	N/A.	-	-	-

Table 2.7: Prescribed time periods for claim submission

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
Injured worker puts in claim form	6 months - 1998 Act, s65(7); or 3 years - s65(13).	As soon as practicable with injury employer for weekly payments, 2 years for death claims, 6 months after relevant service for claim for medical and like service - s103.	6 months - s131(1). (if beyond 20 days, extent of the insurer's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged) - s131(2). Beyond 6 months - s131(5).	12 months - s178(1)(b). Beyond 12 months - s178(1)(d).	<6 months - s52(1)(b). >6 months - s52(3)(b). NB: s52(1)(b), prescribed period is 6 months commencing on the day on which the entitlement to make the claim arises.	6 months - s32(1)(b). Beyond 6 months - s38(1).	6 months - s182(1). Beyond 6 months - s182(3).	3 years - s120(1)(b), or Beyond 3 years - s120(2).	No specified time - S54(1).	No time specified - s62(1).	N/A.	Within 12 months – s 53.
Employer acknowledges receipt of claim		As soon as reasonably practicable - s103(4E).	-	-	N/A			-	-		N/A	
Employer passes on claim form to insurer/authority	7 days - 1998 Act, s69(1)(a).	Within 10 days after the employer receives the claim- s108(1).	-	5 working days - s57A(2A).	5 Business days - s52(5).	Employer must notify insurer of claim within 3 working days of receiving claim - s36(1AA). Employer must complete employer's report section of claim and forward it to insurer within	3 working days - s84(1).	7 days - s126(1).	-		N/A	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
						5 working days of receiving claim - s36(1).						
Employer/worker supplies further information to insurer on request	7 days - 1998 Act, s69(1)(b).	No time limit except decision must be made on claim for weekly payments or deemed accepted.	10 business days of receiving notice - s167(2).		N/A			7 days - s126(2).	28 days - S58(2).	No time specified - s67.	N/A	
Insurer passes on claim form to authority		Not required as authorised agent of authority has claims management function.	-	Within 21 days after payments commence - s57C(2).	N/A	5 working days - s36(2).	10 working days - s84(2).	N/A	-		N/A	
Claim deemed accepted	Within 7 days of notification for up to 12 weeks provisional - s274(2). 21 days - 1998 Act, s274(1).	28 days for weekly payments if received by insurer within 10 days or 39 days in other circumstances - s109.	20 business days - s134(2).	-	10 Business days - s53(4) (wherever practicable).	84 days - s81AB, s81A(1).	10 working days after receipt by employer if no decision has been made - ss85(1) and 87.	28 days - s128(1).	-	Under the Seafarers Act, claims are deemed to be rejected if not determined within the following statutory time frames: 60 days for death claims (s 72), 12 days for incapacity, loss of property and medical expenses (s73), 30 days for	N/A	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
										permanent impairment (s73A).		

Table 2.8: Prescribed time periods for payments

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
Eligibility from	Periods of either total or partial incapacity for work resulting from the injury – s 33 1998 Act.	Date of incapacity for work for weekly payments - s93.	Assessment by medical practitioner, nurse practitioner or dentist - s141(1).	From date of incapacity - s21.	From date of incapacity s35(8).	Date of injury (for medical etc expenses). Date of incapacity for weekly payments - s81(3)(a).	-	Date of injury - s38(1)(b)	For injuries - date of injury - for diseases the date employee first sought medical treatment, date of death or date of first incapacity or impairment – s7(4)	Date of incapacity - s31	Date of incapacity - Chapter 4, Parts 3 and 4.	Date of incapacity – Schedule 1, Part 2, cl 32.
Payments begin	Within 7 days of notification if provisional liability - 1998 Act, s267 Promptly when liability accepted by insurer - 1998 Act, s74A(1) 21 days of claim lodged and accepted - s274(1)	Max 7 days after end of week in which payments are due - s114D(6).	Day of assessment - s141(1). Day after assessment day - s141(2).	Not later than 14 days - s57A(7).	Within 7 days of notification if provisional liability accepted unless a reasonable excuse exists – s50B(1). Within 14 days of claim - s46(6).	Max 14 days from receipt of claim - s81(1)(a).	3 working days from accepting liability - S85(2).	From notification of injury - s38(1)(a).	No time specified	Within 30 days of date of determination of amount for injuries resulting in death or permanent impairment - s130	No time specified.	
Employer passes on payments to injured worker	As soon as practicable - 1998 Act, s69(1)(c).	Max 7 days after end of week in which payments are due - s114D(6).	Not specified.		Within 14 days after date of claim - s46(6).		3 working days from accepting liability - S85(2).	Immediately - s126(3).	No time specified		No time specified.	
Medical invoices sent to insurer	No time specified	No time limit specified.	2 months - s213(2).	No time specified.	No time specified	Within 7 days of employer receiving account.	No time specified.	Not specified	No time specified		No time specified.	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
Medical expenses accepted	Within 7 days of notification if provisional liability accepted - s267 21 days of claim lodged -1998 Act, s279(1)	Claim for compens'n to be accepted with 28 days - s109(2).			No timeframe specified under s32		No time specified.	Not specified	No time specified		No time specified.	
Medical expenses paid	No time specified.	No time specified.	No time specified - s210.	No time specified.	No timeframe specified under s32	28 days - s77AA(1) and s77AB(2).	No time specified - s73.	30 days of insurer receiving notice - s90(1).	No time specified		No time specified.	

Table 2.9: Dispute resolution process

	Dispute resolution provisions
New South Wales	If liability for a claim or a request for a benefit is declined, the injured workers will receive a copy of all information relevant to the decision. This means that all information is exchanged and considered before an application for dispute resolution is lodged with the Workers Compensation Commission (the Commission). An injured worker can ask the insurer to review the 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. If the dispute is about the level of permanent impairment, the Commission-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. The Commission is an independent Statutory Tribunal, which deals with disputed workers' compensation claims (except for coal miners). 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. 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. **Medical Panels:** AMS are appointed to assess medical disputes. 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). **Dust Diseases** Workers who disagree with a decision made by the Dust Diseases Board or its Medical Authority can lodge an appeal in the District Court of NSW in accordance with section 8I of the Workers' Compensation (Dust Diseases) Act 1942.
Victoria	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. **Conciliation**: The worker or person making the claim may refer the dispute for conciliation to attempt to resolve the dispute – s53 and s55. 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. A direction of a conciliation officer is binding on the parties unless subsequently revoked by that conciliation officer or any other Conciliation Officer or a Court – s60. 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. Unless a Court orders otherwise, a dispute can be conciliated notwithstanding that court proceedings have been commenced – s57. The Magistrates' Court deals with claims up to $100 000, disputes regarding access to claims documents, claims for reimbursement of expenses incurred by non-family members of a deceased worker and civil proceedings relating to discriminatory conduct against a worker - ss43 and 242AD. The County Court deals with all other claims – s43. **Medical Panels:** 'medical questions' as defined in s5(1) may be referred to the Medical Panels. Disputed impairment benefits assessments under s104B and any medical question arising in a conciliation dispute relating to a worker's entitlement to weekly payments for reduced work capacity after 130 weeks under s 93CD must be referred to Medical Panels. Medical Panels must form binding opinions on medical questions referred – s68.

	Dispute resolution provisions
Queensland	**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. **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. **Appeal to Industrial Magistrate (premium matters) or Industrial Relations Commission (claim matters):** Formal hearing of both sides, where the appeal body can confirm, vary, set aside and substitute another decision, or set aside the decision and return the matter to the decision maker with directions considered appropriate – s558. **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. **Medical Panel:** Referral to Medical Assessment Tribunal (MAT) by an insurer to decide a worker's capacity for work or permanent impairment – s 500. No appeal against a decision by MAT unless fresh medical evidence is submitted to MAT within 12 months of the MAT decision – s512.
Western Australia	The new Conciliation and Arbitration Services were established in December2011. There are 3 main steps to resolve a dispute: Before an application is lodged with WorkCover WA, there must have been reasonable attempts made to resolve the dispute by negotiation with the other party. If the dispute is not resolved by negotiation, an application can be made to WorkCover WA's Conciliation Service. If there are matters remaining in dispute at the conclusion of conciliation, an application can be made to WorkCover WA's Arbitration Service **Conciliation Process** Application: May be made in person, post, fax or online. Applicants may lodge the following: Application form Proof (to the satisfaction of the Director, Conciliation Services) that reasonable attempts have been made to resolve the dispute by negotiation Any other relevant document **Grounds for rejection:** Reasonable attempts to resolve the dispute have not been made. 56 days have not elapsed since prior conciliation on same issue Incomplete or incorrect application. **Not suitable for conciliation** Director may deem a dispute not suitable for conciliation if the issues are unlikely to be resolved by conciliation Director will then issue a certificate identifying issues, and provide it to the parties A party to the dispute may then make an application to the Arbitration Service. **Time limits:** 56 days from acceptance of application to completion A conciliator may request the Director grant up to an additional 56 days Referral to medical panel "stops the clock" Conferences will normally occur within 21 days from acceptance of the application. **Powers of Conciliation Officers (COs)** CO may require parties to provide documents to assist with conciliation CO may make payment directions:

- payment, suspension or reduction of wages payments for up to 12 weeks
- for the payment of statutory allowances of up to 5% or the Prescribed Amount.

Failure to comply with payment direction – s182ZL, application to Director for an order 14 days after payment due.

Certification of outcome
At the end of conciliation, a Certificate of Outcome is issued by the conciliation officer. The Certificate outlines:
The matters in dispute at the outset of the process
Those matters that were resolved and the basis on which they were resolved
Those matters remaining in dispute
Details of any payment directions issued
A Certificate is essential to make an application to the Arbitration Service.

Costs
Party may apply for a conciliator to make a determination of costs. This can only occur if disoute is resolved or has otherwise ended. Cost order may be reviewed by the Director.

ARBITRATION SERVICES

An Arbitrator:
Must be a legal practitioner
Is not subject to the direction of the WorkCover WA CEO or the Registraras to any decisions or discretions regarding specific disputes
Makes determinations (orders) based on evidence and law
Is not to attempt to resolve any matter by conciliation
May confirm, vary or revoke a payment direction made by a CO
Makes final and binding decisions on parties
Subject to appeal to the District Court in certain circumstances or subject to review if there is new evidence

Application
To be lodged within 28 days after a certificate is issued by the Concilliation Service (party may apply to Registrar for an extension)
Can be lodged in person or by post or fax.

Rejection: Registrar may reject application if:
Not properly lodged
Not accompanied by materials required by the Arbitration Rules or an order
Does not comply with Rules or order
No Certificate of Outcome from the Conciliation Service is provided

Reply
Reply is to be filed within 14 days after being served with the application.

Interlocutory Application: The Arbitration Rules introduce a simplified definition of interculatory application:

“Interculatory application means any application or request for an order, except an order that finally determines a dispute between parties”

Directions Hearing: Before the hearing for the determination of a dispute, the Registrar may convene a directions hearing to be conducted by an arbitrator to:
Clearly define the issues being determined
Make appropriate directions for the speedy and fair conduct of the proceeding
List the dispute for the hearing

	Dispute resolution provisions
	Ensure effective casde management of the dispute **Arbitration Hearing:** In appropriate circumstances applications may be arbitrated on the papers. Otherwise, a more formal hearing will take place involving: The formal taking of evidience Cross examination Tendering of documents An arbitrator is bound by the common law rules of natural justince to the extent that the WCIM Act does not preclude them. Decisions may be given orally then and there or reserved and likely yo be in writing. **Appeals:** While a determination by an Arbitrator is legally binding, questions of law may be appealed to District Court providing certain thresholds are met. An appeal must be made within 28 days from the Arbitrator's written determination. **Medical Panel:** Where the dispute is of a medical nature, the conciliation officer or Arbitrator may refer the matter to a medical assessment panel, made up of medical professionals. The determination of the panel is final and binding on all parties and on any court or tribunal. **Further information:** 'What happens if there is a dispute?' Workers' Compensation and Injury Management Conciliation Rules 2011
South Australia	**Reconsideration:** Disputed claim determinations on a claim must be reviewed and reconsidered by a person who did not make the disputed decision. The reconsideration of the disputed decision must be completed within 7 days after receiving notice of the dispute – s91. **Conciliation:** If a dispute is not resolved through the reconsideration process it must be referred for conciliation – s91A. 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. **Judicial Determination:** A hearing before a presidential member of the Tribunal – s94A. **Full Bench:** The President can refer a dispute to the Full Bench of the Tribunal – s94A. An appeal lies on a question of law from a judicial determination to the Full Bench of the Tribunal – s86. **Supreme Court:** The Full Bench of the Tribunal may refer a question of law for the opinion of the Full Court of the Supreme Court - s86A(1). An appeal lies on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court but such an appeal can only be commenced with the permission of a Judge of the Supreme Court - s86A(2) and (2a). A compensating authority or the Tribunal may require a worker who claims compensation under the Act or who is in receipt of weekly payments to submit to an examination by a Medical Panel or to answer questions (or both) on a date and at a place arranged by the Convenor of Medical Panels so that the Medical Panel can determine any specified medical question - s98F(2). That power may be exercised by a compensating authority both before and after the matter has been referred into the Tribunal for judicial determination - Campbell v Employers Mutual Ltd; Yaghoubi v Employers Mutual Ltd [2011] SASCFC 58. Medical questions are defined in section 98E. The opinion of a Medical Panel on a medical question is final and binding on the parties, subject to the opinion not being based on an error of fact or law, but is not binding on the Tribunal. It remains for the Tribunal to determine what weight is given to an opinion. The Tribunal should satisfy itself that the opinion of the panel is based on evidence and made within its expertise -s 98H(4) and Campbell v Employers Mutual Ltd; Yaghoubi v Employers Mutual Ltd [2011] SASCFC 58.

	Dispute resolution provisions
Tasmania	**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. **Arbitration:** Formal hearing held in private, where both parties give evidence. Orders made by the Tribunal are final and binding – s44-s49. Appeal to Supreme Court: Can only appeal on points of law – s58. **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).
Northern Territory	**Mediation:** To try and resolve disputes by having discussions with each party and through conference with parties. The mediator may make recommendation to parties in relation to resolution of dispute – s103B to s103E. **Work Health Court:** Hear and determine claims for compensation and all matters and questions incidental to or arising out of such claims - s93 to s110B. **Supreme Court:** Points of law only can be referred to the Supreme Court – s115 & s116. NB: Claimant is not entitled to commence court proceedings unless an attempt of resolution had been made through mediation – s103J(1).
Australian Capital Territory	**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. 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. **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. **Magistrates Court:** Appeals or referrals by the Committee – Part 7, Regulations. **Medical Referees:** Medical referees may be requested throughout the resolution process to prepare a report to help parties reach an agreement – Part 7, Regulations.
C'wealth Comcare	Following an internal reconsideration process (s62), by an independent review officer (or by a delegate not involved in the initial decision), if either party (employee or Commonwealth entity or authority) 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. **Appeals:** A party may apply from the AAT to the Federal Court on questions of law.
C'wealth Seacare	Following a reconsideration process which must involve the assistance of an industry panel, or Comcare officer, if the employee is not satisfied with that decision an application to the Administrative Appeals Tribunal (AAT) may be made (a dispute) – s88 to s91. **Appeals:** A party may apply from the AAT to the Federal Court on questions of law.
C'wealth DVA	Following an internal reconsideration process (s350) or review by the Veterans' Review Board (s353), if either party (claimant, service chief or MRCC) to a "reviewable determination" is not satisfied with that decision an application to the AAT may be made (see above).

	Dispute resolution provisions
New Zealand	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. A claimant may apply to the Corporation for a review of: 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. Levy payers can also ask for a review of any levy paid or payable. Reviews are conducted by an independent reviewer. A review decision can be appealed to the District Court. Appeals on questions of law can be taken to the High Court and the Court of Appeal.

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

	Definition of remuneration
New South Wales	Total gross earnings (before tax), bonuses, commissions, payments to working directors, fringe benefits, superannuation, trust distributions where in lieu of wages and some other payments as outlined in the Wages Definition Manual http://www.workcover.nsw.gov.au/formspublications/publications/Pages/wagesdefinitionmanual.aspx.
Victoria	Gross wages, salaries (including overtime and loadings), bonuses, commission, fringe benefits and superannuation. The Remuneration Checklist found in A guide for employers - Your WorkSafe Insurance http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/worksafe/home/forms+and+publications/publications/your+worksafe+injury+insurance+-+a+guide+for+employers. outlines payments further.
Queensland	Total gross wages, salaries, superannuation contributions and other payments as outlined in the Wages Definition Manual.
Western Australia	All gross wages, salaries, commissions, bonuses, overtime, allowances and the like, directors fees, superannuation contributions (except those made by force of law),and all other benefits paid (whether at piece work rates or otherwise, and whether paid in cash or in kind) to, or in relation to, a worker before the deduction of income tax. 'Wages' does not include termination payments, retirement pay, retrenchment pay in lieu of notice, pensions, golden handshakes, or weekly payments of workers' compensation.
South Australia	Payments made to or for the benefit of a worker (quantified in monetary terms). The WorkCoverSA Guide to remuneration (May 2011) identifies what is included as remuneration. 'Levy Information' is a further guide available on the WorkCoverSA website that may be found under 'L' within 'Documents A-Z'.
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 on the Definition of Wages, and s96A of the Act. Guideline on the Definition of Wages (GB118) f
Northern Territory	Not in legislation but guidance material suggests: Wages, Salaries and Remuneration includes: Wages, salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments for public and annual holidays (including loadings), payments for sick leave, payments for long service leave (including a lump sum payment instead of long service leave), including but not limited to: • the market value of meals, accommodation and electricity provided by the employer for the worker • the total value of any salary sacrificed amounts, for example motor vehicles, (including fringe benefits applicable to these salary sacrifices) • superannuation contributions that would be payable to a worker as wages or salary if the worker so elected (e.g. salary sacrificed superannuation).
Australian Capital Territory	Regulated from 30 June 2010. The ACT Wages and Earnings Guide (based on the WorkCover NSW Wages Definition Manual: October 2003). This guide assists insurers, employers and employees to ensure consistency in wages declarations. Wages includes 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 also AIMS Insurers' Data Dictionary (May 2002 Edition)).
C'wealth 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. Excludes employer superannuation contributions, one off payments and bonuses – generally, non-taxable allowances.

	Definition of remuneration
C'wealth Seacare	Not defined, but generally taken to be gross wages, salaries and all other remuneration including pay in respect of holidays, sick leave and long service leave.
C'wealth DVA	N/A.
New Zealand	Earnings as an employee mean all gross source deduction payments (i.e. taxable wages) but does not include social security benefit, student allowance, redundancy payment, retiring allowance or superannuation scheme pension. Earnings as a self-employed person is defined as their annual assessable income, after expenses are deducted, that results from personal exertions. This definition includes Private Domestic Workers. Earnings as a shareholder-employee are any earnings as an employee, and/or any further salary representing payment for services provided as an employee or director of the company.

Table 2.11: Employer excess

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
Excess	Yes: – s160 (1987 Act) and Insurance Premiums Order.	Yes – s125A(3).	Yes – s65.	No.	Yes – s46 and s33.	Yes – s97(1A).	Yes – s56.	Employers are liable for weekly compensation payments from date of injury until the insurer is notified of the injury - s95 WC Act 1951	No.	Not prescribed under legislation but may be negotiated between employer and insurer.	N/A	Yes – s98.
Period of incapacity	One week's weekly compensation up to a maximum indexed amount.	First 10 days.	The lesser of: • 100% of Qld full-time adult's ordinary time earnings (QOTE), or • the injured worker's weekly compensation rate. QOTE is currently $1,263.20 from 1 July 2011.		First two weeks of the period of incapacity per worker per calendar year.	First weekly payment. May be extended up to first 4 weekly payments.	first day.	as above			N/A	first week.
Cost of benefits	-	First $610 of medical costs.	$1,263.20 (max).			First $200 of other benefits.		as above			N/A	
Buyout option	Excess is waived if the claim is reported to a Scheme Agent within 5 days of the employer becoming aware of the injury.	Yes – 10% of premium.	No			Yes – subject to the approval of the WorkCover Tasmania Board - s97(1C).		as above			N/A	

Table 2.12: Uninsured employer provisions

	Uninsured Employers
New South Wales	A claim may be made against the Nominal Insurer by any person having a workers' compensation claim if the employer is uninsured or unable to be identified by the worker – 1987 Act, s140. The employer is required to repay the amount spent on the claim and legal expenses (1987 Act, s145), plus penalties incurred for not maintaining a workers' compensation insurance policy.
Victoria	As at 1 July 2010, an employer who is required to obtain a policy of insurance but does not do so, is deemed to have in force a policy of insurance for the policy period for the purposes of the Accident Compensation (WorkCover Insurance) Act 1993 (s7) An employer who is deemed to have in force a policy of insurance is liable to pay premium for the period of non-compliance in accordance with the relevant Premiums Order and a default penalty of an amount equal to the premium payable. WorkSafe may remit the whole or any part of the default penalty (s7).
Queensland	WorkCover may recover from the employer the amount of the payment made to an injured worker together with a penalty equal to 50% of the payment, as well as the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium – s57.
Western Australia	Where an employer is not insured against their liability to pay compensation to an injured worker, WorkCover WA will pay an amount to satisfy the award or any award for costs made from the General Account (uninsured fund) - s174. This arrangement originally excluded common law damages. However, from 1 October 2011 common law access to the General Account is now available. This change is not retrospective. Where an employer is uninsured, that employer will be directly liable for the cost of the benefits paid under the Workers' Compensation and Injury Management Act Costs could include: • statutory benefits • legal costs involved in court action • liability for the cost of any action taken at common law • fines of up to $5000 per worker • an amount equal to any avoided premiums going back five years • separate and further offences for every week you remain uninsured after the date of conviction. 1981–s170, s174AA
South Australia	An employer must not employ workers to whom the Act applies if the employer is not registered with WorkCover – s59. 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.
Tasmania	The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where: 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 reasons, there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act – s121. The Workers Rehabilitation and Compensation Tribunal can order the Nominal Insurer to meet the employer's liability for the claim. The Nominal Insurer will then attempt to recover the amount paid in relation to the claim from the employer or insurers involved – s130. 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).
Northern Territory	The Nominal Insurer Fund is established by the Minster and administered by the Nominal Insurer -s162. Where an employer is not covered in full by a policy of insurance or indemnity obtained in accordance with the Act, and has accepted, been deemed to have accepted or is otherwise ordered by the Court to pay compensation, and the employer defaults in their obligation to pay compensation, the worker can make a claim on the Nominal Insurer - s167. 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).

Uninsured Employers	
Australian Capital Territory	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. If an employer fails to maintain a compulsory insurance policy, the DI fund manager may recover the double recovery amount 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: 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.
C'wealth Comcare	Not necessary within the 'premium' (Commonwealth and ACT Public Sector) component of the scheme as all employees are 'Government' employees or members of the ADF. In the self insured (licensee) component of the scheme, prudential arrangements including the requirement for a guarantee held by the SRC Commission ensures that any under insurance or non payment of liabilities is provided for. The Commonwealth could be considered to be the nominal insurer through the Department of Finance and Administration for injuries incurred before 1 July 1989. Liabilities of the Commonwealth (but not self insured licensees) which were incurred before this date are not funded through the Comcare premium scheme. This arrangement continues for claims determined under the MRCA by the DVA.
C'wealth Seacare	Not prescribed under legislation but may be negotiated between employer and insurer.
C'wealth DVA	N/A
New Zealand	An employer must pay, in accordance with the Act and regulations made under the Act, levies to fund the Work Account. The Scheme covers all workers regardless of whether their employer has breached the Act by failing to pay levies.

Table 2.13: Leave accrual while on workers' compensation

	Leave accrual while on workers' compensation
New South Wales	Compensation is payable under this Division to a worker in respect of any period of incapacity for work even though the worker has received or is entitled to receive in respect of the period any payment, allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act or contract of employment – s49 1987 Act. The NSW Office of Industrial Relations advises that all entitlements such as leave continue to accrue as long as a contract of employment exists.
Victoria	In Victoria, leave provisions are not covered under workers' compensation legislation. WorkSafe Victoria does not advise employers whether a worker is entitled to the payment or accrual of leave and refers employers and workers to the appropriate employment agreement and/or the Fair Work Act 2009 (Cth). Where weekly payments are paid or payable, regard shall not be had to any sum paid or payable in lieu of accrued annual leave or long service leave: s97(1)(d) .
Queensland	A worker is entitled to take or accrue annual leave, sick leave and long service leave under an Industrial Act or industrial instrument while they are entitled to and receiving workers' compensation payments (s119A)
Western Australia	Compensation is payable to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of any such period any payment, allowance, or benefit for annual leave, or long service leave - s80(1). Any sick leave payments made in lieu of workers' compensation payments must be repaid to the employer and the sick leave entitlement reinstated for the relevant period - s80(2). There is no provision in the Act that permits the accrual of leave while receiving weekly payments of compensation for any period of incapacity.
South Australia	In South Australia, annual leave continues to accrue for the first twelve months of incapacity, for incapacity extending beyond twelve months, that leave is deemed to have been taken and no more accrues.Any annual leave accrued before a compensable injury remains extant. Long service leave entitlements continue to accrue throughout periods of incapacity. s-40
Tasmania	When compensation is payable and the worker would be entitled to be absent from his/her employment on annual recreational leave or long service leave- (a) The worker must be given a similar period of leave on pay in lieu of that annual recreational leave or long service leave within 3 months from the date of their return to work or at the termination of their right to compensation if they do not then return to work; or (b) If the worker so desires, he/she may by arrangement with the employer, take the leave during the period of incapacity for which compensation is payable (the worker is then not entitled to receive weekly payments during that period of annual recreational leave or long service leave.) (s84) An employer must not attempt to cause or require a worker to take annual recreational leave or long service leave during a period of incapacity for which compensation is payable. A worker is entitled to be recredited with annual recreational leave or long service leave taken whilst his/her entitlement to workers compensation is pending (s84B). Tasmania's workers' compensation legislation does not deal with accrual of annual or long service leave. Workplace Standards Tasmania advise that it is an industrial relations matter and unless an award or agreement stipulates that annual leave or long service ceases to accrue after a certain period of absence it will continue to accrue.
Northern Territory	The workers' compensation law in the Northern Territory is silent on the matter of leave and the NT WorkSafe advise that is entirely a workplace relations matter between employers and workers, although presumably under the relevant industrial instrument or relevant legislation.
Australian Capital Territory	Similar to NSW in which leave provisions are not covered under the workers' compensation legislation, other than section 46 which states: Effect of payment of weekly compensation on other benefits etc. This part is not intended to affect an entitlement that, apart from this Act, the worker has to a benefit or payment except so far as a law in force in the ACT otherwise applies. Examples of benefits not affected: 1 accrual of long service leave, and 2 accrual of annual leave (see Legislation Act, s 126 and s 132). An employee's entitlement to accrue long service leave/annual leave would be covered under their award or agreement or in some cases under the Workplace Relations Act 1996. These are administered by the Workplace Ombudsman and therefore enquiries of this nature would be usually directed to them or in the case of a construction worker or cleaner they may be directed to the Long Service Leave Board. If an employee was covered by the Long Service Leave Act 1976, the Act stipulates that whilst off work on workers' compensation people do not accrue long service leave, however the employee's continuity would not be broken.

Leave accrual while on workers' compensation	
C'wealth Comcare	An injured employee cannot take leave other than maternity leave while they are on compensation leave - s116. Annual leave and sick leave accrue during the first 45 weeks of incapacity - s116. Long service leave accrues throughout compensation leave - s116.
C'wealth Seacare	An injured employee cannot take leave other than maternity leave while they are on compensation leave - S137. Long service leave entitlements continue to accrue in accordance with the applicable industrial instrument or National Employment Standard - s137
C'wealth DVA	If incapacity payments would have continued were it not for the pregnancy/maternity leave then they should still continue during the period that is generally considered to be the period of 'confinement' i.e. six weeks either side of the expected/actual birth date. Compensation is not payable for annual leave not accrued while the person is incapacitated.
New Zealand	Leave provisions are not covered under accident compensation legislation. Annual leave continues to accrue if an employee is receiving accident compensation - Holidays Act 2003 (administered by Department of Labour).

Table 2.14: Superannuation and workers' compensation

	Included in wages for premium calculations	Included with income replacement payments
New South Wales	Yes.	No.
Victoria	Yes.	No. However, workers are entitled to compensation in the form of superannuation contributions if weekly payments have been paid or payable for an aggregate period of 52 weeks and not ceased to be paid or payable and worker has not reached 65 years: s93CE.
Queensland	Yes.	No.
Western Australia	Yes (Worker Contributions) No (Contributions required by force of law).	No.
South Australia	Yes.	No.
Tasmania	Salary sacrifice only.	No.
Northern Territory	No.	No.
Australian Capital Territory		
C'wealth Comcare	No – employer contribution. Yes – employee contribution amount.	No – employer contribution amount. Yes – employee contribution amount while still employed.
C'wealth Seacare	No.	No.
C'wealth DVA	N/A	No.
New Zealand	No.	No.

Chapter 3 - Coverage and eligibility for benefits

Coverage of workers

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:

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

Coverage of employees

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

Definitions of deemed workers

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

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

Treatment of sportspersons

All jurisdictions that cover sporting activities in their workers' compensation legislation refer to the professional side of the sport only. Comcare and DVA have no direct reference to sport-related injuries. As New Zealand's scheme has much broader coverage, there is no distinction made between sport-related and any other injury; all receive the same cover. Similarly, in NSW, coverage for workers' compensation depends on whether the person is within the definition of a 'worker', it being noted that persons who might otherwise be workers are excluded where they are covered by the Sporting Injuries Insurance Act 1978. A full comparison of all jurisdictions can be found in Table 3.3.

Workers' compensation arrangements for government employers

Table 3.4 summarises the legislation, self-insurance, claims managers and premiums covering workers' compensation for government employers in each of the jurisdictions.

Workers' compensation arrangements for judges and members of parliament

Table 3.5 provides a summary of workers' compensation arrangements for judges and members of parliament in each jurisdiction.

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

	Definition of 'worker'
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) certain exclusions apply. S.4(1988).– s4(1) (1998 Act). In additional S.5 of the 1998 Act provides that Schedule 1 deems outworkers, labour hire workers, some contractors and certain other classes of persons to be workers..
Victoria	'worker means an individual- (a) who- (i) peforms work for an employer; or (ii) agrees with an employer to perform work- at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or (b) who is deemed to be a worker under this Act;': s5(1).
Queensland	A worker is an individual who works under a contract of service (s11 Workers' Compensation and Rehabilitation Act 2003). A person who works under a contract, or at piecework rates, for labour only or substantially for labour only is a worker (Schedule 2 (1.1). 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 Income Tax Assessment Act 1997 (Cth) The three elements of the results test to be satisfied are that: 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. (Schedule 2 (1.1), Workers' Compensation and Rehabilitation Act 2003).
Western Australia	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: a) any person to whose service any industrial award or industrial agreement applies, and 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). WorkCover WA guidance: Workers' Compensation and Injury Management : Important Information for Employers Who do I need to cover for Workers' Compensation? Contractors and Workers' Compensation. Contractors and workers' compensation (Technical Note 1).
South Australia	a) a person by whom work is done under a contract of service (whether or not as an employee), b) a person who is a worker by virtue of section 103A, c) a self-employed worker and includes a former worker and the legal personal rep of a deceased worker. S3(1)
Tasmania	•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).

Definition of 'worker'	
Northern Territory	Contract or agreement of any kind to perform work or a service. Exclusions apply for people who supply an ABN – s3.
Australian Capital Terrirory	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. Individual who has entered into or works under a contract of service with an employer, whether the contract is expressed or implied, oral or written – s8(1)(a), workers for labour only or substantially labour only s8(1)(b), or works for another person under contract UNLESS they are paid to achieve a stated outcome, and has to supply plant and equipment, and is (or would be) liable for the cost of rectifying any defective work s8(1)(i)(a-c) OR has a personal services business determination s8(1)(ii)
C'wealth 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. Also a person who is employed by a licensed corporation if a person performs work for that corporation under a law or a contract and the person would, if the corporation were not licensed, be entitled to workers' compensation in connection of that work – s4 & s5.
C'wealth Seacare	Seafarer (person employed in any capacity on a prescribed ship or the business of the ship, other than: a pilot, a person temporarily employed on the ship in port, or a person defined as a special personnel in s283 of the Navigation Act), trainee, person attending approved industry training or registering availability for employment or engagement on a prescribed ship – s4.
C'wealth DVA	Member or former member of the Permanent Forces, Reserves, or cadets of the Australian Defence Force who has rendered service on or after 1 July 2004 - MRCA s5.
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 28 days prior to incapacity, and who had an agreement to start work within three months of the date of incapacity or within 12 months for seasonal workers).=

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

	Are individual contractors covered under legislation?	Are labour hire workers covered under legislation?
New South Wales	Not unless contractor is a deemed worker pursuant to Schedule 1, 1998 Act. The final arbiter of whether a contractor is a deemed worker is the Workers' Compensation Commission and this is decided on the individual facts of each case. WorkCover may also apply tests determined by other Courts. One relevant test is whether the contract can be construed as a 'contract of service' (which would usually result in a finding that the person is a worker) or a 'contract for services' (which would usually result in a finding that the person supplying the services is not a worker).	Yes, labour hire firm held to be employer.
Victoria	No, if employed under contract for service; they are covered if enter into any form of contract of employment (definition of 'worker' in s5(1)).	Yes, labour hire firm held to be employer (definition of 'worker' in s 5(1).
Queensland	No, if employed under contract for services. The following guidance for determining whether a person is a worker is provided: Worker's guidelines: http://www.justice.qld.gov.au/fair-and-safe-work/workers-compensation-and-rehabilitation/workers-guidelines Worker determination	Yes, labour hire firm held to be employer.
Western Australia	No, unless employed under contract for service and remunerated in substance for personal manual labour or service.	Yes, labour hire firm held to be employer.
South Australia	Yes, if undertake prescribed work or work of a prescribed class. S3(6). See: 'A Guide to the Definition of Worker'.	Yes, labour hire firm held to be employer.
Tasmania	No, if engaged under contract for services. (Note – A person who is engaged under a contract of service would be regarded at common law as being an employee whereas a person who is engaged under a contract for service is regarded as being an independent contractor.) Exception where contract is for work not related to a trade or business regularly carried on by the contractor in the contractor's own name or under a business or firm name - s4B.	Yes, labour hire firm held to be employer.
Northern Territory	Not if an ABN is supplied in writing, otherwise yes.	If the individual's contract or agreement is with the Labour Hire business they are the employer.
Australian Capital Terrirory	No, if employed under contract for services. However, there are provisions for the coverage of regular contractors.	Yes , where the individual is not an executive officer of the corporation and: • 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.

	Are individual contractors covered under legislation?	Are labour hire workers covered under legislation?
C'wealth Comcare	No, if employed under contract for service.	Possibly, according to definition of nature of contract.
C'wealth Seacare	No, compensation only through employment of employees.	Possibly, according to definition of nature of contract.
C'wealth DVA	Only if a "declared member" - MRCA s8.	Only if a "declared member" - MRCA s8.
New Zealand	Yes.	Yes, labour hire firm held to be employer.

Table 3.2: Deemed workers

	Definition of deemed worker
New South Wales	Schedule 1 of the 1998 Act lists the twenty-one specific circumstances in which persons are deemed to be workers: 1 Workers lent or on hire. 1A Outworkers. 2 Other contractors. 2A Contractors under labour hire services arrangements. 3 Rural work. 4 Timbergetters. 5 Salespersons, canvassers, collectors and others. 6 Tributers. 7 Mine employees. 8 Mines rescue personnel. 9 Jockeys and harness racing drivers. 10 Drivers of hire-vehicles or hire-vessels – contract of bailment. 11 Caddies and others employed through club. 12 Shearers' cooks and others. 13 Fire fighters in fire district. 14 Workers at place of pick-up. 15 Boxers, wrestlers, referees and entertainers. 16 Voluntary ambulance workers. 17 Ministers of religion. 18 Ministers of religion covered by policies. 19 Participants in training programs.
Victoria	Circumstances under the Act where a person may be deemed to be a worker: (i) Students under work experience and practical placement arrangements, apprentices, persons participating in declared traning programs – s5F-5H. (ii) Secretaries of co-operative societies – s5I. (iii) Door to door sellers – s5J. (iv) Timber contractors – s6. (v) Drivers of passenger vehicles – s7. (vi) Owner drivers carrying goods for reward – s 7A. (vii) Contractors – s8. (viii) Sharefarmers – s11. (ix) Declared workers of religious bodies and organizations - s12. (x) Crown employees, Ministers, government members, judicial officers, bail justices, public corporation members, retired police reserve members - s14. (xi) Municipal councillors - s14AA. (xii) Persons engaged at places of pick-up for the purposes of being selected for work (e.g. fruit pickers) – s15. (xiii) Jockeys and track riders, riders and drivers in mixed sports gatherings – ss16(4) & 16A. (xiv) Outworkers - s17. (xv) Sailors – s81(2).
Queensland	Circumstances under the Act where a person may be deemed to be a worker: (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).

	Definition of deemed worker
Western Australia	Circumstances under the Act where a person may be deemed to be a worker: (i) Workers lent or let on hire – s5(1). (ii) Contract in substance for personal manual labour or service – s5(1). (iii) Workers under an industrial award or agreement – s5(1). (iv) Deceased worker – s5(1). (v) Police officer – s5(1) (Who suffers an injury and dies as a result of that injury). (vi) Clergy – s8, s9 and s10. (vii) Tributers - s7. (viii) Jockey – s11A. (ix) Crown workers – s14(2). (x) Certain persons deemed workers – s175AA. (xi) Working directors – s10A. WorkCover WA guidance: Workers' Compensation and Injury Management : Important Information for Employers . Who do I need to cover for Workers' Compensation?
South Australia	The definition of "contract of service" in s3(1) of the Workers Rehabilitation and Compensation Act 1986 (SA) includes: "a contract, arrangement or understanding under which one person (the worker) works for another in prescribed work or work of a prescribed class". Current classes of work prescribed under regulations 5 and 6 of the Workers Rehabilition and Compensation Regulations, include: • building work (other than wall or floor tilers) • cleaning work • council driving • taxi and hire car driving • transport driving • work as an entertainer • work as an outworker • work as a licensed jockey • work as a minister, priest or member of another religious order (except Anglican, Catholic, Lutheran and Uniting churches or the Salvation Army) • work as a Review Officer appointed under the Workers Rehabilitation and Compensation Act 1986 (SA). Under section 103 of the Workers Rehabilitation and Compensation Act 1986, the Corporation may also extend the application of the WRCA to self-employed persons. Under section 103A of the Workers Rehabilitation and Compensation Act 1986, the Crown is the presumptive employer of volunteers of a prescribed class. To date only Country Fire Service volunteers are prescribed by regulation)* See comment on page 9 under 'recent developments in workers compensation scheme'.
Tasmania	Circumstances under the Act where a person may be deemed to be a worker: (i) Contractors where the work exceeds $100 and is not incidental to a trade or business regularly carried on by the contractor – 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) Volunteers providing ambulance services – s6. (vi) Port and harbour persons engaged at places of pickup – s25(4). (vii) Salespersons, canvassers and collectors – s4C. (viii) Luxury hire car drivers and taxi drivers – s4DA & s4DB. (ix) Jockeys- s4DC. (x) Specified clergymen – s3(4). (xi) Participants in training programs – s4D. (xii) Persons in relationship prescribed to be relationship between employer and worker – s4E. (xiii) Prescribed classes of volunteers – s6B. (none are prescribed for the purpose of 6B).

	Definition of deemed worker
Northern Territory	Circumstances under the Act and Regulations where a person may be deemed or prescribed to be a worker: (ii) Workers of householders – s3(5). (iii) Working directors – s3(3). (iv) Jockeys – r3A(1)(b). (v) Taxi drivers – r3A(1)(c). (vi) Community work and volunteers – s3(4). (vii) Persons specifically prescribed by the Regulations. (viii) Family members - s3(2). (ix) Emergency service volunteers - s3(7). (x) Volunteer fire fighters - s3(8) and s3(8A).
Australian Capital Territory	Circumstances under the Act where a person may be deemed to be a worker: (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
C'wealth Comcare	Comcare: The following persons are deemed to be employees of the Commonwealth, provided they perform certain duties: (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: 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). 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). This includes those undertaking work for the Commonwealth on a voluntary basis. Such volunteers, following a declaration by the Minister, are deemed to be Commonwealth employees for the purposes of workers' compensation. 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).
C'wealth Seacare	The Act does not include any category of 'deemed' worker.
C'wealth DVA	Only if a 'declared member' - MRCA s8.
New Zealand	An earner is a natural person who engages in employment for the purposes of pecuniary gain, whether or not as an employee – s6.

Table 3.3: Treatment of sportspersons and sporting injuries

	Treatment of sportsperson and sporting injuries
New South Wales	A sporting participant meeting the definition of a "worker" is covered under the Workplace Injury Management and Workers Compensation Act 1998 unless he/ she is a registered participant of a sporting organisation (within the meaning of the Sporting Injuries Insurance Act 1978) while: (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, 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. The Sporting Injuries Insurance Act 1978 provides coverage for serious injury and death while participating in an authorised activity to persons who are registered members of a sporting organisation that is recognised by the Sporting Injuries Committee. The Sporting Injuries Insurance Act 1978 exemption to the definition of "worker" contained within the Workplace Injury Management and Workers Compensation Act 1998 does not apply to the following "deemed workers". For exemptions see Table 3.2.
Victoria	Accident Compensation Act 1985 s16 (1) Except as provided in sub-section (4), where a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority or authorised insurer is liable to pay compensation for an injury received by the person if— a) the injury is received while the person is— (i) participating as a contestant in a sporting or athletic activity; (ii) engaged in training or preparation with a view to so participating; or (iii) travelling between a place of residence and the place at which the person is so participating or so engaged. (4) Except for jockeys and harness riders (see Table 3.2)
Queensland	Workers Compensation and Rehabilitation Act 2003—Schedule 2 Part 2 – Persons who are not workers 2 A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is—a) participating in a sporting or athletic activity as a contestant; or b) training or preparing for participation in a sporting or athletic activity as a contestant; or c) performing promotional activities offered to the person because of the person's standing as a sportsperson; or d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.
Western Australia	Workers Compensation and Injury Management Act 1981s11 - Exclusion of certain persons who are contestants in sporting or athletic activities Notwithstanding anything in section 5 and subject to section 11A, a person is deemed not to be a worker while they are- a) participating as a contestant in any sporting or athletic activity; b)engaged in training or preparing himself with a view to his so participating; c) engaged in promotional activities in accordance with the contract pursuant to which he so participates; or d) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged, if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things. s11A - Jockeys. Except for licensed jockeys under the Racing and Wagering Western Australia Act 2003 while engaged in racing or riding work.
South Australia	Workers Rehabilitation and Compensation Act 1986 - s58 1. Notwithstanding any other provision of this Act, but subject to subsection (2), where — a) a worker is employed by an employer solely— (i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation); or (ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and b) remuneration is not payable under the contract of employment except in respect of such employment, a disability arising out of or in the course of that employment is not compensable. 2. This section does not apply to— a) a person authorised or permitted by a racing controlling authority within the meaning of the Authorised Betting Operations Act 2000 to ride or drive in a race within the meaning of that Act; or b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match; or c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in subsection (1)(a) 3. In this section— the prescribed amount means— a) in relation to 1987—$27 200; b) calculated to nearest multiple of $100 A professional sportsperson's income for 2011 is $60,800 and for 2012 is $63,200. See: Schedule of Sums.
Tasmania	Workers Rehabilitation and Compensation Act 1988 s7. Exclusion of certain persons who are contestants in sporting activities. A person is deemed not to be a worker within the meaning of the Act while he is, pursuant to a contract – a) participating as a contestant in any sporting or athletic activity; b) engaged in training or preparing himself with a view to his so participating; or c) travelling in connection with his so participating or being so engaged – if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things. Jockeys - Section 7 does not apply to jockeys and apprentices whilst engaged in riding at a race meeting or official trial or whilst riding in a training session for a licensed trainer – s4DC.
Northern Territory	Workers Rehabilitation and Compensation Act 2008. A person shall be deemed not to be a worker while they are – a) participating as a contestant in a sporting or athletic activity; b) engaged in training or preparing themself with a view to his or her so participating; or c) travelling in connection with them so participating or being so engaged, unless, under the contract, they are entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in his or her receiving remuneration of not less than that amount.. S 3 (10) - 3A. Definition of "worker" - Jockeys are defined as workers.

Treatment of sportsperson and sporting injuries	
Australian Capital Territory	Workers Compensation Act 1951. s84 Compensation for sporting injuries. A person is not entitled to receive compensation for an injury sustained as a result of the person's engagement in professional sporting activity. S177 Premiums—remuneration for professional sporting activity. An employer is not liable to pay any part of a premium for a compulsory insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity
C'wealth Comcare	Nothing specific in legislation. The Safety, Rehabilitation and Compensation Act 1988 provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of employment.'
C'wealth Seacare	Nothing specific in legislation. The Seafarers Rehabilitation and Compensation Act 1992 provides that in the case of an injury, compensation is payable where the injury 'arises out of or in the course of employment'.
C'wealth DVA	Nothing specific in legislation. Each claim for an injury sustained during a sporting or leisure activity will be decided on its own merits in accordance with the principle of 'relatedness to service' and relevant case law applicable at the time the claim is considered.
New Zealand	The Accident Compensation Act 2001 provides broad cover for personal injury and makes no distinction in coverage between sport-related injury and any other injury. However, injuries that are not work-related are not funded through levies collected from employers.

Table 3.4: Workers' compensation arrangements for government employers

	Legislation	Self-insurance	Claims managers	Premiums
New South Wales	Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998	Several different types of cover are available to public sector employers in NSW: • NSW Self-Insurance Corporation (previously known as NSW Treasury Managed Fund) is a self insurance scheme owned and underwritten by the NSW Government for all participating budget dependent agencies. • A number of agencies and state owned corporations are self-insured with WorkCover NSW. •Specialised Insurers are licensed in similar fashion to self-insurers but organised on an industry basis - most local councils are insured through StateCover Mutual, a specialised insurer in NSW.	- All claims are handled by claim agents, which are approved insurers on behalf of SICorp. - Claims managed by the self-insured organisation. - Claims managed by StateCover Mutual.	StateCover Mutual determines annual contributions in accordance with its published premium rating methodology.
Victoria	Accident Compensation Act 1985.	Bodies corporate and the Municipal Association of Victoria can apply to become self-insurers in Victoria: s141. Government agencies are neither, and therefore cannot become self-insurers under Victorian legislation.	Each government agency chooses one of the agents appointed to manage claims in Victoria to manage claims on their behalf Employers, including government agencies, may change agents once per year if they believe another agent will provide better service.	Government agencies must have worker's compensation insurance and pay premiums to the WorkCover fund. Administration of policies and the calculation of premium is the same as for private sector employers.
Queensland	Workers' Compensation and Rehabilitation Act 2003	Local governments can apply for self-insurance. State Government Owned Corporations and other statutory bodies were able to self-insure until a 1998 government directive stating they were to remain with the WorkCover system. Departments of government cannot apply for single self-insurance licences unless all departments are joined in the licence.	All claims are handled by WorkCover Queensland. *	All employers are required to pay a premium for a workers' compensation policy.*
Western Australia	Workers' Compensation and Injury Management Act 1981.	Agencies are underwritten by the Insurance Commission of WA through the "RiskCover" fund. No government agencies are directly self insured.	All government agency claims are handled by RiskCover.	All government agencies must have workers' compensation coverage with RiskCover. Premiums are paid direct to RiskCover.[1]
South Australia	Workers Rehabilitation and Compensation Act 1986.	The Crown and any agency or instrumentality of the Crown is deemed to be a self-insured employer under Section 61 of the Act and are	Crown agencies assume the role of the compensating authority in respect of the management of workers' compensation.	Crown agencies are required to pay an administrative levy each year to meet the costs associated with

	Legislation	Self-insurance	Claims managers	Premiums
		therefore meets all of the costs associated with worker's compensation claims.		scheme administration.
Tasmania	Workers' Rehabilitation and Compensation Act 1988.	The Crown and any agency or instrumentality of the Crown is deemed to be an exempt employer under Sections 97(9) and 114(5) of the Act and is therefore self- insured and meets all of the costs associated with worker's compensation claims. The Tasmanian Risk Management Fund is a whole-of-government self-insurance arrangement for funding and managing the insurable liabilities of inner-Budget agencies. The Fund is administered by the Department of Treasury and Finance	Claims administration is undertaken by a Fund Administration Agent, Marsh Pty Ltd, who is engaged under contract.	The Fund operates on a cost recovery basis with contributions set to ensure adequate financial provision for the cost of risk now and into the future. The level of Agencies contributions is determined by an independent actuary to reflect their risk exposure, claims experience and nominated excess amount.*
Northern Territory	Workers Rehabilitation and Compensation Act 2008.	Local Government and some statutory agencies are insured with approved insurers. The majority of the Northern Territory Public Service is 'insurance exempt' and is treated as a self insurer.	For the majority of the Nothern Territory Public service claims are managed by an approved insurer, TIO,, in partnership with the Dept of Business and Employment (DBE) and the parent agency. The NTPS pays a fee for this service. Some agencies are insured commercially, and the insurer manages these claims.	Unless the government agency insures with an approved insurer, no premium is paid. Claims are paid by the Agency.
Australian Capital Territory	Safety, Rehabilitation and Compensation Act 1988 (Cth).	All ACT Government workers are covered under the COMCARE scheme.	All government claims are handled by Comcare.	A premium is paid to Comcare annually.
Commonwealth Comcare	-	Commonwealth Authorities (defined in the Act) may be granted a licence to self insure which may include self management of claims. Departments of state are not such authorities and are not eligible to apply. Note: current licensed authorities are Australia Postal Corporation and Reserve Bank of Australia.	All government claims except those covered by self - insurance are managed by Comcare. Claims by the 2 licensed authorities are managed in-house by those authorities.	Commonwealth entities, other than those 2 licensed Commonwealth authorities pay experienced based premiums to Comcare annually.
Commonwealth Seacare	Seafarers Rehabilitation and Compensation Act 1992.	Not applicable.	Act does not apply to employees covered by the Safety, Rehabilitation and Compensation Act 1988.	Act does not apply to employees covered by the Safety, Rehabilitation and Compensation Act 1988.

	Legislation	Self-insurance	Claims managers	Premiums
Commonwealth DVA	N/A.	N/A.	N/A.	N/A.
New Zealand	Accident Compensation Act 2001.		All government claims except those covered by Accredited Employers are managed by ACC. Claims by Accredited Employers are managed by those employers, either in-house or by a contracted third-party administrator.	Government employers pay levies to ACC like all other employers unless they are Accredited Employers.

Table 3.5: Workers' compensation arrangements for judges and members of parliament

	Coverage for judges	Coverage for members of parliament
New South Wales	Covered as state government employees.	Members and electorate officers are covered by insurance arranged with the NSW Treasury Managed Fund which includes personal accident insurance and workers' compensation insurance in connection with their electorate or parliamentary duties. Members need to satisfy the Treasury Managed Fund and, if subject to dispute the Treasurer that they were on duty at the time of the accident.
Victoria	Covered as state government employees: s 14(2) Accident Compensation Act 1985.	Section 14(2) of the Accident Compensation Act 1985 provides that politicians are covered.
Queensland	Covered as state government employees.	All Members have personal accident indemnity cover on a twenty-four hour basis. Members are indemnified in the event of injury, as defined, resulting in death. The cover is administered by the Under Treasurer. (Clause 2.4 Members' Entitlements Handbook).
Western Australia	Covered as state government employees.	Not covered for workers' compensation, although insurance is taken out by the Joint House Committee, consistent with personal injury insurance.
South Australia	Covered as state government employees.	Not covered for workers' compensation, although an administrative arrangement provides the equivalent of workers' compensation
Tasmania	Covered as state government employees.	Workers' compensation is not provided to Members of Parliament. Members of Parliament are eligible for personal accident cover in the event of an injury whilst in service to the Government. Cover is provided by the Tasmanian Risk Management Fund (TRMF). The TRMF provides no-fault personal accident cover for Ministers and Members of Parliament who suffer or aggravate an injury which arises out of, and in the course of, their official parliamentary duties or contract a disease for which their official parliamentary duties was the major contributor.
Northern Territory	Covered as government employees.	Covered as government employees.
Australian Capital Territory	Covered as government employees	Not covered under the legislation.
C'wealth Comcare	Separate arrangements. Section 5(8) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) excludes judges from coverage under that Act.	Separate arrangements. Section 5(8) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) excludes members of parliament and Ministers of State from coverage under that Act.
C'wealth Seacare	Not applicable.	Not applicable.

	Coverage for judges	Coverage for members of parliament
C'wealth DVA	N/A.	N/A.
New Zealand	Covered as any other employee under the Accident Compensation Act 2001.	Covered as any other employee under the Accident Compensation Act 2001.

Coverage of work and injury

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

Journeys and breaks

Injuries which occur on work premises while a person is working are easily identifiable as occurring at work, however it is not always simple to determine whether or not a person was at work when injured. Table 3.7 provides information on the variations 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 outside the work premises.

Definition of injury

Workers' compensation schemes generally provide that a worker is entitled to workers' compensation if they have suffered an injury 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 a result of any form of trauma, each jurisdiction places limits on the term injury and defines it differently. To determine whether an incident falls within the definition of injury several factors need to be considered.

Relationship to employment and contribution of employment

Where any incident has occurred in the workplace, it needs to be determined that there is a relationship between the injury and employment before the worker can claim workers' compensation. In addition, a worker's employment has to contribute to a certain extent before a worker is entitled to compensation.

Table 3.8 provides information on how each jurisdiction defines injury, its relationship to employment and the contribution of employment to the injury.

Aggravation and acceleration

Sometimes employment is not the cause of an original injury, however can aggravate or accelerate and existing injury. As at September 2011, aggravation and acceleration of existing injuries are covered in all jurisdictions.

Diseases

Diseases 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, all jurisdictions, except Queensland, have in their legislation tables of diseases which are deemed to be caused by work.

Appendix Table 1 on page 220 provides a jurisdictional comparison of these lists.

Industrial deafness

Industrial deafness is generally examined separately from other forms of injuries. All jurisdictions have an impairment threshold in place for industrial deafness, which means that an injured worker is not entitled to lump sum compensation until they reach the threshold level. Table 3.6 illustrates the industrial deafness provisions in each jurisdiction.

Table 3.6: Industrial deafness thresholds

	Industrial deafness thresholds
New South Wales	At least 6% binaural total hearing loss – 1987 Act, s69A.
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 –ss 89, 91 & 98C.
Queensland	Not for the first 5% – s125.
Western Australia	At least 10% hearing loss for first election – s24A. Further 5% for subsequent elections – s24A.
South Australia	There are no specific thresholds provided in the Workers Rehabilitation and Compensation Act 1986 in order for hearing loss to be compensable, however, a lump sum for non-economic loss is only payable if there is a 5% or greater whole person impairment – s43.
Tasmania	5% binaural hearing impairment – s72A(3).
Northern Territory	Impairments no less than 5% – s70.
Australian Capital Territory	6% hearing loss (boilermakers deafness or similar deafness) – s64(1).
C'wealth Comcare	Binaural hearing loss of less than 5% is not payable – s24(7A).
C'wealth Seacare	10% hearing loss – s39(7).
C'wealth DVA	At least 5 impairment points hearing loss – MRCA s69(a).
New Zealand	6% binaural hearing loss – s26(1A).

Table 3.7: Definition of work - journeys and breaks

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth Comcare	C'wealth Seacare	C'wealth DVA	New Zealand
Journeys to and from work	Yes, some restrictions – 1987 Act, s10.	No – s83.	Yes, some restrictions – s35.	No – s19(2).	Generally no. Only where there is a real and substantial connection between the employment and the accident out of which the disability arises – s30(5).	No, some exceptions – s25(6).	Yes, some restrictions – s4.	Yes – s36.	No, some exceptions – s6(1C).	Yes – s9(e).	Yes - s.27; exceptions - s.35.	Yes, some restrictions - s28(1)(b).
Work-related travel	Yes, covered by s4 definition of 'personal injury arising out of or in the course of employment' - 1987 Act.	Yes, some restrictions – s83.	Yes – s34.	Yes – s19(1).	Yes – s30.	Yes –s25(6).	Yes – s4.	Yes – s36.	Yes – s6(1)(d).	Yes – s9(e).	Yes - s.27; exceptions - s.35.	Yes – s28(1)(a).
Breaks - onsite	Yes – 1987 Act, s11	Yes – s83.	Yes – s34(1)(c).	Yes	Yes, if the break is authorised – s30(3).	Yes – s25(6).	Yes – s4.	No reference.	Yes - s6(1)(b).	Yes – s9(b).	Yes - s.27.	Yes – s28(1)(b).
Breaks - offsite	Yes – 1987 Act, s11	Yes – s83.	Yes – s34(1)(c).	No reference in the Act. Coverage depends on factual circumstances or common law.	No.	No, some exceptions – s25(6).	Yes – s4.	No reference.	No	Yes – s9(b).	Yes - s.27.	Yes, some restrictions.

Table 3.8: Definition of injury and relationship to employment - detailed

	Definition of injury and relationship to employment	Contribution of employment
New South Wales	" . . . personal injury arising out of or in the course of employment . . ." – 1998 Act, s4.	No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury – 1987 Act, s9A(1).
Victoria	" . . . an injury arising out of, or in the course of, any employment . . ." – s82(1).	Compensation is not payable in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury: a) a heart attack or stroke injury; b) a disease contracted by a worker in the course of employment (whether at, or away from, the place of employment); c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease – s82(2B) & s82(2C).
Queensland	" . . . a personal injury arising out of, or in the course of, employment . . ." – s32(1).	A significant contributing factor – s32(1).
Western Australia	" . . . a personal injury by accident arising out of or in the course of the employment . . ." – s5.	Injury includes: a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree – s5.
South Australia	" . . . disability arises out of, or in the course of employment . . ." – s30.	A substantial cause (for psychiatric disabilities only) – s30A(a).
Tasmania	"Injury includes- 1. a disease; and 2. the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration." (section 3(1) "An injury, not being a disease, arising out of, or in the course of employment" – s25(1)(a). "an injury, which is a disease, to which his employment contributed to a substantial degree"- s25(1)(b).	To a substantial degree, that is, employment is the 'major or most significant factor ' (for diseases only) – s3(2A). Employment being the major or most significant contributing factor is also a requirement in relation to injuries that are a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease (section 3(1) – in definition of "injury").
Northern Territory	" . . . a physical or mental injury . . . out of or in the course of employment . . ." – s3 & s4.	To a material degree, (for diseases – s4(6) and gradual process – (s4(5)) that is employment was the real, proximate or effective cause (S4(8)).
Australian Capital Territory	"a physical or mental injury (including stress) . . . includes aggravation, acceleration or recurrence of a pre-existing injury . . . arising out of, or in the course of, the worker's employment . . ." – s4 & s31.	A substantial contributing factor – s31(2).
C'wealth Comcare	" . . . a physical or mental injury arising out of, or in the course of, the employee's employment . . .', or '... an aggravation of a physical or mental injury (other than a disease) ...'" - s5A.	Comcare: To a significant degree (for diseases) – s5B, with matter to be taken into account being set out in a non-exclusive list and with 'significant' being defined as "substantially more than material".
C'wealth Seacare	" . . . a physical or mental injury arising out of, or in the course of, the employee's employment . . .', or '... an aggravation of a physical or mental injury (other than a disease) ...'" - s3.	To a material degree (for diseases) – s10(1).
C'wealth DVA		

	Definition of injury and relationship to employment	Contribution of employment
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.	Not required, except for work-related gradual process, disease, or infection suffered by the person – s20(2)(e).

Permanent Impairment

Definition of Permanent Impairment

Pre-requisite to determining the level of permanent impairment is the understanding that impairment should not be determined until the claimant has reached a point of maximum medical improvement. This is the point at which the impairment has become static, or is not likely to remit despite medical treatment.

In addition to the principles of assessment contained in the AMA Guides, scheme legislation also provides substantive guidance on how to determine whether an impairment is permanent. Table 3.9 lists the legislative definitions of permanent impairment and also the criteria by which an injury is judged to be permanent.

Permanent Impairment Guidelines

Each of the schemes substitute or remove sections of their respective editions of the AMA Guide. The necessity for these modifications is primarily due to differences in Australian and US clinical practice, but they are sometimes also the result of differences in legislative processes.

Table.3.10 illustrates the particular approach taken by the various schemes to substitute or remove assessment criteria from the Guide.

Discounting of prior conditions

Most schemes require that where a pre-existing non-compensable condition exists, the assessing doctor must discount this pre-existing condition before making a final assessment of impairment. However, if the deductible portion is difficult or costly to determine, schemes may designate a nominal amount for this purpose or in some instances, accept complete liabillity for the injury. Table 3.11 lists the discounting provisions under each scheme.

Table 3.9: Statutory definitions of permanent and impairment and criteria for determining whether impairment is permanent

	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
New South Wales	Assessments are only to be conducted when the medical assessor considers that the degree of permanent impairment of the injured worker is fully ascertainable. The permanent impairment will be fully ascertainable where the medical assessor considers that the person has attained maximum medical improvement. This is considered to occur when the worker's condition has been medically stable for the previous three months and is unlikely to change by more than 3%WPI in the ensuing 12 months with or without further medical treatment (i.e. further recovery or deterioration is not anticipated).	Sections 65 and 65A of the Workers Compensation Act 1987.
Victoria	Section 91(1A) Accident Compensation Act 1985: Despite anything to the contrary in the AMA Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made- (a) after the injury has stabilised; and (b) subject to subsection (7) based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury. Section 91(1B) Accident Compensation Act 1985: The AMA Guides apply in respect of an assessment under 3.3d of Chapter 3 of the AMA Guides as if the following were omitted- "with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment".	
Queensland	Workers' Compensation and Rehabilitation Act 2003: s38 Meaning of permanent impairment A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment. s37 Meaning of impairment - An impairment from injury is a loss of, or loss of efficient use of, any part of a worker's body.	Workers' Compensation and Rehabilitation Act 2003: s179 Assessment of permanent impairment • An insurer may decide, or a worker may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment. • The insurer must have the degree of permanent impairment assessed— (a) for industrial deafness—by an audiologist; or (b) or a psychiatric or psychological injury—by a medical assessment tribunal; or (c) or another injury—by a doctor. • The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to the insurer stating— (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and (b) any other information prescribed under a regulation. Workers' Compensation and Rehabilitation Regulation 2003: - Division 3, Entitlement to compensation for permanent impairment. - Schedule 2, Table of injuries.
Western Australia	No statutory definition. S146A (1) notes that a worker's degree of impairment is to be evaluated, as a percentage in accordance with the WorkCover Guides for the Evaluation of Permanent Impairment.	No statutory criteria for determining whether impairment is permanent – this is based on medical opinion in accordance with WorkCover Guides for the Evaluation of Permanent Impairment. The Guides are based on the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA 5) and the New South Wales Guides for the Evaluation of Permanent Impairment.

	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
South Australia	The WorkCover Guidelines state: "The meaning given to the word 'permanent' in various decisions of the courts includes: a) for a long and indeterminate time but not necessarily forever b)more likely than not to persist in the foreseeable future." "The permanent impairment will be fully ascertainable where the assessor considers the worker has attained maximum medical improvement. This is generally considered to occur when the worker's condition has been medically stable for the previous three months and is likely to be stable for the foreseeable future, with or without further medical treatment (i.e., further recovery or deterioration is not anticipated, but can include temporary fluctuations)."	Workers Rehabilitation and Compensation Act 1986 (SA). 43A(2) An assessment— (a) must be made in accordance with the WorkCover Guidelines; and (b) must be made by a legally qualified medical practitioner who holds a current accreditation issued by the Corporation for the purposes of this section.
Tasmania	The WorkCover Tasmania Guidelines state: " it must be shown that the problem has been present for a period of time, is static, well stabilised, and is unlikely to change substantially regardless of treatment." Guidelines for the Assessment of Permanent Impairment_Version_3.pdf However where impairment assessment is a prerequisite for access to common law, and where strict time limits apply, a medical assessor may undertake an assessment where the impairment does not meet the definition of 'permanent' to verify that the level of impairment will not be less than the statutory threshold. (Under amendments which commenced on 1 July 2010, the threshold for access to common law is 20% WPI).	No statutory criteria.
Northern Territory	Section 70 of the Workers Rehabilitation and Compensation Act defines permanent impairment as: "permanent impairment means an impairment or impairments assessed in accordance with the prescribed guides, as being an impairment or combination of impairments of not less than 5% of the whole person". Permanent Impairment	Workers Rehabilitation and Compensation Act Regulations, regulation 9 prescribes the AMA 4th edition. Other than as provided by AMA 4 there is no legislative guidance as to when an impairment becomes permanent.
Australian Capital Territory	Section 51 Workers Compensation Act 1951 is based on the concept of loss arising from a compensable injury. "Loss" is defined to mean loss of a thing or permanent loss of use or efficient use of the thing. The definition also includes permanent musculoskeletal impairment and loss, damage, impairment, disfigurement or disease lists in Schedule 1 of the Workers Compensation Act 1951.	Part 4.4 Workers Compensation Act 1951.
C'wealth Comcare	Safety, Rehabilitation and Compensation Act (1988) s4 permanent means likely to continue indefinitely. impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.	Safety, Rehabilitation and Compensation Act (1988)- s24(2) For the purpose of determining whether an impairment is permanent, Comcare shall have regard to: a) the duration of the impairment; b) the likelihood of improvement in the employee's condition; c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; and d) any other relevant matters.
C'wealth Seacare	Seafarers Rehabilitation and Compensation Act 1992 s3 impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of the whole or part of any bodily system or function. permanent means likely to continue indefinitely.	Seafarers Rehabilitation and Compensation Act 1992 s39(2) For the purpose of determining whether an impairment is permanent, the employer must have regard to the following matters: a)the duration of the impairment; b) the likelihood of improvement in the employee's condition; c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; d) any other relevant matters.

	Definition of 'permanent' and 'impairment'	Statutory criteria for determining whether an impairment is permanent
C'wealth DVA	permanent means likely to continue indefinitely. - s68(1)(b)(ii) impairment, in relation to a person, means the loss, the loss of the use, or the damage or malfunction, of any part of the person's body, of any bodily system or function, or of any part of such a system or function - s5	Deciding whether an impairment is likely to continue indefinitely - s73 For the purposes of subparagraph 68(1)(b)(ii) and subparagraphs 71(1)(b)(ii) and (2)(a)(ii), in deciding whether an impairment suffered by a person is likely to continue indefinitely, the Commission must have regard to: a) the duration of the impairment; and b) the likelihood of improvement in the one or more service injuries or diseases concerned; and c) whether the person has undertaken all reasonable rehabilitative treatment for the impairment; and d) any other relevant matters.
New Zealand	AC Act 2001 defines 'impairment as "a loss, a loss of use, or derangement of any body part, organ system or organ function."	Requires permanence and stability of condition being assessed by a medical practitioner; or after two years since the date of injury, a medical practitioner certifying that the claimant's condition has not stabilised, but it is likely that there is permanent impairment resulting from the injury.

Table 3.10: Permanent impairment guides

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
New South Wales	5th Ed.	Modifier.[1]	WorkCover Guides for the Evaluation of Permanent Impairment modify several Chapters in AMA5 Removed: Ch18 Pain. Substituted: • AMA 4 – Vision. • Ch 11 WorkCover Guides for the Evaluation of PI 3rd Edition Psychiatric and Psychological Disorders. • Evaluation of Permanent Impairment due to Hearing Loss adopts the methodology indicated in the WorkCover guides (Chapter 9) with some reference to AMA5 (Chapter11, pp 245-251), but uses National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.	Section 376 of the Workplace Injury Management And Workers Compensation Act 1998.
Victoria	4th Ed.	Designator .[2]	Statutory removal: Chapter 15 Pain. Statutory Guideline Substitutions: Chapter 9 section 9.1a Hearing replaced with the Improved Procedures for Determination of Percentage Loss of Hearing (1988 Edition or later prescribed edition). Chapter 14 Mental and Behavioural Disorders replaced with The Guide to the Evaluation of Psychiatric Impairment for Clinicians. Omit from section 3.3d of Chapter 3: "with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment". Replaced with: the degree of impairment resulting from an injury must be made after the injury has stabilised and based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury. Specified assessments of spinal impairment are to specify the whole person values derived in accordance with section 3.3 of Chapter 3 of the AMA Guides. Statutory Guideline Extensions : Impairment Assessment in Workers with Occupational Asthma. Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases.	Sections 91(6), (6A), (6B) and (7AA) Accident Compensation Act 1985.
Quensland	4th Ed.	Modifier.[1]	For visual injuries use the Royal Australian and New Zealand College of Opthalmologists (RANCO) Eye Guide together with the Table of injuries part 3. For hearing loss, use National Acoustics Laboratories (NAL) Report No. 118 together with part 3 of the Table of Injuries. For all other injuries use the methodology of the AMA Guides, 4th Edition, and then determine the interaction between the Table of injuries and the appropriate assessment methodology (eg. RANCO Eye Guide, NAL Report 118 or AMA Guides.)	Workers' Compensation and Rehabilitation Regulation 2003.

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
Western Australia	5th Ed.	Modifier.[1]	Removed: Chapter 18 AMA5 regarding assessment of pain is excluded. Substituted: Chapter 14 AMA5 – Mental and behavioural disorder replaced with chapter in WorkCover WA Guides on Psychiatric Impairment Rating Scale (PIRS). Chapter 18 AMA5 regarding assessment of pain is excluded. Vision – based on AMA 4th Ed. Hearing loss – continues to be assessed based on sections 24A & 31E and Schedule 7 of the Workers' Compensation and Injury Management Act 1981.	Workers' Compensation and Injury Management Act 1981 Section 146R WorkCover Guides WorkCover WA may issue directions with respect to the evaluation of degree of impairment: 1. The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under section 100A for the purposes of this section. 2. The directions may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time. 3.Sections 41, 42, 43 and 44 of the Interpretation Act 1984 apply to the directions as if they were regulations.
South Australia	5th Ed.	Modifier.[1]	Vision assessments based on AMA4 with some reference to AMA5, but uses National Acoustic Laboratory (NAL) tables from the NAL report No 118, Improved procedure for determining percentage loss of hearing, January 1988. Pain (chapter 18, AMA 5) and Mental and Behavioural Disorders (chapter 14, AMA5) are omitted as the Act excludes entitlement for psychiatric impairment.	The WorkCover Guidelines are published in the South Australian Government Gazette under section 43A(3) of the Workers Rehabilitation and Compensation Act 1986.
Tasmania	4th Ed.	Modifier.[1]	WorkCover Tasmania Guidelines modify several chapters in AMA4 Removed: Ch 15 Pain. Substituted Ch 7 of WorkCover Tasmania Guides (Mental and Behavioural Disorders) incorporating the Psychiatric Impairment Rating Scale (PIRS) is substituted for chapter 14 AMA 4. Evaluation of hearing impairment adopts the methodology indicated in chapter 6 of WorkCover Tasmania Guides including the use of the National Acoustic Laboratory (NAL) Tables, Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988. Guidelines (and legislation) require the level of binaural hearing impairment to be converted to WPI.	
Northern Territory	4th Ed.	Designator.[2]	N/A.	Workers Rehabilitation and Compensation Act 2008 (S.70 and regulation 9).
Australian Capital Territory	4th & 5th Ed.	Standalone (authorised by the Regs).	WorkCover Guides for the Evaluation of Permanent Impairment (1st Ed) modify several Chapters in AMA5 Removed: Ch18 Pain. Vision. Ch 14 Mental and Behavioural Disorders. Substituted: • AMA 4 – Vision. • Ch 11 - Psychiatric and Psychological Disorders. Evaluation of Permanent Impairment due to Hearing Loss adopts the methodology indicated in the WorkCover guides (Chapter 9) with some reference to AMA5 (Chapter11, pp 245-251), but uses National Acoustic Laboratory (NAL) Tables from the NAL Report No 118, Improved Procedure for Determining Percentage Loss of Hearing, January 1988.	Reg 5(1)(b) of the Workers Compensation Regulation 2002 allows the Minister to approve medical guidelines.

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
C'wealth Comcare	5th Ed.	Stand-alone[3]	Removed: Ch.18 (Pain). Substituted in whole: Ch.12 (The Visual System), and Ch.14 (Mental and Behavioural Disorders). Substituted in part: Ch. 11 (Ear, Nose, Throat, and related Structures). Comcare's Guide to the Assessment of the Degree of Permanent Impairment (2nd Ed), lists substitutions made to AMA 5 in Principles of Assessment (full text of the relevant section contained below). Part 1, Principles of Assessment 12. Exceptions to the use of Part 1 of this Guide An assessment is not to be made using the American Medical Association's Guides to the Evaluation of Permanent Impairment for: - mental and behavioural impairments; - impairments of the visual system; - hearing impairment; or - chronic pain conditions except in the case of migraine or tension headaches.	Safety, Rehabilitation and Compensation Act (1988) s24(5) Comcare shall determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide. s28(1) Comcare may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out: (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined; (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
C'wealth Seacare	5th ed	Stand-alone	Removed: Ch.18 (Pain). Substituted in whole: Ch.12 (The Visual System), and Ch.14 (Mental and Behavioural Disorders). Substituted in part: Ch. 11 (Ear, Nose, Throat, and related Structures). Seacare's Guide to the Assessment of the Degree of Permanent Impairment (2nd Ed), lists substitutions made to AMA 5 in Principles of Assessment (full text of the relevant section contained below). Principles of Assessment 12. Exceptions to the use of of this Guide An assessment is not to be made using the American Medical Association's Guides to the Evaluation of Permanent Impairment for: - mental and behavioural impairments; - impairments of the visual system; - hearing impairment; or - chronic pain conditions except in the case of migraine or tension	Seafarers Rehabilitation and Compensation Act (1992) s39(5) The employer under this section must determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide. s42(1) The Authority may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out: (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury must be determined; and (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment must be determined; and (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, must be expressed as a percentage.
C'wealth DVA	4th Ed.	Stand alone[4]	Impairment points of a person means the points worked out for the person using the guide determined under section 67 - s5 The Commission may determine, in writing, a guide setting out: (a) criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease; and (b) methods by which the degree of that impairment can be expressed in impairment points on a scale from 0 to 100; and (c) criteria to be used in assessing the effect of a service injury or disease on a person's lifestyle; and (d) methods by which the effect of a service injury or disease on a person's lifestyle can be expressed as a numerical rating; and (e) methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease can be used to determine the compensation payable to the person under this Part by reference to the maximum compensation that can be payable to a person under this Part. - s67(1)	

	Edition of AMA	Format	Substituted/removed	Authorisation of the guide
New Zealand	4th Ed.	Designator.[2] Modifier.[1]	AMA 4th Edition. ACC User Handbook. This takes precedence over the AMA 4th Edition.	Injury Prevention, Rehabilitation, and Compensation (Lump Sum and Independence Allowance) Regulations 2002 Assessment tool for assessing eligibility for lump sum payments and independence allowance Assessment of a person's whole-person impairment, for the purposes of determining the person's eligibility to receive lump sum compensation or an independence allowance, must be carried out by an assessor using the assessment tool prescribed by subclause (2). (2) The assessment tool comprises— (a) the American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition); and (b) the ACC User Handbook to AMA4. (3) The ACC User Handbook to AMA4 prevails if there is a conflict between it and the American Medical Association Guides to the Evaluation of Permanent Impairment (Fourth Edition).

1 - Modifier refers to an edition of the AMA Guide that is attached with additional instructions for assessors and which acts to modify the AMA Guides or chapters. Schemes applying this modified approach publish separate guidelines to clarify the key points of divergence for doctors. The authority for these documents is contained in the legislation or its associated regulations.
2 - Designator refers to an edition of the AMA Guide which is designated by legislation as the Guide to be followed. Depending on the particular scheme, the designated Guide may also be a modifier (see above).
3 - Unlike other schemes, Comcare amalgamates modifications to AMA 5 (as noted in this table) in a stand-alone document known as the Guide to the Assessment of the Degree of Permanent Impairment. Section 28 of the Safety, Rehabilitation and Compensation Act (1988) is also unique in that it does not designate the use of AMA produced guidelines for assessment purposes.
4. GARP V (M)) does not allow recourse to the AMA Guides in the event that an impairment cannot be measured under GARP V (M).

Table 3.11: Discounting of prior conditions

	Threshold test	Waiting period	Permits discounting?
New South Wales	>0% WPI, except for: 15% WPI for psychiatric and psychological impairment. 6% binaural hearing loss for hearing loss claims.Entitlement to pain and suffering payment: 10%WPI for physical injuries, 15% WPI for psychiatric and psychological injuries. Entitlement to claim under Common Law: 15% WPI.	No waiting period.	Yes
Victoria	10% WPI (5% for Chapter 3 musculoskeletal impairments with a date of injury on or after 2 December 2003). 10% WPI other than for psychiatric impairment (and additional 10% WPI for further hearing loss). 30% WPI for psychiatric impairment – not arising secondary to physical injury.	12 months (except gradual process hearing loss injury).	Apportionment
Queensland	>0% WRI, generally. 5% WRI for hearing loss (s125). 15% WRI + demonstrated eligibility to qualify for gratuitous care entitlement (s193). 30% WRI to qualify for additional lump sum entitlement (s192).	No waiting period.	Yes.
Western Australia	>0% WPI, except for: 10% WPI for initial noise induced hearing loss (NIHL) & 5% for subsequent NIHL.	No waiting period.	-
South Australia	5% WPI.	Can't be assessed until the worker has attained maximum medical improvement. This is generally considered to occur when the worker's condition has been medically stable for the previous three months and is likely to be stable for the foreseeable future, with or without further medical treatment (i.e., further recovery or deterioration is not anticipated, but can include temporary fluctuations).	Yes.
Tasmania	"5% WPI for physical injuries with the exception of loss of part or all of a finger or toe >0%WPI for loss of all or part of a finger or toe 10%WPI for psychiatric impairment 5% for binaural hearing impairment caused by industrial deafness"	-	-
Northern Territory	5% WPI. If the impairment is 5%-14% WPI, the compensation payable is calculated on a sliding scale. Impairments of 15%- 84% WPI attract a benefit equal to the actual percentage given. >85% WPI receives maximum entitlement	No waiting period.	Apportionment.
Australian Capital Territory	0% (no threshold). 6% threshold for hearing loss (boilermaker's deafness).	Two years from DOI or earlier if worker has leave from the Magistrates Court or the Injury has stabilised. Injury is taken to have stabilised if the worker has returned to pre-injury weekly hours for a period of at least three months.	Yes
C'wealth Comcare	10% Whole Person Impairment (WPI). 5% binaural hearing. >0% Finger/toe, taste/smell. Must qualify for PI to qualify for Non-economic loss payment.	No waiting period	Yes.
C'wealth Seacare	10% Whole Person Impairment (WPI).	No waiting period.	Yes.

	Threshold test	Waiting period	Permits discounting?
	10% hearing. >0% Finger/toe, taste/smell. Must qualify for PI to qualify for Non-economic loss payment.		
C'wealth DVA	Initial compensation - 10 impairment points (IP). 5 IPs hearing, fingers, toes, taste, and smell. Additional compensation - 5 IPs..	No waiting period.	Yes - apportionment.
New Zealand	10%.	Independence allowance: Claimant suffered personal injury on or after 1 April 1974. At least one year after the date of the injury or condition has stabilised. Lump sums: Claimant suffered personal injury on or after 1 April 2002. At least 2 years after day of the injury or condition stabilised.	Yes – Apportionment.

Exclusionary Provisions

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 3.12 shows the general exclusionary provisions in each jurisdiction.

Exclusionary provisions for psychological injuries

Statutory threshold requirements for psychological injuries vary significantly from physical injuries. To be eligible for compensation, the claimant of a psychological injury must be able to demonstrate that the injury was not related to any reasonable action taken by their employer in relation to a dismissal, retrenchment, transfer, performance appraisal, demotion, disciplinary action or deployment. In addition to these criteria, the claimant must also meet the designated impairment threhold for psychological injury. There are also significant differences in the way in which each jurisdiction assesses psychological impairment. Table 3.13 lists the exclusionary provisions for psychological injuries.

Table 3.12: Exclusionary provisions (general)

	Exclusionary provisions
New South Wales	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 – 1987 Act, s14. Compensation is not payable: • If the employment concerned was not a substantial contributing factor to the injury – 1987 Act, s9A(1). • In respect of any injury to or death of a worker caused by an intentional self-inflicted injury – 1987 Act, s14(3). • To a member of the Police Service who is a contributor to the Police Superannuation Fund under the Police Regulation (Superannuation) Act 1906 – 1998 Act, s4. • 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 – 1998 Act, s4. • To an officer of a religious or other voluntary association, who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed $700 per year – 1998 Act, s4. • Except as provided by Schedule 1 (1998 Act), to a registered participant of a sporting organisation (within the meaning of the Sporting Injuries Insurance Act 1978) (see Table 3.3).
Victoria	If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted there is no entitlement to compensation in respect of that injury – s82(3). Subject to ss82A to 82C, if it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including, but not limited to, being under the influence of intoxicating liquor, or a drug) there is no entitlement to compensation in respect of that injury, unless the injury results in death or severe injury (as defined) – ss82(4), (5) & (10). Sections 82A to 82C apply where a worker's incapacity for work results from or is materially contributed to by an injury caused by a transport accident involving a motor vehicle driven by the worker if the worker is convicted of drink or drug driving offences to reduce a worker's weekly payments for 130 weeks or to disentitle the worker to compensation under the Act if the offence is also a serious offence except where the injury results in death or severe injury. If it is proved that before commencing employment an employer in writing requested that the worker disclose all pre-existing injuries and diseases, and the worker did not disclose the information, compensation is not payable for any recurrence, aggravation, acceleration, exacerbation or deterioration – s82(7).
Queensland	Compensation is not payable: • 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). * WRI: – Work related impairment .
Western Australia	If it is proved that the injury of a worker is attributable to their– 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. Compensation is not payable: • To a person while participating as a contestant, engaged in training or preparation for participating, or engaged in promotional activities or engaged in regular journeys in any sporting activity – s11.
South Australia	Effect of misconduct etc – s30B. 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: 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: 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: 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.

	Exclusionary provisions
Tasmania	Compensation is not payable: • 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 • for any disease where the worker has wilfully and falsely represented themselves in writing as not having suffered from the disease – s25(2). The Act does not apply to any person: 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 Social Security Act 1991 of the Commonwealth – s4(5).
Northern Territory	Compensation not payable in respect of an injury to a worker that was deliberately self-inflicted; or (not being an injury resulting in the worker's death or permanent or long term capacity)attributable to the worker's serious or wilful misconduct – s57(1). 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.
Australian Capital Territory	Compensation is not payable if the injury to, or death of, the worker is caused by: • 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). (a) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if at the time of the injury the worker was under the influence of alcohol or prescription drugs, unless the alcohol or drug did not contribute to the injury or was not consumed or taken voluntarily – s 82(4)(a); (b) A personal injury received by a worker is attributable to the serious and wilful misconduct of the worker if the injury was otherwise attributable to the serious and wilful misconduct of the worker – s 82(4)(b). • The worker being imprisoned – s83. • His or her engagement in professional sporting activity – s84
C'wealth Comcare	Compensation is not payable in respect of: • 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 including under the influence of alcohol or a non-prescribed drug, but is not intentionally self inflicted, unless the injury results in death, or serious and permanent impairment: – s14(2) & s14(3). • If the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury – s6(3).
C'wealth Seacare	Compensation is not payable in respect of: • Any period during which the employee is imprisoned – s38(3). • An injury that is intentionally self-inflicted – s26(2). • Any injury, disease or aggravation suffered as a result of reasonable disciplinary action taken against the employee, or failure to by the employee to obtain a promotion, transferor benefit in connection with his or her employment – s3 definition of Injury. • An injury caused by the serious and wilful misconduct of the worker including under the influence of alcohol or a non-prescribed drug, unless the injury results in death, or serious and permanent impairment - s12 & s26(3). • Where an employee made a wilful and false representation that he/she suffered from a disease or an aggravation of a disease – s10(7). • If the employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury – s9(4).

Exclusionary provisions	
C'wealth DVA	Compensation is not payable in respect of: * An injury or disease that results from the person's serious default or wilful act except if the injury or disease results in a serious and permanent impairment - MRCA s32. * An injury or disease that results from reasonable and appropriate counselling or failure to obtain a promotion, transfer or benefit in relation to a person's service as a member - MRCA s33. * A wilful and false representations in connection with service or proposed service that not suffering the injury or disease - MRCA s34. * An injury, disease, or death that results from a substantial delay commencing journey, routes that are not reasonably direct, and substantial interruptions to journeys - MRCA s35. * Injury, disease, or death that results from the use of tobacco products - MRCA s36.
New Zealand	Compensation is not payable: • Where the injury or death is due to suicide or wilfully self-inflicted injury – s119. • Where the claimant 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 – s120. • Where the claimant is in prison – s121. • Where the claimant was injured committing an offence for which they are imprisoned and that offence is punishable by a maximum term of imprisonment of 2 years or more – s122.

Table 3.13: Exclusionary provisions for psychological injuries

	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
New South Wales	1987 Act, s11A(1) "No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers." – s65A "(1) No compensation is payable … (either as permanent impairment compensation or pain and suffering compensation) in respect of permanent impairment that results from a secondary psychological injury. Note: This does not prevent a secondary psychological injury from being compensated under section 67 as pain and suffering resulting from permanent impairment (but only if that permanent impairment results from a physical injury or a primary psychological injury). (2) In assessing the degree of permanent impairment that results from a physical injury or primary psychological injury, no regard is to be had to any impairment or symptoms resulting from a secondary psychological injury. (3) No compensation is payable … (either as permanent impairment compensation or pain and suffering compensation) in respect of permanent impairment that results from a primary psychological injury unless the degree of permanent impairment resulting from the primary psychological injury is at least 15%. Note: If more than one psychological injury arises out of the same incident, section 322 of the 1998 Act requires the injuries to be assessed together as one injury to determine the degree of permanent impairment. (4) If a worker receives a primary psychological injury and a physical injury, arising out of the same incident, the worker is only entitled to receive compensation … in respect of impairment resulting from one of those injuries, and for that purpose the following provisions apply: i. the degree of permanent impairment that results from the primary psychological injury is to be assessed separately from the degree of permanent impairment that results from the physical injury ii. the worker is entitled to receive compensation … for impairment resulting from whichever injury results in the greater amount of compensation being payable to the worker … (and is not entitled to receive compensation … for impairment resulting from the other injury), iii. the question of which injury results in the greater amount of compensation is, in default of agreement, to be determined by the Commission. Note: If there is more than one physical injury those injuries will still be assessed together as one injury under section 322 of the 1998 Act, but separately from any psychological injury. Similarly, if there is more than one psychological injury those psychological injuries will be assessed together as one injury, but separately from any physical injury."	15% WPI for a primary psychological injury.	Ch 11 WorkCover Guides for the Evaluation of Permanent Impairment, using the Psychiatric Impairment Rating Scale (PIRS).
Victoria	There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominately by any one or more of the following: (a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer; or (b) a decision of the worker's employer, on reasonable grounds, to take, or not to take any management action; or (c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action; or (d) an application under section 81B of the Local Government Act 1989, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of section 14AA – s82(2A). In s82, management action, in relation to a worker, includes, but is not limited to, any one or more of the following- (a) appraisal of the worker's performance; (b) counselling of the worker; (c) suspension or stand-down of the worker's employment; (d) disciplinary action taken in respect of the worker's employment; (e) transfer of the worker's employment; (f) demotion, redeployment or retrenchment of the worker; (g) dismissal of the worker; (h) promotion of the worker; (i) reclassification of the worker's employment position; (j) provision of leave of absence to the worker; (k) provision to the worker of a benefit connected with the worker's employment; (l) training a worker in respect of the worker's employment; (m) investigation by the worker's employer of any	30% WPI – not arising secondary to physical injury.	The Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC).

	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
	alleged misconduct- (i) of the worker; or (ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness; (n) communication in connection with an action mentioned in any of the above paragraphs - s82(10).		
Queensland	An injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances: (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment (b) the worker's expectation or perception of reasonable management action being taken against the worker (c) action by the Authority or an insurer in connection with the worker's application for compensation. Reasonable management actions include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker, a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment – s32(5).	None.	AMA Guide (4th Edition).
Western Australia	Treatment of stress for compensation purposes Compensation is not payable for diseases caused by stress if the stress wholly or predominately arises from the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment, or the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to employment or a worker's expectation of a matter or decision unless it is considered to be unreasonable or harsh on the part of the employer – s5(4). Treatment of secondary conditions in assessment of impairment Secondary conditions are not included for the purposes of assessing impairment for common law, specialised retraining programs of payments of additional medical expenses. "Secondary condition" means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.		WorkCover WA Guides 3nd Ed. Psychiatric Impairment Rating Scale (PIRS).
South Australia	s30A—Psychiatric disabilities A disability consisting of an illness or disorder of the mind is compensable if and only if— (a) the employment was a substantial cause of the disability; and (b) the disability did not arise wholly or predominantly from— (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or (iv) reasonable action taken in a reasonable manner under this Act affecting the worker. In addition, a permanent impairment benefit does not arise under s43 in relation to a psychiatric impairment.	N/A.	N/A.
Tasmania	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: (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).		

	Exclusionary provisions for psychological injuries	Impairment threshold	Diagnostic methodology of assessment
Northern Territory	Compensation is not payable if the injury is: (a) Due to reasonable disciplinary action (b) 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).	None	N/A
Australian Capital Territory	A Mental Injury (including stress) does not include a mental injury (including stress) that is completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker – s4(2).	0% WPI.	-
C'wealth Comcare	Compensation is not payable in respect of an injury (being a disease) if the injury is: (a) Due to reasonable administrative action taken in a reasonable manner in respect of the employee's employment s5A(1) – a non-exclusive list of what might be taken to be 'reasonable administrative action' is included at s5A(2). (b) Intentionally self-inflicted – s14(2). (c) A disease, if the employee, for the purposes connected with his/her employment has made a wilful and false representation that he/she did not suffer, or had not previously suffered, from that disease – s7(7).	10% WPI.	American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition), Ch. Mental Conditions.
C'wealth Seacare	Compensation is not payable in respect of an injury (being a disease), if the injury is a result of reasonable disciplinary action taken against the employee, or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment – s3.	10% WPI.	American Medical Association Guidelines to the Evaluation of Permanent Impairment (2nd Edition), Ch. Mental Conditions.
C'wealth DVA	Psychological injuries are not treated any differently than other injuries or diseases.	Initial compensation - 10 impairment points (IP).	Additional compensation - 5 IPs. As per Chapter 4 "Emotional and Behavioural", GARP V (M)
New Zealand	Cover does not exist for mental injuries if the mental injury is not caused by physical injuries – s26(1)(c), the result of a sudden traumatic event – s 21B, or as a consequence of certain criminal acts – s21.		

Cross-border Provisions

Workers' compensation schemes vary significantly between jurisdictions, which can lead to confusion for employers and workers. All jurisdictions have acknowledged this and have implemented, or will implement, cross-border provisions 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 3.14 shows the status of implementation of the national cross-border model in each jurisdiction.

Table 3.14: Cross border provisions

	Cross border provisions
New South Wales	National cross-border model implemented on 1 January 2006.
Victoria	National cross-border model implemented from 1 September 2004. Effective from 1 July 2005, Victorian legislation imposed a Victorian premium liability on employers only in respect of workers who are connected with Victoria as defined.
Queensland	National cross-border model implemented as at 1 July 2003.
Western Australia	National cross-border model implemented 22 December 2004.
South Australia	National cross-border model commenced in South Australia on 1 January 2007. See the WorkCoverSA Guide to cross border provisions
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.
C'wealth Comcare	There are no formal cooperative arrangements with other jurisdictional compensation authorities as the Commonwealth scheme does not operate on a geographical basis.
C'wealth Seacare	State/Territory compensation schemes have no application if Seafarers Act applies.
C'wealth DVA	N/A.
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.

Chapter 4 - Benefits

Once it is established that an injured worker is entitled to workers' compensation, the next step is to determine the type and amount of *benefits* the worker is entitled to receive. The benefits an injured worker receives should assist them financially 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 and other necessary support. The types of benefits that an injured worker may receive include:

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

Income replacement

Income replacement payments (generally known as weekly payments) are periodic payments that are usually calculated on the basis of the worker's pre-injury earnings.

While income replacement payments aim to substitute fairly the lost earnings of an injured worker, there are limits to entitlements depending on the degree of incapacity. Income replacement payments are 'stepped down' by a percentage or to a set amount for workers who cannot earn an income because of a work related injury.

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

An injured worker may elect to receive a one off lump sum payment, which replaces the 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. There may be criteria that need to be met in order for an injured worker to receive a lump sum settlement payout. If an injured worker elects to receive a lump sum payment, the insurer's liability and weekly income replacement benefits cease, but in some jurisdictions this payment does not affect medical and like expenses.

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

Medical, hospital and other costs

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

Permanent impairment payments

In most cases injured workers make a full recovery from their injury, but there are instances where an injury sustained 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 are a lump sum payment for each impairment sustained to cover non-economic loss. Table 4.3 shows permanent impairment payments in each jurisdiction.

Death entitlements

In the event that a workplace injury results in death, all jurisdictions provide access to death entitlements. A spouse or dependent of a worker who died in a work related incident may be entitled to certain payments, which can assist the family with funeral costs and ongoing living expenses. The amount and type of damages accessible vary between jurisdictions. Table 4.4 outlines death entitlements in each jurisdiction. Table 4.5 outlines the treatment of spouse and dependants for death entitlements.

Common Law Access

Before the introduction of statutory workers' compensation schemes, injured workers had to sue their employers under common law to receive any benefits. 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.

Some jurisdictions have:

- abolished the right to access common law, or
- introduced threshold tests, and/or
- placed restrictions on types of damages that an injured worker can receive, and/or
- placed caps on the amount of damages that can be awarded.

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

Suspension and Cessation of benefits

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

Settlement of future incapacity benefits

Some jurisdictions provide for settlement of future incapacity 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 4.8 provides information on the settlement provisions in each jurisdiction.

Table 4.1: Income replacement

	Calculation	Settlement, redemption, commutation
New South Wales	Part 3, Div 2 (1987 Act) Total Incapacity: < 26 weeks: Current Weekly Wage Rate: Under award/enterprise agreement 100%, or where no award/enterprise agreement, 80% of the average weekly earnings of the worker, excluding overtime and allowances (maximum weekly rate: $1774.50). > 26 weeks: the lesser of 90% of average weekly earnings or the statutory rate of $417.40, plus the following additional amount for spouse and/or dependent children: • spouse: $110.00 • 1 child: $78.60 • 2 children: $175.80 • 3 children: $291.30 • 4 children: $409.70 • For each additional dependent child in excess of 4: $118.20. Note: Calculation of current weekly earnings and computation of average weekly earnings are outlined in s42 and s43 of the Workers Compensation Act 1987 respectively. Partial Incapacity: < 26 weeks with worker not suitably employed (s38): payment as per the total incapacity rate. 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). > 52 weeks: The maximum period for which partially incapacitated workers whose employers cannot provide suitable duties can receive special benefits is 52 weeks. Partial incapacity (all other circumstances): difference between the amount worker would probably have been earning were it not for the injury and the amount currently earning (or able to earn). However, cannot exceed: < 26 weeks: maximum weekly benefit payment of $1774.50. > 26 weeks: the lesser of the statutory rate or 90% of average weekly earnings. > 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. Benefits are indexed on 1 April and 1 October each year. *Workers' Compensation (Dust Diseases) Act 1942*: As above with the exception of statutory payments which are as follows: • up to $417.40 (partially disabled workers are paid on a pro rata basis) • spouse: $110.00 • 1 child: $78.60 • 2 children: $175.80 • 3 children: $291.30 • 4 children: $409.70 Each additional child: $118.20.	Commutation is a single lump sum payment to the injured worker by the scheme agent or insurer on behalf of the employer, the receipt of which brings to an immediate end all future entitlements to weekly benefits, lump sum compensation for Whole Person Impairment, hospital, medical and related treatment and rehabilitation expenses. Commutation is only available if the following pre-conditions are met: • 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 six months • it is 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 as a result of the worker not seeking suitable employment. Prior to receiving a commutation: • the worker must receive independent legal and financial advice • the Scheme agent or insurer, employer and worker must agree with the commutation • WorkCover must agree with the commutation • all agreements must be registered with the Workers' Compensation Commission – Part 3, Div 9 (1987 Act) s87EA. There is no entitlement to commute weekly benefits for workers under the *Workers' Compensation (Dust Diseases) Act 1942* however dependant entitlements may be redeemed.

	Calculation	Settlement, redemption, commutation
Victoria	Due to statutory changes to scheme on 12/11/97, benefit rates depend on date of entitlement. Pre 12/11/97 claims: Workers entitled to receive weekly payments- old rates apply. Post 05/04/10 claims: First 13 weeks: If no current work capacity: 95% of pre-injury average weekly earnings (PIAWE)* less deductible amount** or maximum (twice State average weekly earnings- $1930), whichever is the lesser. If current work capacity: 95% PIAWE less deductible amount and the worker's current weekly earnings or maximum (twice State average weekly earnings- $1930) less the worker's current weekly earnings, whichever is the lesser – s93A. > 13 weeks: If no current work capacity: 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings- $1930), whichever is the lesser. If current work capacity: 80% of PIAWE less deductible amount and 80% of worker's current weekly earnings or maximum (twice State average weekly earnings- $1930) less 80% current weekly earnings, whichever is the lesser – s93B. > 52 weeks: Weekly payments continue as above except PIAWE is reduced as no further entitlement to shift allowance or overtime (earnings enhancements)– ss5A(1A) & (1B). > 130 weeks (Note for pre 1 Jan 2005 claim = > 104 weeks): Weekly payments can continue to be paid until retirement age (except where worker injured within or after 130 weeks' of retirement age where maximum of 130 weeks applies) as long as: (a) the worker is likely to have no current work capacity indefinitely at 80% of PIAWE less deductible amount or maximum (twice State average weekly earnings- $1930), whichever is the lesser – s93C, or (b) the worker has a current work capacity and has returned to work at his/her maximum capacity and is working at least 15 hours per week and earning at least $166 per week at 80% of PIAWE less deductible amount and 80% of the worker's current weekly earnings or maximum twice State average weekly earnings- $1930) less 80% current weekly earnings, whichever is the lesser – s93CD, or (c) worker is working 15 hours per week and earning at least $166 per week and requires surgery and is incapacitated for work – worker entitled to maximum of 13 weeks of weekly payments on same basis as s93B above if worker applies more than 13 weeks after weekly payment entitlement has ceased after 130 weeks - s93CA. *Pre-injury average weekly earnings is defined in ss5A-5E but generally means a worker's average ordinary earnings during the 12 months prior to injury excluding any week that the worker was not actually working and not on paid leave expressed as a lump sum and any earnings enhancements (shift allowance, overtime) in that 12 months. Earnings enhancements are included in PIAWE for the first 52 weeks of weekly payments only. **Deductible amount is defined in s91E but generally means the total value of any ongoing employment benefits including non-pecuniary benefits such as the value of residential accommodation, motor vehicle use, health insurance and education fees.	A settlement of weekly payments 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 is only for weekly payments and does not include reasonable medical and like expenses which continue to be paid.

	Calculation	Settlement, redemption, commutation
Queensland	For the first 26 weeks: Workers under an industrial instrument s150(1)(a) – the greater of: a) 85% of the worker's normal weekly earnings (NWE), or b) amount payable under the worker's industrial instrument. Workers not under an award or agreement s151(1)-(a): – the greater of: a) 85% of NWE b) 80% of QOTE. Queensland Ordinary Time Earnings (QOTE) is currently $1,263.20. Workers on contract (s152(1)(a):- the greater of a) 85% NWE b) the amount payable under the worker's contract of service. 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% - s150(1)(c)(i), s151(1)(c)(i) and s152(1)c)(i) - the greater of: a) 75% of the worker's NWE b) 70% of QOTE. Workers with WRI less than or equal to 15%, receive an amount equal to the single pension rate. Total amount payable for weekly benefits is. $ 273,055(from 1 July 2011). NWE (Normal Weekly Earnings) can include amounts paid to the worker regularly for overtime, higher duties, penalties and allowances. It cannot include some allowances (such as those paid for travelling, meals, education, living away from home), superannuation contributions or lump sum payments made on terminaton of a workers' employment for superannuation or accrued leave (s81 Workers' Compensation and Rehabilitation Regulation 2003). QOTE (Queensland Ordinary Time Earnings) is the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician's report about average weekly earnings published immediately before the start of the financial year (s107 Workers' Compensation and Rehabilitation Act 2003).	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 – Ch 3, Part 9, Div 7. 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.
Western Australia	A cap on weekly payments of $2156.60 applies for the duration of claims. This amount is indexed annually (every 1 July). Workers whose earnings are prescribed by an industrial award First 13 weeks of claim: Weekly payments will consist of the rate of the worker's average weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, including overtime, bonuses or allowances up to a maximum of $2156.60. Overtime, bonuses or allowances are averaged over the 13 weeks before the disability occurred – Schedule 1, clause 11(3)(a). 14th week onward: Weekly payments consist of the rate of weekly earnings payable under the relevant industrial award, plus any over award or service payment paid on a regular basis, any allowance paid on a regular basis as part of the worker's earnings and related to the number and pattern of hours worked but excluding overtime, bonuses or allowances. Maximum payment is $2156.60. Subject to the cap of $2156.60, 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). Workers whose earnings are not prescribed by an industrial award First 13 weeks of claim: Weekly payments will consist of the worker's average weekly earnings (including overtime, bonuses and allowances) averaged over the year before the disability occurred, up to a maximum of $2156.60 – Schedule 1, clause 11(4)(a). 14th week onward: Weekly payments 'step down' to 85% of the worker's average weekly earnings; maximum payment is $2156.60. Minimum rate: Subject to the cap of $2156.60, the minimum rate of weekly earnings payable under the Minimum Conditions of Employment Act 1993 – Schedule 1, clause 11(4)(b).	Lump sum redemption payment for loss of future wages, medical and like expenses, as a result of a permanent total or partial incapacity. Criteria: 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 Concilliation Services is satisfied the worker is aware of the consequences of redeeming their claim – s67. 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.
South Australia	Cap of 2 x State average weekly earnings ($2,523.00 at 30/09/10 and $2,589.40 as at 17/11/2011). If worker is partially incapacitated, their actual earnings are deducted from their income maintenance, which instead of a full wage replacement, acts as a 'top up'. < 13 weeks: 100% of the worker's Average Weekly Earnings (AWE). 13 - 26 weeks: 90% of worker's AWE. > 26 weeks: 80% of AWE. > 130 weeks: Worker may be subject to a Work Capacity Review and if they have capacity to work that they are not maximising, their income maintenance may cease.	The Workers Rehabilitation and Compensation Act 1986 (SA) provides for redemption of liabilities (weekly payments and/or medical expenses). One of the following legislative criteria for redemption, of weekly payments must be met. • the rate of weekly payments to be redeemed does not exceed $30 (indexed) • the worker is 55 years of age or older and has no current work capacity • the Workers Compensation Tribunal has determined on the basis of a joint application by the worker and the Corporation, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological and social perspective. Redemptions are voluntary and can only take place through mutual agreement between the parties. The current position of the WorkCover Board is that there should be no redemptions. This policy only applies to the injured workers of registered employers. Third party recovery redemption s are managed under a separate policy and

	Calculation	Settlement, redemption, commutation
		must have had proceedings issued prior to 22 October 2010 to be eligible for redemption. This policy only applies to the injured workers of registered employers.
Tasmania	Section 69B ≤ 26 weeks: 100% of weekly payment i.e. the greater of normal weekly earnings (NWE), or ordinary-time rate-of-pay for work engaged in immediately prior to incapacity. NWE is the workers average weekly earnings with that employer over the previous 12 months or the period of employment if less than 12 months. Overtime is included if it was regular and would have continued to be paid if the worker was not incapacitated. > 26 weeks - ≤ 78 Weeks: 90% of weekly payment. The Act provides that the worker is to receive 95% of the weekly payment if the employer fails to provide suitable alternative duties. > 78 weeks: 80% of weekly payment. The Act provides that the worker is to receive 85% of the weekly payment if the employer fails to provide suitable alternative duties. Cessation of entitlement to weekly payments depends on the worker's degree of whole person impairment (WPI): • 9 years if < 15% WPI • 12 years if ≥15% WPI but < 20% WPI • 20 years if ≥20% WPI but < 30% WPI • To date of cessation of employment under section 87 (65 years) if ≥ 30% WPI. Minimum weekly payment is 70% of the basic salary ($487.80 per week as at September 2011) or 100% of the weekly payment – whichever is the lesser amount (or pro rata equivalent) – s.69B(3).	Section 132A Settlements made within 2 years of the date of claim Settlement by agreement of outstanding entitlements to compensation made within 2 years of the date the claim was made must be approved by the Workers Rehabilitation and Compensation Tribunal (the Tribunal). To approve a proposed agreement to settle, the Tribunal must be satisfied that: • all reasonable steps have been taken to enable the worker to be rehabilitated, retrained or to return to work, or • the worker has returned to work, or • where there has been a reasonably arguable case determination, that the proposed agreement is in the best interests of the worker, or • special circumstances in relation to the worker make rehabilitation, retraining or return to work impracticable and the proposed agreement is in the best interests of the worker. The Tribunal must also be satisfied that the worker has received appropriate professional advice about the proposed agreement to settle and that the worker's entitlement to lump sum compensation for permanent impairment has been considered. Settlements made after 2 years Agreements to settle made more than 2 years after the date the claim was made do not have to be approved by the Tribunal. However, a party can subsequently refer the agreement to the Tribunal to be reviewed and possibly set aside. Referral must be made within 3 months of the date of the agreement. The Tribunal can set aside an agreement if it is of the opinion that: • a party entered the agreement under duress, or • the worker has not received appropriate advice, or • a party was induced to enter the agreement by a misrepresentation by another party (or their agent).
Northern Territory	< 26 weeks: 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) – s64. > 26 weeks: Whichever is the greater of: a) 75% of NWE to a maximum of $2011.80, or b) $670.60 plus $167.65 for a dependant spouse and $83.83 for each dependent child; or 90% of NWE (whichever is the lesser) – s65(1). < 104 weeks: Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, provided that suitable employment is reasonably available –s65(2)(b)(i). > 104 weeks: Weekly benefits may reduce or cease, if the worker has been deemed to have an earning capacity, without having regard to the availability of suitable employment – s65(2)(b)(ii).	Commute weekly benefits into lump sum payment. Maximum 156 times NWE or 156 times AWE, whichever is greater: – s74. Only for workers who are not totally incapacitated and rehabilitation is completed. Medical and like expenses are continued to be paid.
Australian Capital Territory	First 26 weeks of incapacity Where the worker is totally incapacitated, weekly compensation is payable at the worker's average pre-incapacity earnings – s 39(4)(a) Where the worker is partially incapacitated during the first 26 weeks, weekly compensation is payable calculated as 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 suitable employment: s 39(4)(b)	Negotiated between injured worker and employer/insurer. Schedule 1 of the Act provides a list of injuries, including for the loss of toes, taste and smell, and sets out a % rate (from 2% to 100%) of the single loss amount payable. Unlimited Common Law. Benefits may be commuted.

	Calculation	Settlement, redemption, commutation
	After first 26 weeks of incapacity If the worker is totally incapacitated for any period after the 26-week period, s/he is entitled to weekly compensation equal to: a) 100% of the worker's average pre-incapacity weekly earnings - if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker; or b) the statutory floor - if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker; or c) whichever is more - if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker – s 41 (1) If the worker is partially incapacitated for period after the 26-week period, s/he is entitled to weekly compensation equal to: d) 100% of the worker's average pre-incapacity weekly earnings if that amount is less than the statutory floor; or e) the statutory floor if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor; or f) the statutory ceiling if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling3; or g) in any other case – the relevant percentage of the worker's average pre-incapacity weekly earnings –s 42(1) For these purposes the "relevant percentage" is: a) 65% if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less; or b) 75% if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%; or c) 85% if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%; or d) 95% if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%; or e) 100% if the worker is working more than 85% of the worker's average pre-incapacity weekly hours – s 42(2) **Definitions** Pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury – s 41(2). Statutory floor, means the national minimum wage set by a national minimum wage order in an annual wage review by Fair Work Australia – s 36(G)(1) Statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid – s 42(4)	
C'wealth Comcare	Comcare:< 45 weeks: 100% Normal weekly earnings (NWE) which includes overtime if regular and required and penalties, with no maximum cap applied –s19(2). Part II, Div 3: a) if working >0% - <=25% of pre injury hours:- 80% of NWE less Able to Earn b) if working >25% - <=50% of pre injury hours:- 85% of NWE less Able to Earn c) if working >50% - <=75% of pre injury hours:- 90% of NWE less Able to Earn d) if working >75% - <100% of pre injury hours:- 95% of NWE less Able to Earn e) if working 100% of pre injury hours:- 100% of NWE less Able to Earn. > 45 weeks: s19(3). If not working:- 75% of NWE. Minimum: $412.92. Additional for prescribed person - $102.25, and for each dependent child - $51.09. Compensation payments for ex-workers are increased by reference to the ABS Wage Cost Index for year ending 31 December applicable from 1 July each year Maximum: $1958.10 from 18 August 2011 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics). Retired Employees The weekly benefit payable to such employees is the equivalent of 70% of their former normal weekly earnings. This is calculated by subtracting from the amount of compensation otherwise payable (i) the employer-funded part of their weekly superannuation pension (or its deemed weekly equivalent from the employer funded lump sum) and (ii) 5% of the employee's former normal weekly earnings to equate with the typical superannuation contribution most employees would have been paying had the employee not retired. The above mentioned "amount of compensation otherwise payable" takes into account any actual or able to earn amount - subsections 20(3), 21(3) and 21A(3).	Redemptions of weekly benefits are only available in some circumstances and are calculated per s30(1) (or s137(1) for "former workers") under the SRC Act. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than an indexed amount ($102.25 per week, 1 July 2011) and Comcare is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula.

	Calculation	Settlement, redemption, commutation
C'wealth Seacare	< 45 weeks: 100% Normal weekly earnings (NWE) which includes overtime if regular and required and penalties, with no maximum cap applied – s31(2). > 45 weeks: s31(5): (a) if not working:- 75% of NWE. Minimum: $412.92. Additional for prescribed person - $102.25, and for each dependent child - $51.09. Compensation payments for ex-workers are increased by reference to the ABS Wage Cost Index for year ending 31 December applicable from 1 July each year – ss31(12,13). b) if working >0% - <=25% of pre injury hours:- 80% of NWE less Able to Earnc) if working >25% - <=50% of pre injury hours:- 85% of NWE less Able to Earnd) if working >50% - <=75% of pre injury hours:- 90% of NWE less Able to Earne) if working >75% - <100% of pre injury hours:- 95% of NWE less Able to Earnf) if working 100% of pre injury hours:- 100% of NWE less Able to Earn. Maximum: $1,958.10 from 18 August 2011 (150% of Average Week Ordinary Time Earnings for Full-time Adults as published by Australian Bureau of Statistics).	Redemptions of weekly benefits are only available in some circumstances. Medical, rehabilitation or permanent impairment payments are not affected. A redemption lump sum can only be paid out in lieu of ongoing weekly incapacity payments when a worker's weekly incapacity payments are equal to or less than the statutory rate ($102.25 per week at 1 July 2011) and the employer is satisfied that the degree of incapacity is unlikely to change. The lump sum payment is calculated by a specified formula – s44.
C'wealth DVA	100% normal earnings (NE) for current members - Ch 4 Part III. <45 weeks: 100% NE for former members - s131, plus ADF allowance. >45 weeks: (a) if not working: 75% of NE - s131. Minimum: Federal Minimum Wage - s179. Compensation payments for ex-workers are increased by reference to the ADF pay scales:- (a) if working >0% - <=25% of pre injury hours:- 80% of NE less actual earnings (AE) (b) if working >25% - <=50% of pre injury hours:- 85% of NWE less AE (c) if working >50% - <=75% of pre injury hours:- 90% of NE less AE (d) if working >75% - <100% of pre injury hours:- 95% of NE less AE (e) if working 100% of pre injury hours:- 100% of NE less AE.	Redemptions of weekly benefits are only available in some circumstances and are calculated per s138.
New Zealand	Employees For weeks 2-5, 80% of short term rate, which is defined as: Permanent employees: earnings in the four weeks prior divided by number of weeks in which they were derived – Schedule 1, Part 1, clause 34. Non-permanent employees: all earnings in the four weeks prior divided by number of weeks in which they were derived – Schedule 1, Part 1, clause 36. Week 5, 80% of the long term rate, which is defined as: Permanent employees: earnings from employment with that employer in the 52 weeks prior divided by weeks in which they were derived – Schedule 1, Part 1, clause 34. Non-permanent employees: all earnings in the 52 weeks prior divided by 52 weeks – Schedule 1, Part 1, clause36. Share-holder-employees Either: a) earnings as an employee in the 52 weeks prior to incapacity divided by the number of weeks worked 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 c) weeks as an employee divided by 52 plus shareholder-employee earnings divided by 52 – Schedule 1, Part 1, clause 39. Maximum is NZ$89 334.96. Will be reduced by a proportion of any earnings derived in the period of incapacity. Minimum for full-time earners: 80% of NZ$510. (The IPRC Amendment Act 2008 removed the need for a different minimum earner rate for full-time earners under 18).	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, weekly compensation and medical costs can not be commuted.

Table 4.2: Medical, hospital and other costs

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
New South Wales	Covers all medical and related treatment and hospital/ ambulance costs. Includes prostheses, allied health provision along with medical provider costs. All costs deemed reasonably necessary. Sections 60, 60A, 61, 62 and 63 of Workers Compensation Act 1987. Fees for many parties covered by fee schedules. If no fee schedule in place - costs should be in line with customary community charge.	Covered under "medical" same sections of the Act as above. No guidelines in place, no maximum fees or limit. Usually provided for severe injury claimants.	Domestic assistance covered if a medical practitioner certifies it is required. It is available for 6 hours/week for cumulative 12 week period or longer if likely to be over 15% WPI . It is available on an ongoing basis if worker rates 15% WPI or more. Section 60AA of the 1987 Act. Also covered by Domestic Assistance Guidelines.	Covered under "medical" same sections of the Act as per medical and hospital costs	No maximum set, other than fee rates for allied health providers, medical practitioners, public, private hospitals and ambulance. Section 61(2) of the 1987 Act gives WorkCover the power to set fees. Where there are no fee orders, the customary community charge applies. Criteria for all services is that it is due to work injury and meets the reasonably necessary criteria.
Victoria	All reasonable costs for road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the injury. - s99(1) Reasonable costs is defined in S99AAA(2) For more information go to Chapter 10 of the On-line Claims Manual on WorkSafe's website	Attendant care is covered under the definition of personal and household services in s5(1). When making an assessment of an attendant care program consideration needs to be given to the worker's • abilities • degree of self reliance • accommodation needs • extent of family support, and • family's need for respite	Personal and household services are defined in s5(1) and s99. In determining entitlement for personal and household services the individual circumstances of the worker need to be assessed having regard to : • the reasonableness of the cost of the service, and • the service is necessary given the worker's circumstances	WorkSafe can pay the reasonable costs of home or car modifications reasonably required as a result of a work related injury where approval is given before the costs are incurred - s99AC. WorkSafe is liable to pay the reasonable costs of modifying the car, or if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car. WorkSafe is liable to pay the reasonable costs of modifying the home, or if for any reason the home cannot be reasonably modified, to contribute a reasonable amount towards the purchase costs of a semi-detachable portable unit or the costs of relocating the worker to another home that is suitable.	WorkSafe may issue guidelines identifying services or classes of services for which approval should be sought from WorkSafe before the services are provided - s99(2) Entitlement to medical and like services ceases 52 weeks after the entitlement to weekly payments cease, or if compensation is only payable for medical and like services, 52 weeks after entitlement commenced unless certain circumstances apply - s99AD. If a worker's injury is severe (s99AAA) or results in death, family members are eligible for counselling services - s99(1)(b).
Queensland	The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable having regard to the workers injury. Under the table of costs, the Authority may impose conditions on the provision of the medical treatment (s210 of the Act). The insurer must pay the costs that it accepts as reasonable, having regard to the relevant table of costs, for medical treatment by a	As above for Act references. Insurer decision on a case by case basis with respect to funding these services. Home Nursing services are listed under the Nursing services table of cost published by Q-COMP.	Insurer decision on a case by case basis with respect to funding these services. Domestic assistance covered under the Rehabilitation support table of cost published by Q-COMP. Act s224 A caring allowance may be paid if the insurer is satisfied - 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	The insurer must pay reasonable costs for nursing , medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices given to the worker (s211). The insurer must also pay reasonable expenses for maintenance, replacement or repair of a prosthesis, medical aid or device (s212).	Act s144A & 144B Payment of medical treatment, hospitalisation and expenses stops when the entitlement of the worker to weekly payments of compensation stops and if the medical treatment is no longer required for the injury because the injury is not likely to improve with further medical treatment or hospitalisation.

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
	registered person (s211). The Table of costs are published by the Authority (Q-COMP). The Insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker's injury (s222 and s223).		worker's home on a voluntary basis by another person in relation to whom compensation is not payable.		
Western Australia	Reasonable expenses incurred – S1, clause 17. Limited to 30% of prescribed amount ($57,210). An additional $50 000 can be granted by Dispute Resolution Directorate where the worker's social and financial circumstances justify it – S1, clause 18A(1). If a worker meets an exceptional medical circumstances test and has a 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 – S1, clause 18A.	Reasonable expenses associated with a nursing home may be paid where a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance, which cannot be administered in the worker's domestic environment – Schedule 1, clause 17(1).	N/A	Not prescribed in legislation. In special circumstances insurers may approve limited home and vehicle modifications. Injured workers that require assistance from an approved vocational rehabilitation provider to assist them to RTW can access the entitlement for vocational rehabilitation expenses, which represents 7% of the prescribed amount (up to $13,349 at 30 September 2011). Workers injured post 14 November 2005 with a degree of WPI between not less than 10% and 15% that have exhausted all avenues in an attempt to RTW, may be able to access a specialised retraining program. To qualify, injured workers need to meet strict retraining criteria. Specialised retraining programs can offer an extension of up to 75 per cent of the prescribed amount (up to $143,026 at 30 September 2011) to partake in informal training, vocational or tertiary studies	Limits as noted above
South Austtralia	A worker is entitled to be compensated for reasonable costs (including medical and hospital costs), reasonably incurred in consequence of having suffered a compensable disability - s32.	WorkCover may pay the cost of attendance by a registered or enrolled nurse, or by some other person approved by WorkCover, where the disability is such that the worker requires attendant care – s32(2)(f). Each case for attendant care	WorkCover may as part of a rehabilitation program provide services (including home help and domestic assistance) to assist workers to cope with their disabilities at home or in the workplace – s26(3)(g) and s32(2).	WorkCover may as part of a rehabilitation program provide equipment, facilities and services (including home, vehicle modification, aids and appliances) to assist workers to cope with their disabilities at home or in the workplace – s26(3)(g) and s32(2).	Fees are regulated by gazette for hospital, medical and allied health services - s32(11). Other costs may be reimbursed if reasonably incurred - s32(1)

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		must be determined on its own merits, and the test is the reasonableness of the particular worker in incurring the expense in the circumstances. Reasonableness should be considered in the context of: • 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, and • the cost of the service.		A worker who has suffered a serious injury or injuries and whose rehabilitation goal is restoration to the community may require his/her home or vehicle to be modified as part of that goal. The extent of such modifications will depend on the circumstances of each case.	
Tasmania	A worker is entitled to compensation for reasonable expenses necessarily incurred as a result of the injury (section 75(1)(a)).	A worker is entitled to compensation for reasonable expenses for constant attendance services necessarily incurred as a result of the injury (section 75(1)(a)). Constant attendance services are services provided by a person other than a member of the worker's family where the worker requires the regular or constant personal attendance of another person (section 74). Where there is any dispute in relation to constant attendance services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (section 75(3))	A worker is entitled to compensation for reasonable expenses for household services necessarily incurred as a result of the injury (section 75(1)(a)). Household services are services provided to the worker (other than by a family member) of a domestic nature and services required for the proper running and maintenance of the worker's residential premises (section 74). Where there is any dispute in relation to household services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (section 75(3))	A worker is entitled to compensation for reasonable expenses for rehabilitation services necessarily incurred as a result of the injury (section 75(1)(a)). Rehabilitation services include any necessary and reasonable modifications required to be made to the worker's workplace, place of residence or motor vehicle (section 74). Where there is any dispute in relation to rehabilitation services, the Tribunal can make a determination as to: the necessity for the services, the period for which they are to be provided, and the level of payments that are reasonable and appropriate for those services (section 75(3))	A worker is entitled to compensation for reasonable expenses necessarily incurred as a result of the injury (section 75(1)(a)). There is no monetary limit. However, there are limits on duration. If the worker is entitled to weekly payments for incapacity in respect of the injury, entitlement to compensation for medical and other expenses ceases 52 weeks after the lawful termination of weekly payments (section 75(2)). If the worker is not entitled to weekly payments for incapacity, entitlement to compensation for medical and other expenses ceases 52 weeks after the date the claim was made (section 75(2AA). Compensation for medical and other expenses can be extended by Tribunal order (section 75(2AB)).
Northern Territory	Costs reasonably incurred - s73	Costs that are reasonable and necessary- s78	costs that are reasonable and necessary- s78	costs that are reasonable and necessary- s78	No
Australian Capital Territory	Medical treatment reasonably recieved (s70 Workers Compensation Act 1951)	Other costs reasonably required (s70(1)(c) Workers Compensation Act 1951)	Other costs reasonably required (s70(1)(c) Workers Compensation Act 1951)	Cost of alterations (s70(1)(b) Workers Compensation Act 1951)	Costs are as agreed with the insurer or $658 indexed.

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
C'wealth Comcare	All reasonable costs - s16	Compensation is payable for attendant care services reasonably required - s29(1). ss29(4) requires consideration of: (a) nature of injury and degree that injury impairs ability to provide for personal care; (b) extent to which any medical service or nursing care received provides for essential and regular personal care; (c) extent to which reasonable to meet any wish by the employee to live outside an institution; (d) extent to which attendant care services are necessary to enable the employee to undertake or continue employment; (e) any assessment made in relation to rehabilitation of the employee; (f) extent to which a relative might reasonably be expected to provide attendant care services. Not payable where an employee is residing in nursing home or other similar place - s29(3). Comcare is liable to pay the lesser of $408.83 (statutory rate updated 1 July) or an amount per week paid or payable by the employee for those services.	Compensation is payable for household services reasonably required - s29(1). ss29(2) requires consideration of: (a) extent to which household services were provided by the employee before the injury and extent to which employee is able to provide those services after that date; (b) number of persons living with the employee as members of household, their ages and their need for household services; (c) extent to which household services were provided by the persons referred to in paragraph (b) before the injury; (d) extent to which the persons referred to in paragraph (b), or any other members of employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury; (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b). Comcare is liable to pay not less than 50% of the amount paid or payable by the employee nor more than $408.83 (statutory rate updated 1 July).	Comcare is liable to pay compensation of such amount as is reasonable in respect of costs payable by the employee due to any alteration of the employee's place of residence or work, any modifications of a vehicle or article used or any aids/ applicances for the use of the employee, or the repair or replacement of same - s39.	Medical and hospital costs - no limits - appropriate costs - s16 Other costs - no limits
C'wealth Seacare	all reasonable costs - s28	s43(5) The following matters need to be considered: • nature of the injury and the degree to which that injury impairs the worker's ability to provide for their personal care • extent to which any medical service or nursing service received by the employee provides for his or her essential and regular personal care • extent to which it is reasonable to meet any wish by the employee to	s43(3) The following matters need to be considered: • extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date • number of persons living with the employee as members of their household, their ages and need for household services • extent to which household	Where an employee has undertaken or completed a rehabilitation program or is assessed as not capable of undertaking a program, the following are payable if reasonable: • costs of alteration of employee's residence or place of work • modifications to a vehicle used by employee • aids and appliances including repair or replacement s51	Attendant care - $408.83 Household help - $408.83, not less than 50% paid by employee unless the amount is greater than $817.66

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		live outside an institution • extent to which attendant care services are necessary to enable the employee to undertake or continue employment • any assessment made in relation to the rehabilitation of the employee • extent to which a relative of the employee might reasonably be expected to provide attendant care services.	services were provided to the employee before the injury • extent to which members of the household might reasonably be expected to provide household services for themselves and injured employee • the need to avoid substantial disruption to the employment or other activites of persons in the household.		
C'wealth DVA	a) all reasonable costs - s270 or b) scheduled items if condition is chronic and member has discharged from the ADF - s278.	Liable to pay compensation for attendant care services reasonably required. in the amount of: a) $424.73 per week, or b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less – s219. The following matters need to be considered (s218): (a) the nature of the person's injury or disease (b) the degree to which that injury or disease impairs the person's ability to provide for his or her personal care (c) the extent to which any medical service or nursing care received by the person provides for his or her essential and regular personal care (d) the extent to which the attendant care services are necessary to meet any reasonable wish by the person to live outside an institution (e) the extent to which attendant care services are necessary to enable the person to undertake or continue defence service or any other work (f) any assessment made in relation to the rehabilitation of the person (g) the extent to which a relative of the person might reasonably be expected to provide attendant care services	Liable to pay compensation for household services reasonably required. in the amount of: a) $424.73 per week, or b) an amount per week equal to the amount per week paid or payable by the person for those services, whichever is less – s216. The following matters need to be considered (s215): (a) the extent to which household services were provided by the person before the service injury or disease (b) the extent to which he or she is able to provide those services after the service injury or disease (c) the number of other persons (household members) living with that person as members of his or her household (d) the age of the household members and their need for household services (e) the extent to which household services were provided by household members before the service injury or disease (f) the extent to which household members, or any other relatives of the person, might reasonably be expected to provide household services for themselves and for the person after the service injury or disease	1. a) Loss of, or damage to, medical aids - s226 b) alterations to a person's place of residence, education, work or service - s56. • reimbursement of amounts reasonably incurred in replacement or repair. 2. Motor Vehicle Compensation Scheme - s212. To provide for the reasonable costs of a vehicle's modification (and vehicle purchase in some circumstances). • the amount is what the MRCC considers reasonable.	Attendant care - $424.73 per week Household services - $424.73 per week

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
		(h) any other matter that the MRCC considers relevant.	(g) the need to avoid substantial disruption to the work or other activities of the household members (h) any other matter that the MRCC considers relevant.		
New Zealand	Regulated or contract rates for treatment and reasonable costs associated with social and vocational rehabilitation-s60 (1)(a). Prior approval is required except for acute treatment and all costs approved by contract or regulations:-Schedule 1,Part 1, s 1.	"In deciding whether to provide or contribute to the cost of attendant care, the Corporation must have regard to – 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: – Schedule 1, cl(l4)"	"Reimbursement: Schedule 1, Part 1 17 Home help (1) In deciding whether to provide or contribute to the cost of home help, the Corporation must have regard to— (a) any rehabilitation outcome that would be achieved by providing it; and (b) the extent to which a claimant undertook domestic activities before the claimant's personal injury and the extent to which he or she is able to undertake domestic activities after his or her injury; and (c) the number of household family members and their need for home help; and (d) the extent to which domestic activities were done by other household family members before the claimant's personal injury; and (e) the extent to which other household family members or other family members might reasonably be expected to do domestic activities for themselves and for the claimant after the claimant's personal injury, and (f) the need to avoid substantial disruption to the employment or other activities of the household family members, and (g) the impact of the claimant's personal injury on the contribution of other family members to domestic activities. Calculation: All assistance must be provided to meet an assessed, injury-based need. ACC is only responsible for providing the level of assistance required to achieve the planned rehabilitation outcome. Limits: The Corporation [is not required] to pay for home help to the extent that	"Social rehabilitation includes: • aids and appliances • child care • educational support • home modifications • training for independence, and • transport for independence (including vehicle purchasing and modifications). 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."	Noted above

	Medical and hospital benefits	Attendant care (at home or in supported accommodation)	Home help	Other costs (i.e. home modification)	Limits to benefits listed above
			home help continues to be provided after a claimant's personal injury by a person— (a) who lives in the claimant's home or lived in the claimant's home immediately before the claimant suffered his or her personal injury; and (b) who provided home help before the claimant suffered his or her personal injury. "		

Table 4.3: Permanent impairment payments

	Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
New South Wales	Permanent Impairment - s66 of the 1987 Act. Thresholds: •Physical injury 1% WPI. •Binaural hearing loss 6%. •Primary psychological injury 15% WPI. Pain and Suffering - s67. Thresholds: •Physical injury 10% WPI. •Primary psychological injury 15% WPI.	$220,000 (plus an additional 5% for permanent impairment of the spine).$50 000 (for pain and suffering.		Thresholds for claims for: •Work Injury Damages 15% WPI. •Commutation 15% WPI. Other criteria apply for the above claims.	Weekly benefits and medical costs are still payable.
Victoria	Combined.[1]	$527 610 – s98C.	CPI (Melbourne). Adjusted 1 July.	See section on common law at Table 4.6.	Weekly payments and medical and like expenses are still payable: s 93 & 99
Queensland	Standard. Additional. (s192(2)) Gratuitous care. (s193(6)) Latent onset (s128B). Serious injuries - Compensation benefits.	$273,055 (standard) $273,055 (additional -s192(2)) $309,315 (Gratuitous care) $573,425 (Latent onset) (as at 1 January 2012)	QOTE. Adjusted 1 July.	If 30% or more Work Related Impairment: up to $273,055 additional lump sum compensation, payable according to a graduated scale prescribed by regulation (s192). If a worker sustains 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, the worker is entitled to additional lump sum compensation of up to $309,315, payable according to a graduated scale prescribed by regulation, but only if: (a) day to day care for the fundamental activities of daily living is to be provided at the worker's home on a voluntary basis by another person, and (b) the worker resides at home on a permanent basis, and (c) the level of care required was not provided to the worker before the worker sustained the impairment, and (d) the worker physically demonstrates the level of dependency (s193).	All other payments cease.

	Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
				No threshold for common law.	
Western Australia	Lump sum for single or multiple impairments.	$190,701 for Schedule 2 Impairments	Index ordinary time hourly rates of pay for Western Australia. Adjusted 1 July.	1. Common law: not less than 15% whole of person impairment (limited damages) and not less than 25% whole of person impairment (unlimited damages). 2. Specialised retraining programs: Not less than 10% whole of person impairment but less than 15% whole of person impairment (also need to satisfy criteria determined by WorkCover WA). 3. Payment of additional expenses: (Schedule 1, Clause 18A of up to $250 000). Not less than 15% whole of person impairment (Arbitrator is also to have regard to the social and financial circumstances and the reasonable financial needs of the injured worker).	Weekly payments cease once a memorandum of agreement is registered pursuant to section 76 of the Act. Publications / Guidance Recieving Workers' Compensation Entitlements Specialised Retraining Exceptional Circumstances Medical Payments Prescribed Amount Information on Finalising Your Claim
South Australia	Non-economic loss.	$437,401 s43 See 'Schedule of Sums'	Adjusted on 1 January in each year, beginning on 1 January 2010, by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index for the September quarter of the immediately preceding year by the Consumer Price Index for the September quarter, 2008 (with the amount so adjusted being rounded up to the nearest dollar).	N/A.	Weekly benefits and medical costs are still payable.
Tasmania	Combined.[1]	$289 193	415 x basic salary. The basic salary is calculated each year taking into account the variation in the average weekly ordinary full-time earnings of adults in Tasmania from May of the preceding year and May in the year before that. (For example, the basic salary for 2011 was calculated taking in account the variation in the average weekly earnings between May 2009 and May	20% WPI for access to common law damages.	Entitlement to weekly benefits and medical costs is not affected except where payment of impairment benefit is a component of a claim settlement.

	Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
			2010).		
Northern Territory	Combined[1]	$278 969.60	208 X full-time adult persons weekly ordinary time earnings for Northern Territory. Adjusted on 1 January.	N/A.	Payment of permanent impairment does not impact on any other entitlements.
Australian Capital Territory	Single, or multiple impairments	$131,785 (July 11). (single) $197,677 (July 11).(multiple)	CPI (Canberra). Adjusted quarterly in line with CPI indexed variations.	-	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.
C'wealth Comcare	Economic. Non Economic.	$163 535 (Economic) $61 326 (non economic)	CPI. Adjusted 1 July.	N/A	Payment of Permanent Impairment does not impact on any other entitlements under the SRC.
C'wealth Seacare	Economic. Non Economic.	$163,535.42 (Economic) $61,325.82 (non economic)	CPI. Adjusted 1 July.	N/A	Payment of Permanent Impairment does not impact on any other entitlements under the Seafarers Act.
C'wealth DVA	Combined.	$299.97 per week or equivalent age based lump sum up to maximum $397 790.22 - MRCA ss74 & 78.	CPI. Adjusted 1 July - MRCA s404.	• $77 222.06 plus education scheme benefits equivalent to Youth Allowance paid for each dependent eligible young person, if the impaired person suffers impairment of 80 or more IPs - MRCA ss80 & 258. • MRCA Supplement of maximum $3 per week paid if the impaired person suffers impairment of 80 or more IPs - MRCA s223. • Free medical treatment for all conditions (compensable or otherwise) if the impaired person suffers impairment of 60 or more IPs due to compensable conditions • MRCA s281. • Maximum $1544.43 for financial advice compensation if the impaired person suffers impairment of 50 or more IPs - MRCA s82.	Payment of Permanent Impairment can impact on the payment of Special Rate Disability Pension - MRCA s204.

	Benefit type	Maximum amount (current)	Indexation mechanism	Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Weekly benefits still payable?
New Zealand	Non Economic.	Max. $123 138	Adjusted 1 July.	N/A.	Injury prior to 1 April 2002, an independence allowance may be payable if impairment > 10% WPI. 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

Table 4.4: Death entitlements

	Lump sum	Periodic payments	Other payments
New South Wales	$465,100 – 1987 Act, s25(1)(a). $268,375 - Workers' Compensation Dust Diseases Act 1942, s8(2B)(i).	$118.20 a week to each dependent child – 1987 Act, s25(1)(b). $243.60 weekly to dependent spouse - Workers Compensation (Dust Diseases) Act 1942 s8(2B)(b)(ii). $123.10 benefit paid to each dependant child - Workers Compensation (Dust Diseases) Act 1942, s8(2B)(b)(iii). NB: dependants of a deceased worker without a spouse are entitled to receive a lump sum and weekly benefits paid in accordance with the provisions of the 1987 Act or 1926 Act (determined by last date of occupational exposure) - Workers Compensation (Dust Diseases) Act 1942, s8AA.	Funeral expenses $9000 maximum – 1987 Act, s27.
Victoria	$527 610 – s92A.	Dependent partner - determined by average pre-injury earnings (PIAWE) subject to statutory maximum – s92B: First 13 weeks: •95% of earnings •$1930 max. 14 weeks: – 3 years: •50% of earnings •$1930 max. $1290 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 $9300 – s99. Counselling for family members, max. total $5580 – s99.
Queensland	$511,460 $13,665 for a totally dependent spouse - s200(2)(aa), and $27,320 for each dependent family member other than the spouse, under 16 or a student - s200(2)(b).	Weekly payment of 8% of QOTE ($101.10) for the spouse if there is a dependent family member under 6 - s200(2)(ab), and weekly payment of 10% of QOTE ($126.35) for each dependent under 16 or a student s200(2)(c).	Reasonable funeral expenses – s199, Ch 3 Part 11.
Western Australia	$261,429 (subject to Labour Price Index (LPI)) notional residual entitlement of the deceased worker – Schedule 1(1).	A child's allowance of $50.00 per week (subject to LPI) for each dependent child up to age 16 or 21 if a student, whichever an arbitrator determines as likely to be in the best interests of that dependant.	Reasonable funeral expenses: not exceeding $8,832 (subject to CPI) – Schedule 1(17).
South Australia	Dependent partner: A lump sum equal to the prescribed sum less any amount that the deceased worker received as compensation for non-economic loss under Division 5 – s45A(5). Dependent partner and one dependent child: 90% of the prescribed sum to partner and 10% to the child. Dependent partner and more than one and not more than five dependent children: 5% to each child with the balance to the partner. Dependent partner and more than five dependent children: 75% to the partner and 25% to children shared equally. Dependent orphaned child: A lump sum of $437,401 (as of 1 Sept 2011) less any amount that the deceased worker received as compensation for non-economic loss under Division 5 – s45A(6).	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)(a). 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)(b). 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 weekly payments if WorkCover determines they are eligible in their particular circumstances - s44(1)(e).	Funeral expenses: maximum as at 1 Jan 2012, $9,602, s45B(1) and reg 40(3), regulations 2010. See: 'Help when someone dies because of their work') a factsheet outlining some of the important matters you may need to consider, including financial issues, with the sudden loss of a family member. See: WorkCoverSA's Injury and Case Management Manual, Chapter 12: 'Death Claims'.

	Lump sum	Periodic payments	Other payments
	[If there is more than 1 dependent orphaned children, that amount is divided equally between them]. Prescribed sum will be $454,739 from 1 January 2012 for claims received on or after 1 July 2008.		
Tasmania	Maximum payment: $289 192.75 – s67.	A dependent spouse or caring partner is entitled to weekly payments for a period of two years from the date of death calculated at the same rate as the deceased would have received if he/she became totally incapacitated – s67A: • first 26 weeks following the date of death: 100% of weekly payments • >26 weeks, up to 78 weeks: 90% of weekly payments • >78 weeks, up to-2 years from the date of death: 80% of weekly payments. A dependent child is entitled to weekly payments paid at 15% of the basic salary ($104.53 per week), commencing on the expiration of 13 weeks after the date of death – s67A.	-
Northern Territory	Entitled to 260 times the average weekly earnings ($348 712.00) in prescribed proportions (share with children), or such proportions as the Court determines – s62(1).	10% of average weekly earnings ($134.12) for each child under 16 (or 21 if student), for up to 10 children– s63. Limited to 100% of average weekly earnings ($1341.20).	Max: 10% of the annual equivalent of average weekly earning ($6,974.24) for funeral costs – s62(1)(a).
Australian Capital Territory	$197,677 (July 11) CPI indexed (to be divided between the dependants – s77(2).	$65.89 per child, CPI indexed – s77(2).	$6974.24 CPI indexed for funeral expenses – s77(2).
C'wealth Comcare	$458 980 – ss17(3), (4).	$126.22 a week to each child under 16 (or 25 if full-time student) – s17(5).	Reasonable funeral expenses, not exceeding $10 412 – s18(2).
C'wealth Seacare	$458 980.51 – s29(3).	$125.22 a week to each child under 16 (or 25 if full-time student) – s29(5).	Reasonable funeral expenses, not exceeding $5662.54 – s30(2).
C'wealth DVA	• $379.35 per week for partner, or equivalent age based lump sum up to a maximum of $638 787.47 - MRCA ss234(4) & (5). • $128 703.43 (age-based maximum additional amount for partner where a service death as defined). • $77 222.06 (maximum amount for each "other dependant") to a maximum of $244 536.53 for all "other dependants" - MRCA s263. • $77 222.06 for each child - MRCA s252.	• $84.94 a week to each child under 16 (or to age 25 if full-time student) - MRCA s254. • $3.00 MRCA Supplement per week to the partner and each child - MRCA s247	• Reasonable funeral expenses, not exceeding $10 412.50 - MRCA s267. • Medical treatment for partner and each child for all conditions - MRCA ss284 & 302. • $1 544.43 financial advice for partner - MRCA s240. • Children's education expenses equivalent to Youth Allowance payable in some circumstances - MRCA s258. • Bereavement payments for a limited time where deceased was in receipt of periodical compensation payments - MRCA ss243 & 256.

	Lump sum	Periodic payments	Other payments
New Zealand	Spouse: NZ$6206. Each child or other dependent: NZ$3103.	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$5789. Child care payments: NZ$131.98 for a single child, NZ$79.18 each if there are more than two children, and a total of NZ$184.77 for 3 or more children.

Table 4.5: Definitions of dependants/ spouse for death benefits

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
New South Wales	1987 Act, s25 – dependants: If there are no dependants the lump sum death benefit is paid to the worker's estate. Workers Compensation (Dust Diseases) Act 1942, s8(2B): dependants.	1998 Act, s4: "dependants" of a worker: means members of the worker's family as were wholly or in part dependent for support on the worker at the time of the worker's death, or would but for the incapacity due to the injury have been so dependent, and includes: a. a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and b. a divorced spouse of the worker so dependent, and c. a person so dependent who: i. in relation to an injury received before the commencement of Schedule 7 to the Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998 – although not legally married to the worker, lived with the worker as the worker's husband or wife on a permanent and genuine domestic basis, or ii. in relation to an injury received after that commencement – is the other part to a de facto relationship with the worker. 1987 Act, s25(5): • "Child of the worker" means a child or stepchild of the worker and includes a person to whom the worker stood in the place of a parent. • "Dependent child of the worker" means a child of the worker who was wholly or partly dependent for support of the worker. • "Student" means a person receiving full-time education at a school, college or university. Workers Compensation (Dust Diseases) Act 1942, s8(2B)(a): persons dependent for support upon a worker immediately before the worker's death, being the following and no other persons: • a prescribed relative of the worker, or • a surviving spouse and a child or children of the worker. Workers Compensation (Dust Diseases) Act 1942, s8(9): A prescribed relative is: • a surviving spouse of the person, or • if there is no surviving spouse – a father, mother, grandmother, grandfather, step-father, step-mother, grandson, granddaughter, brother, sister, half-brother or half sister of the person. Workers Compensation (Dust Diseases) Act 1942, s8(2AA): provides for dependants, being children of a deceased worker who had no spouse. References to "child" under the Workers Compensation	Broad definition of 'dependant' - encompasses same sex relationships.	-

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		(Dust Diseases) Act 1942 includes step-children and children to whom the worker stood in loco parentis.		
Victoria		s5(1): "dependant" means a person who: (a) at the time of the death of a worker was wholly, mainly or partly dependent on the earnings of the worker, or (b) would but for the incapacity of a worker due to the injury have been wholly, mainly or partly dependent on the earnings of the worker. s5(1): "spouse" of a person means a person to whom that person is married. s5(1): "spouse" of a person means a person to whom that person is married. s5(1): "partner" of a worker means: a) in relation to a worker who died before the commencement of s4 Statute Law Amendment (Relationships) Act 2001— (i) the worker's spouse at the time of the worker's death; or (ii) a person of the opposite sex who, though not married to the worker, lived with the worker at the time of the worker's death on a permanent and bona fide domestic basis; b) in relation to a worker who dies on or after that commencement—the workers' spouse or domestic partner at the time of the worker's death s5(1): "domestic partner" of a person means: (a) a person who is in a registered domestic relationship, or (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).	Yes. s92A: Revised compensation for death of worker. Includes definitions: "partially dependent partner" means a partner who is to any extent dependent on the worker's earnings. "dependent partner" means a partner wholly or mainly dependent on the worker's earnings.	s5: "member of a family" means the partner, father, mother, grandfather, grandmother, stepfather, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister and any person who stands in the place of a parent in relation to another person or that other person.
Queensland	Ch 3 part 11: dependant	s27: Meaning of dependant - A dependant, of a deceased worker, is a member of the deceased worker's family who was completely or partly dependent on the worker's earnings at the time of the worker's death or, but for the worker's death, would have been so dependent. s29: Who is the spouse of a deceased worker: 1. The spouse, of a deceased worker, includes the worker's de facto partner only if the worker and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of s32DA Acts Interpretation Act 1954,—a) generally— (i) for a continuous period of at least 2 years ending on the worker's death; or (ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long term, committed relationship, or b) if the deceased left a dependant who is a child of the relationship—immediately before the worker's death.	Under the Acts Interpretation Act 1954, "spouse" includes a de facto partner or civil partner. For either de facto partner or civil partner, the gender of the person is not relevant.	s28: Meaning of member of the family - A person is a member of the family of a deceased worker, if the person is— a) the worker's— (i) spouse, or (ii) parent, grandparent and stepparent, or (iii) child, grandchild and stepchild, or (iv) brother, sister, half-brother and half-sister, or b) if the worker stands in the place of a parent to another person—the other person, or c) if another person stands in the place of a parent to the deceased worker—the other person.

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
Western Australia	s5: "dependants" means such members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would, but for the injury, have been so dependent.	s5: "member of a family" means spouse, de facto partner, parent, grandparent, step-parent; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grandson, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes the workers' parents, and his brothers and sisters, whether legitimate or ex-nuptial, who have at least one parent in common with the worker. s5: "de facto partner" a) a person who, immediately before the death of the worker, was living in a de facto relationship with the worker and had been living on that basis with that worker for at least the previous 2 years; and b) any former de facto partner of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former de facto partner with respect to financial matters. s5: "spouse" includes any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters.	No specific reference is provided with regard to same sex relationships. However, same sex de facto relationships have been recognised in Western Australian law since 2002. The Interpretation Act 1984 (s13A(3)(a)) states, with regard to references to de facto relationships and de facto partners, that "It does not matter whether the persons are different sexes or the same sex."	-
South Australia	s44: spouse or domestic partner.	s3: spouse, - a person is the spouse of another if they are legally married. s3: domestic partner – a person is the domestic partner of a worker if he or she lives with the worker in a close personal relationship and (a) the person: (i) has been so living with the worker continuously for the preceding period of 3 years, or (ii) has during the preceding period of 4 years so lived with the worker for periods aggregating not less than 3 years, or (iii) has been living with the worker for a substantial part of a period referred to in subparagraph (i) or (ii) and the Corporation considers that it is fair and reasonable that the person be regarded as the domestic partner of the worker for the purposes of this Act, or (b) a child, of whom the worker and the person are the parents, has been born (whether or not the child is still living).	Not explicitly, however is included within the broader definition of a domestic partner (s5D, Schedule 1).	s3: dependant, in relation to a deceased worker, means a relative of the worker who, at the time of the worker's death: a) was wholly or partially dependent for the ordinary necessities of life on earnings of the worker, or b) would, but for the worker's disability, have been so dependent, and includes a posthumous child of the worker, and dependent has a corresponding meaning;
Tasmania	s67: dependant spouse or dependant caring partner Dependent child	s3: "caring partner", in relation to a person, means: a) the person who is in a caring relationship with that person which is the subject of a deed of relationship registered under Part 2 of the Relationships Act 2003, or b) the person who was, at the time of the death of the first-mentioned person, in a caring relationship with that person which was the subject of a deed of relationship registered under Part 2 of the Relationships Act 2003.	Yes, included in s67 as a result of the definitions of spouse and caring partner.	s3: "dependants" means such members of the family of the worker in relation to whom the term is used as: a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death, or b) would have been so dependent but for the incapacity due to the injury.

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		S65: "dependent caring partner" means a caring partner who is a dependant s3: "spouse" includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the Relationships Act 2003. S65: "dependent spouse" means a spouse who is a dependant. s65: "child" means a person who: (a) is under the age of 16 years, or (b) is 16 years or more, but less than 21 years and is a full time student. "dependent child" means a child who is a dependant.		s3: "member of the family", in relation to a worker, means: a) the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker, or b) a person to whom the worker stood in loco parentis.
Northern Territory	Dependant.	dependent, in relation to a worker, means: (a) a spouse or other member of the worker's family; (b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker; (c) a grandchild of the worker, • who was wholly or in part dependent on his or her earnings at the date of his or her death or who would but for the worker's incapacity due to the injury resulting in his or her death, have been so dependent.	No.	***Prescribed child*** means a child of the deceased worker, or child in relation to whom the deceased worker stood in loco parentis, and who: (a) has not attained the age of 16 years; or (b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped, other than such a child who is the spouse of another person. ***Family***, in relation to an Aboriginal or Torres Strait Islander, includes all persons who are members of the person's family according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which the person identifies.
Australian Capital Territory	s77(2): dependants	Dictionary: dependant, of a dead worker, means an individual: a) who was totally or partly dependent on the worker's earnings on the day of the worker's death or who would, apart from the worker's incapacity because of the injury, have been so dependent, and b) who was: (i) a member of the worker's family, or (ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.	Yes, the definition does not limit the meaning of dependant to a heterosexual relationship	Dictionary: - member of the family, in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother, half-sister, half-brother, domestic partner, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer. Note For the meaning of domestic partner, see s169 of the Legislation Act 2001. If a worker has died, the definition of domestic partner elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died. Dictionary : domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
				worker died.Note This definition qualifies the meaning of domestic partner given by s169 of the Legislation Act 2001
C'wealth Comcare	s17: dependants	s4: dependant, in relation to a deceased employee, means: a) the spouse, parent, step parent, father in law, mother in law, grandparent, child, stepchild, grandchild, sibling or half sibling of the employee, or b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee, being a person who was wholly or partly dependent on the employee at the date of the employee's death. s4: spouse includes: a) in relation to an employee or a deceased employee—a person who is, or immediately before the employee's death was, a de facto partner of the employee, and b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.	Yes. The Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law Reform) Act 2008 commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependent children from a wide range of Commonwealth laws including the SRC Act.	-
C'wealth Seacare	s29: dependants	s15(2): For the purposes of this Act, a person who, immediately before the date of an employee's death, lived with the employee and was: (a) the employee's spouse, or (b) a prescribed child of the employee, is taken to be a person who was wholly dependent on the employee at that date. s3: spouse includes: (a) in relation to an employee or a deceased employee—a person who is, or immediately before the employee's death was, a de facto partner of the employee, and (b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.	Yes. The Same Sex Relationships (Equal Treatment in Commonwealth Laws-General Law reform) Act 2008 commenced on and from 10 December 2008. It removed discrimination against same-sex couples, their dependants and their dependent children from a wide range of Commonwealth laws including the Seafarers Act.	-
C'wealth DVA	ss233, 251 and 262 - wholly dependent partner, dependent eligible young person, other dependant	s15: dependant means - persons in the following list who are partly or wholly economically dependent on the member (deemed for partners and eligible young persons if living with member, s17): *member's partner *member's father, mother, step-father or step-mother *the father, mother, step-father or step-mother of the member's partner *the member's grandfather or grandmother	Yes, see definition of partner - MRCA s5.	-

	Who is entitled to death benefits	Definitions	Reference to same sex relationships	Other relevant information
		*the member's son, daughter, step-son or step-daughter *the son, daughter, step-son, step-daughter of the member's partner *the member's grandson or grand-daughter *the member's brother, sister, half-brother, or half-sister *a person in respect of whom the member stands in the position of a parent, or *a person who stands in the position of a parent to the member. s5: partner of a member means a person in respect of whom at least one of the following applies: (a) if the member is a member of the Aboriginal race of Australia or a descendant of Indigenous inhabitants of the Torres Strait Islands-the person is recognised as the member's husband or wife by the custom prevailing in the tribe or group to which the member belongs (b) the person is legally married to the member (ba) a relationship between the person and the member (whether the person and the member are the same sex or different sexes) is registered under a law of a State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act 1901 as a kind of relationship prescribed for the purposes of that section (c) the person (whether of the same sex or a different sex to the member): (i) is, in the Commission's opinion (see subsection (2)), in a de facto relationship with the member, and (ii) is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member (see subsection (3)).		
New Zealand	s69(e): spouse of partner, children and other dependants.	s18: spouse (in relation to deceased claimant) means a person (person A) to whom the claimant is legally married. However, person A is not the spouse of a claimant if: a) Person A and the claimant are living apart, and b)The claimant is not contributing financially to person A's welfare. s18(a): partner means a person (person A) with whom the claimant is in a civil union or a de facto relationship. However, person A is not the partner of a claimant if: (a) Person A and the claimant are living apart, and (b) The claimant is not contributing financially to person A's welfare.	No specific reference, however de facto partner is not defined, and civil unions in New Zealand are recognised in New Zealand for same sex couples.	-

Table 4.6: Common law provisions

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
New South Wales	Yes (limited) (known as Work Injury Damages "WID"). Dust disease sufferers can pursue common law damages against an employer, occupier and/or supplier in accordance with the Dust Diseases Tribunal Act 1987 and also continue to receive their statutory benefits under the Workers' Compensation (Dust Diseases) Act 1942.	•Damages are paid as one lump sum to cover past and future economic loss of earnings only. •The amount of weekly benefits already paid must be repaid out of the money awarded. •Damages can be reduced if the worker's own negligence contributed to the injury – 1987 Act, Part 5, Division 3.	To be eligible to make a claim for work injury damages, three criteria must be met: 1.the work injury is a result of the negligence of the employer 2.the worker must have at least a 15% whole person impairment 3.claims for lump sum compensation for permanent impairment and pain and suffering must be made prior to or at the same time as the work injury damages claim, and must be settled prior to a WID claim being finalised. A WID claim cannot be started for at least six months after the worker gave notice of the injury to the employer, or not more than three years after the date of injury – 1987 Act, Part 5, Division 3.	No. If a common law claim is not successful, the worker will continue to receive workers' compensation under the statutory scheme.	No.
Victoria	Yes (limited), Access to common law is for workers injured on or after 20 October 1999.	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. If pain and suffering damages are awarded the amount must be reduced by any lump sum impairment benefit paid – s134AB(36).	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: 1. During the impairment assessment process, be assessed as having a whole person impairment of 30% or more (can combine physical and mental impairments), or 2. WorkSafe or the County Court determines that the worker has a 'serious injury' pursuant to the narrative test - Accident Compensation Act 1985, s134AB. 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 WorkSafe before they can proceed to the next step. 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. A worker can have a 'serious injury' that entitles them to pursue pain and suffering damages only and/or economic loss	-	Damages for pain and suffering must not be awarded if the amount is less than $51 990 – s134AB(22)(b)(i). Maximum amount for pain and suffering damages is $527 610 – s134AB(22)(b)(ii). Damages for economic loss must not be awarded if the amount is less than $53 820 – s134AB(22)(a)(i). Maximum amount for economic loss damages is $1 211 860 – s134AB(22)(a)(ii).

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
			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.		
Queensland	Yes.	General damages based on ISV scale (s306O) Cap on economic loss at 3 times QOTE (s306I) No damages available for gratuitous services.	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).	Yes	General damages (pain and suffering) capped at $302,850. Loss of earnings capped at 3 times QOTE ($3789.60) per week for each week of the period of loss of earnings
Western Australia	Yes (limited).	Damages available for both economic and non-economic loss.	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. Causes of action that occurred before 14 November 2004 are dealt with under the old previous law regimes – Part IV, Subdivision 2, s93D & s93E.	-	Where a worker has a WPI of less than 25% the maximum amount of damages that may be awarded is $400,475 (indexed annually) – s93K. Unlimited common law is available to a worker with a WPI of greater than 25%.
South Australia	No	N/A	N/A	N/A	N/A
Tasmania	Yes (limited).	Damages available for both economic and non-economic loss.	A worker must suffer at least 20% WPI before he or she can commence proceedings for an award of damages or make an agreement to settle a claim for damages. Note – loss of foetus deemed to be 20%WPI. (sections 138AB and 71(3)).	N/A.	Unlimited (provided 20% WPI threshold met).
Northern Territory	No.	N/A	N/A.	N/A.	N/A.
Australian Capital Territory	Yes	Unlimited	Nil.	No. Benefits cease on settlement or outcome in favour of the worker. Benefits received prior to settlement are deducted from the damages settlement to avoid the worker receiving double compensation for the same loss	Unlimited, outside of workers' compensation scheme.
C'wealth	Yes (limited).	Employee is restricted to damages	To have access to common law the	Yes.	Damages shall not exceed

	Access to common law against employer?	Types of damages	Statutory threshold(s)	Is election of common law irrevocable?	Cap on damages?
Comcare		for non-economic loss. A dependant of an employee who has died as a result of injury can take economic and non-economic damages action.	employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act – SRC Act, s45.	Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under section 45 of the Act. No statutory permanent impairment (s24) or non-economic loss (s27) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	$110 000. This amount is not indexed
C'wealth Seacare	Yes (limited).	Damages for non-economic loss.	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act - Seafarers Act, s55.	Yes. Employees are able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under section 55 of the Act. No statutory permanent impairment (s39) or non-economic loss (s41) benefits are payable after the date of such an election. However, a damages award does not affect other entitlements, such as weekly benefits, medical costs etc.	Damages shall not exceed $110 000. This amount is not indexed
C'wealth DVA	Yes (limited).	Damages for non-economic loss.	To have access to common law the employee must have a successful permanent impairment claim i.e. a benefit payable under the relevant Commonwealth Act - s389 MRC Act.	Yes. Able to make an irrevocable election to institute an action or proceedings for damages for non-economic loss under section 389 of the MRCA. No statutory permanent impairment benefits are payable after the date of such an election.	Damages shall not exceed $110 000. This amount is not indexed.
New Zealand	People do not have the right to sue for personal injury, except for exemplary damages.	These damages are punitive, and aimed at punishing the conduct of the offender. They are not intended to compensate for the injury.	No threshold.	-	N/A

Table 4.7: Suspension and cessation of benefits

	Criteria for suspension of compensation payments
New South Wales	•If a person recovers damages in respect of an injury from the employer liable to pay compensation under this Act then (except to the extent that subsection (2), (3) or (4) covers the case): a.the person ceases to be entitled to any further compensation under this Act in respect of the injury concerned (including compensation claimed but not yet paid), and b.the amount of any weekly payments of compensation already paid in respect of the injury concerned is to be deducted from the damages (awarded or otherwise paid as a lump sum) and is to be paid to the person who paid the compensation, and c.the person ceases to be entitled to participate in any injury management program provided for under this Act or the 1998 Act – 1987 Act, s151A. •The insurer may discontinue weekly payments of compensation if the worker fails to provide medical certification of the worker's incapacity or to provide permission for the insurer to obtain information relevant to the injury from medical or rehabilitation service providers – 1998 Act, s270. •As part of a commutation agreement, a worker may agree that payment of a lump sum removes any liability to make a payment under Division 4 of Part 3 (or section 16 of the former Act) in respect of the injury concerned. This Division applies to the agreement for payment of that lump sum as if it were an agreement to commute the liability to pay that compensation to a lump sum. Payment of the lump sum removes any liability to which the agreement of the worker relates – 1987 Act, s87F(8). •If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination: a.the worker's right to recover compensation under this Act with respect to the injury, or b.the worker's right to the weekly payments, is suspended until the examination has taken place – 1998 Act, s119. •If a worker has been receiving weekly payments for partial incapacity for more than two years, these payments can be discontinued if the worker: a.is not suitably employed and is not seeking suitable employment or participating in rehabilitation/retraining, or b.is not suitably employed and has previously unreasonably rejected suitable employment, or c.has sought but has failed to obtain suitable employment primarily because of the labour market – 1987 Act, s52A. •Worker ceases to reside in Australia unless an approved medical specialist certifies, or the Workers Compensation Commission determines, that the incapacity is likely to be permanent – 1987 Act, s53. Under the Workers Compensation (Dust Diseases) Act 1942 benefits cease upon the worker's death or re entering full time employment.
Victoria	A worker's entitlement to compensation and access to court proceedings may be suspended if the worker unreasonably refuses to have a medical examination or unreasonably obstructs a medical examination until the examination takes place and weekly payments may be forfeited for the suspension period - s112.
Queensland	Insurer may suspend compensation if worker: • 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. If compensation payments are suspended, no compensation is payable for the period of suspension – s138.
Western Australia	Suspension of payments during custody – s72. Suspension or cessation of payments for failure to undergo medical examination - s72A. Suspension or cessation of payments for failure to participate in return to work program – s72B. If the employer satisfies an arbitrator that there is a genuine dispute as to liability to pay compensation or as to the proper amount of such weekly payments, and in either case of the grounds of the dispute, the arbitrator may order that the payments be suspended for such time as the arbitrator directs or be discontinued or be reduced to such amount as the arbitrator thinks proper or the arbitrator may dismiss the application. –s60 (2) An Arbitrator also has powers to suspend weekly payments under –s62 (2). In the event that compensation is suspended, no compensation is payable during the suspension period – s63. A conciliation officer may direct that weekly payments of compensation are to be suspended or reduced if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in the payments being suspended or reduced s182L

Criteria for suspension of compensation payments	
South Australia	Discontinued if dismissed from employment for serious and wilful misconduct – s36(1)(e). Discontinued for break of mutuality – s36(1)(f), including: • Failure to submit to a medical examination where required by notice – s36(1a)(a). • Failure to supply a medical certificate where required by notice – s36(1a)(b). • Refusal or failure to submit to proper medical treatment - s36(1a)(c). • Refusal or failure to participate in a rehabilitation program or frustrates the objectives of the program - s36(1a)(d). • Failure to comply with obligation under rehabilitation or return to work plan - s36(1a)(e). • Refusal or failure to undertake work offered and capable of doing or to take reasonable steps to find or obtain employment or unreasonably discontinuing the employment - s36(1a)(f). • Refusal or failure to participate in assessments of worker's capacity, rehabilitation progress or future employment prospects - s36(1a)(fa). • Anything else recognised as a breach of the obligation of mutuality - s36(1a)(g). Workers rights to weekly payments may be suspended by the Corporation until the examination has taken place in accordance with the requirements of the Medical Panel – s98G(5). Suspended whilst a worker is in prison – s116. 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. Suspended during absence of a worker from Australia – s41(3).
Tasmania	A worker's entitlement to compensation may be suspended if the worker unreasonably refuses to submit to a medical examination or undertake any treatment (with the exception of surgical treatment) s90C. An employer may, subject to certain conditions such as providing written notice, terminate or reduce weekly payments where: (a) The payment is in respect of total incapacity and the worker has returned to work (b) The worker is in receipt of the weekly payment in respect of partial incapacity and is receiving weekly earnings in excess of the amount upon which the amount of such weekly payment was determined (c) An accredited medical practitioner who has examined the worker has certified that in his/her opinion the worker has wholly or substantially recovered from the effects of the injury or that the worker's incapacity is no longer wholly or substantially due to that injury; or (d) A worker's entitlement to weekly payments has expired as provided by section 69B(2E). (s86(1)) If a worker does not comply with the requirements of a return to work plan or injury management plan, the matter can be referred to the Tribunal which has the power to suspend compensation (sections 143E(7), 143Q(7)) A worker ceases to be entitled to weekly compensation whilst serving a term of imprisonment - s82.
Northern Territory	Where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training or a workplace based return to work program which could enable him or her to undertake more profitable employment, he or she shall be deemed to be able to undertake such employment and his or her compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly. Where a worker so required under subsection (1) unreasonably refuses to present himself or herself for assessment of his or her employment prospects, he or she shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his or her experience and skill and who has sustained a similar injury and is in similar circumstances, having regard to the matters referred to in section 68, and his or her compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly. Subject to section 69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1), an employer may cancel or reduce the compensation payable to the worker under Subdivision B of Division 3 until the examination takes place. Imprisonment S.65A. Residing overseas when rehabilitation not complete S.65B. Failing to provide medical certificate. Worker is no longer incapacitated.
Australian Capital Territory	A worker's entitlement to compensation may be suspended under section 113 (compliance by workers), section 44 (living outside Australia) or section 83 (no compensation while imprisoned) of the Workers Compensation Act 1951.
C'wealth Comcare	An employee's right to compensation is suspended for unreasonable refusal to: • undergo or obstruct a rehabilitation assessment examination (s36); • undertake a rehabilitation program (s37); • undergo or obstruct a medical examination (s57). An employee's right to compensation is suspended for failure to comply with any reasonable requirement of Comcare where Comcare takes over or initiates a 3rd Party recovery action (s50). Should an employee fail to comply with a notice to give information or a copy of a document (s58), Comcare may refuse to deal with the claim.

Criteria for suspension of compensation payments	
C'wealth Seacare	An employee's right to compensation is suspended for unreasonable refusal to undergo or obstructs a rehabilitation assessment (s49), to undertake a rehabilitation program (s50) or to undergo or obstructs a medical examination (s66). An employee's right to compensation is suspended for failure to comply with any reasonable requirement of the employer where the employer takes over or initiates a third party recovery action (s59).
C'wealth DVA	• failure to undertake a rehabilitation program where requirement to undertake one compensation (other than treatment) may be suspended for that period - s52. • suspension of incapacity payments for periods of imprisonment for conviction of an offence - s122. • failure to provide certain information may result in refusal to deal with claim - s330.
New Zealand	

Table 4.8 Incapacity benefits settlements

	Coverage
New South Wales	Yes, some restrictions. Refer Part 3 Division 9 of the 1987 Act.
Victoria	Yes, some restrictions – Division 3A of Part IV ACA.
Queensland	Yes, as calculated under s174 of the Act.
Western Australia	WorkCover WA Website: http://www.workcover.wa.gov.au/Workers/Settlements/Default.htm WorkCover Guidance Information on finalising your claim http://www.workcover.wa.gov.au/NR/rdonlyres/02B67E51-C595-4619-8096-E2431CC44DE4/0/Publication__Finalising_Your_Claim.pdf
South Australia	Yes, with significant restrictions.1 (1 - Legislative restrictions for a redemption of weekly payments apply. In addition the current position of the WorkCover Board is that there should be no redemptions. This policy only applies to the injured workers of registered employers.)
Tasmania	Yes, some restrictions.
Northern Territory	Yes for incapacity benefits, otherwise able to claim other benefits.
Australian Capital Territory	Yes under s 137. Settlement may include pay out of one or more of the following: • weekly incapacity benefits • lump sum compensation for permanent injuries • medical treatment, damage and other costs under pt 4.5 of the Act • any other amount – s 137(2). A payout of weekly compensation may not assigned, charged or attached, pass to anyone else by operation of the law or have a claim offset against it – s 138
C'wealth Comcare	Yes, some restrictions.
C'wealth Seacare	Yes, some restrictions.
C'wealth DVA	Yes, some restrictions - s138.
New Zealand	Yes.

Chapter 5: Return to work

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

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

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

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

This Section covers the following topics.

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

5.2 Responsibilities of employers in relation to return to work including:

- 5.2 a workplace rehabilitation/return to work programs or policies
- 5.2 b Injured worker return to work plans
- 5.2 c the provision of suitable duties, and
- 5.2 d other requirements of employers.

5.3 Responsibilities of workers in relation to return to work.

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

5.5 Responsibilities of the workers' compensation authorities or insurers.

5.6 Functions and training of workplace rehabilitation coordinators.

5.7 Rehabilitation providers, including:

- 5.7 a Responsibilities, and
- 5.7 b Qualifications and fee structure.

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

	Sections of the Act or regulations referring to return to work	Names and links to guidance material on return to work
New South Wales	Chapter 3 Workplace Injury Management 1998 Act. Part 6 2010 Regulation.	Return to work
Victoria	"Accident Compensation Act 1985 - Part VIIB (RTW) s99 Compensation for medical and like services s99A Commission or self-insurer may pay for rehabilitation services s189 - Purpose190 - Obligations of employers and workers s191 - Part does not derograte from other provisions in Act s192 - Definitions s101(1) - Employer to keep register of injuries s193 - Application of part Division 2 - Obligations of employers s194 - Provide employment s198 - Plan RTW s196 - Consult about RTW s197 - Nominate a RTW Coordinator s198 - Make RTW Information available s199 - Host to cooperate with labour hire employer Division 3 - Obligation for workers s200 Participate in planning for RTW s201 - Use occupational rehabilitation services s202 - Participate in assessments s203 - RTW s204 - Participate in an interview Division 4 - Termination of compensation s205 - Failure to comply with Division 3 s206 - Notification of RTW Division 5 - General Provisions s207 - Resolution of RTW issues s208 - Information about the employer obligation period s209 - Authority may be given s210 - Compliance Codes s211 - Effect of Compliance Code s212 Disallowance of certain compliance code orders s213 - Effect of compliance with compliance codes s213A - Functions of Authority in respect of compliance codes s214 - Provisions applying directions issued by the Minister s214A Disallowance of certain Ministerial Directions Division 6 - RTW Inspectorate Subdivision 1 - Appointment of Inspectors (s214B- 216) Subdivision 2 - Performance of functions or exercise of powers (s217-233) Subdivision 3 - Offences (s234-235)	LABOUR HIRE AND RETURN TO WORK - INFORMATION FOR EMPLOYERS (WSV1344/01/06.10) RETURN TO WORK COORDINATION THE BASICS YOU NEED TO KNOW (WSV1343/02/02.11) RETURN TO WORK INSPECTORS HELPING EMPLOYERS GET BACK TO WORK (WSV1342/02/02.11) RETURN TO WORK OBLIGATIONS INFORMATION FOR WORKERS (WSV1341/02/03.11) RETURNING TO WORK A GUIDE FOR INJURED WORKERS (WSV1153/03/02.11) STEPS TO RESOLVING RETURN TO WORK ISSUES (WSV1347/02/02.11) WHAT TO DO IF A WORKER IS INJURED A GUIDE FOR EMPLOYERS (WSV696/06/02.11) Return to work arrangements (FOR699/05/03.11) Suitable employment for injured workers - a step by step guide to assessing suitable employment options (FOR726/03/03.11) Information for employers - compliance codes (WSV 1425/01/ 03.11) Information for employers - Return to Work Coordinator fact sheet (WSV 1342/02/02.11) RTW Compliance codes 1 (WCC011/01/02.11) RTW Compliance codes 2 (WCC010/01/02.11) RTW Compliance codes 3 (WCC009/01/02.11) RTW Compliance codes 4 (WCC012/01/02.11) Employer Obligation fact sheet Original Employer Services - Information for workers New Employer Services - Information for workers WISE info sheet - workers WISE info sheet - employers RTW Ministerial Direction No 1 - Issue Resolution RTW Ministerial Direction No 2 - Informing workers of their employers obligation to provide employment Workplace Support Service Return to Work Inspector fact sheet

	Sections of the Act or regulations referring to return to work	Names and links to guidance material on return to work
	Subdivision 4 - Review of decisions (s236-236B) s242AA - Offence to engage in discriminatory conduct"	
Queensland	Act s220 Insurers responsibility for rehabilitation. S221 Authority's responsibility for rehabilitation s228 Employer's obiligation to assist or provide rehabilitation. Reg s101-110 Standard for rehabilitation	Q-COMP provides rehabilitation and return to work information in the Return to Work Zone It has also published the guide Helping you get the measure of workplace rehabilitation Information for workers is provided by Q-COMP in the Return to Work Assist pages: Information for health providers is provided by Q-COMP:
Western Australia	Workers' Compensation Code of Practice (Injury Management) 2005: cl1-9; Act: s3, s5(1), s64, s65, s72B, s84AA(1), s84AB, Part IX, Part IXA	Injury Management: A Guide for Employers Workers' Compensation Code of Practice (Injury Management) 2005 Workers' Compensation and Injury Management Important Information for Workers Specialised Retraining Workers' Compensation and Injury Management : Important Information for Employers What is a Return to Work Program? Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers WEBSITE INFO: Returning to work: main section Returning to work: obligations of the key parties List of approved workplace rehabilitation providers
South Australia	s26 - Rehabilitation Programs s27 - Clinics & Other Facilities s28 - Rehabilitation Advisors s28A - Rehabilitation & Return to Work Plans s28B - Review of Plan s28C - Rehabilitation standards and requirements s28D - Rehabilitation and return to work coordinators	Rehabilitation and Return to Work Coordinator Guidelines: Fact sheets are also available on the WorkCoverSA website:
Tasmania	Part XI of the Workers Rehabilitation and Compensation Act 1988 deals with injury management.	Return to Work and Injury Management Model Helping People Return to Work The Role of the Injury Management Coordinator The Role of the Return to Work Coordinator: Sample Return to Work Plan Guideline for preparing Return to Work Plans and Injury Management Plans The Role of the Primary Treating Medical Practitioner The Role of the Workplace Rehabilitation Provider Developing an Injury Management Program Licensed Insurers and Self-Insurers Tasmanian Additional Requirements to operate as a Workplace Rehabilitation Provider

	Sections of the Act or regulations referring to return to work	Names and links to guidance material on return to work
		Transitional arrangements for the accreditation of Workplace Rehabilitation Providers
Northern Territory	Employer must take all reasonable steps to provide injured worker with suitable employment. Worker must cooperate with reasonable return to work and treatment program s75A and 75B. Accredited Vocational Rehabilitation Providers S 50.	Employers Managing Rehabilitation Workers Getting Back to Work Alternative Employer Incentive Scheme Medical Practitioners Workers Compensation Guide Accredited Vocational Rehabilitation Providers
Australian Capital Territory	Chapter 5 of the Workers Compenation Act 1951	Chapter 5 of the Workers Compenation Act 1951
C'wealth Comcare	Safety, Rehabilitation and Compensation Act 1988 - sections 36-41A	Injury management Rehabilitation guidelines for employers (Pub 19)
C'wealth Seacare	Part 3 (sections 48-52)	A best practice guide Seafarers Rehabilitation and Return to Work Short version
C'wealth DVA	MRCA sections 37 to 64	Rehabilitation services in DVA
New Zealand	S70-113 Accident Compensation Act 2001	

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

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
New South Wales	Yes. S52 of the 1998 Act.	Yes. Refer Part 6 Workers Compensation Regulation 2010	Yes. Refer Clause 26 Workers Compensation Regulation 2010.	Yes. S52 of the 1998 Act.	Yes. Refer Clauses 21 and 22 Workers Compensation Regulation 2010.	Must cover the following key areas: • preventing occupational injuries and illness • how the return to work program was developed and implemented including relevant information and training strategies for the workforce • consulting with workers and any industrial unions representing those workers • early commencement of injury management and early return to work • providing suitable duties and/or vocational retraining/job placement assistance • returning to work not to disadvantage injured workers.	Guidelines for return to work programs Injury management and Return to work programs factsheet
Victoria	Yes - s194-198 - required to plan RTW for injured worker and consult on this; to have a RTW coordinator for duration of RTW obligations or at all times if has $2 000 000 rateable remuneration and to make RTW information available to all workers regardless of organisation size.	No. except in relation to RTW coordinator being required at all times or for duration of individual claim based on remuneration (s197)	No	Y - Employer must consult with workers as to how RTW information is to be made available.	Y - An employer must make the RTW information available to workers but the Act does not specify how, only that the workers must be consulted about how.	The RTW information that employers are required to make available to their workers should contain the following elements: (a) the obligations of the employer under the RTW part of the Accident Compensation Act 1985 and how the employer is meeting the obligations; and (b) the rights and obligations of workers under the RTW part of the Accident Compensation Act 1985 and how workers can obtain further information about the rights and obligations; and (c) the name and contact details of the authorised agent selected by the employer; and (d) the name and contact details of the return to work co-ordinator, if applicable; and (e) the procedure for resolving return to work issues as specified in section 207.	RTW Compliance Code 3 - Return to Work Information "Return to Work Information Template"

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
Queensland	Yes. An employer must have a Return To Work (workplace rehabilitation) policy and procedures if they meet the criteria specified under a regulation. They must also review the policy and procedures every 3 years (Act s227 and Reg s99D)	Yes, if the employer is in a high risk industry there is a lower wage threshold to meet the criteria for needing policy and procedures and a Rehabilitation and Return to Work Coordinator (Reg s99D)	Yes, employers in a high risk industry with delcared wages less than $1.981 milllion, and all other employers with declared wages of less than $6.507million, do not need a workplace rehabilitation policy and procedure (Reg s99D). (The threshold amount varies each year by movements in QOTE: Qld Ordinary Time Earnings).	No, there is no requirement for the policy and procedures to be developed in consultation with workers.	No	Workplace rehabilitation policies and proceedures accredited by Qcomp which outline: • employer commitment to assist injured workers to access necessary treatment and rehabilitation • Specific steps employer will take to achieve safe, timely and durable RTW	Employer obligations Workplace Rehabilitation Policy and Procedures: Workplace Rehabilitation Standards:
Western Australia	Yes.s155B and Workers' Compensation Code of Practice (Injury Management) 2005. Employers must establish and implement and Injury Management System System	No. s155B and Workers' Compensation Code of Practice (Injury Management) 2005	No. s155B and Workers' Compensation Code of Practice (Injury Management) 2005	No	Yes. Code: cl6	code: cl6 states that the document describing the injury management system has to include: (a) a description of the steps the employer will take when an injury occurs at the employer's workplace (b) details of the person who is have the day to day responsbility for the injury management systeM, and how to contact that person.	Workers' Compensation Code of Practice (Injury Management) 2005
South Australia	Rehabilitation Procedure is required for all employers who have 30 or more employees. Section 28D(5)(b) requires compliance with training or operational guidelines published by WorkCover, and item 3.1 of the Rehabilitation & RTW Coordinator Guidelines requires that a Rehabilitation Procedure is implemented.	No	Employers with less than 30 employees are not required to have a Rehabilitation Procedure	The Rehabilitation Procedure "must be signed off by a person who has the authority to commit the employer to the procedures" (item 3.1.1 of the Rehabilitation & RTW Coordinator Guidelines)	Item 3.1.2 of the Rehabilitation & RTW Coordinator Guidelines requires the procedure to be displayed in the workplace and made available to all workers	Must include process for early notification of injuries, contact details and functions and responsibilities of coordinators, rights and responsibiltiies of injured workers, roles and responsibilities of managers, supervisors and co-workers in the rehabilitation and RTW process.	Rehabilitation and RTW Coordinator Guidelines Fact sheets are also available on the WorkCover website

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
Tasmania	Yes. Insurers and employers are required to ensure that there is an approved Injury Management Program in place in respect of each employer and to comply with it (Section 142). The process for development and approval of Injury Management Programs is in section 143.	No	No	Section 142(1) The WorkCover Tasmania Board can issue Guidelines setting out the matters to be included in an Injury Management Program The Guidelines state that an Injury Management Program should be developed in consultation with all parties.	The Guidelines indicate that an Injury Management Program should be readily available in the employer's workplace where the workers can readily refer to it.	Injury Management Program should include: an injury management policy including statement of commitment and objectives, statement of roles and responsibilities of all parties, procedures in relation to information and communication management, Insurer procedures for managing the roles of Injury Management Coordinator, workplace rehabilitation provider and return to work coordinator, mechanisms to facilitate early reporting and intervention and procedures relating to medical management.	Guidelines for developing an Injury Management Program
Northern Territory	Not legislated	Not legislated	Not legislated	Not legislated	Not legislated	Not legislated	Not legislated
Australian Capital Territory	yes. S109 Workers Compensation Act 1951	No	No	The RTW program must be developed in consultation with: workers to whom it relates, unions representing the workers and approved rehabilitation provide. S109 Workers Compensation Act 1951	YES S109 (2)	s 109(3) provides that the RTW program must provide polices and procedures for rehabilitation and be consistent with insurer's injury management program, be established in accorance with any guidelines issued by the Minister	Workers Compensation Act 1951
C'wealth Comcare	Yes. Subsection 41A(2) of the Safety, Rehabilitation and Compensation Act 1988 requires rehabilitation authorities to comply with any guidelines issued under subsection 41(1). Those guidelines state: "4. Employers should have in place a rehabilitation policy"	No	No	Yes. Guidelines for Employers state that the rehabilitation policy should be developed in consultation with employees.	Yes. The rehabilitation policy should be communicated throughout the organisation and accessible to all employees.	The rehabilitation policy should: (a) aim to achieve safe maintenance at work or timely RTW of injured employees through early appropriate intervention (b) commit organisation to providing suitable duties in order to maintain the employee at work or enable early RTW (c) responsibilities of managers in relation to rehabilitation programs and provision of suitable duties (d) rights and responsibilities of	Rehabilitation guides for employers

	Employers required to have a return to work program or policies?	Do requirements differ for different categories of employers?	Exemptions from return to work programs	Requirements for development of programs/ policies (e.g. in consultation with workers)	Requirements for display and availability to workers	Return to work program should include	Further information
						employees in rehabilitation programs (e) outline assistance available to help injured employee to remain at or RTW (f) provide for ongoing communication with employee while absent so connection with the workplace can be maintained (g) provide for cost of workplace injury to be monitored and rehabilitation program effectiveness to be evaluated (h) describe the service delivery requirements of approved rehabilitation program providers (i) provide for evaluation of the policy's implementation and its update so it remains effective and achieves aims.	
C'wealth Seacare	No	N/A	No	In consultation with the employee, employer, rehabilitation provider and medical practitioner	N/A		A best practice guide: Seafarers Rehabilitation and Return to Work
C'wealth DVA	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New Zealand	N/A	No	No	N/A	No	N/A	N/A

Table 5.2b: Return to work plans - Individual return to work plans

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
New South Wales	Insurer. S45 of the 1998 Act	If worker sustains significant injury i.e. workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both. Refer s45 1998 Act.	The injury management plan outlines services required to return the injured worker to the workplace. Includes details about the worker and employer, the injury, the rehabilitation goal, and the actions required by the worker, employer, nominated treating doctor, rehabilitation provider, and insurance company.	Guidelines for return to work programs	If injury is a significant injury then insurer must establish an injury management plan.
Victoria	Employer - s194 (provide employment) & s195 (plan RTW)	Employer must plan a worker's RTW from the date on which the employer knows or ought reasonably to have known of worker's incapacity, whichever is the earlier date. S194 defines this start date as the earliest of the following dates: • the date the employer receives the worker's medical certificate (issued in accordance with s105(1), or • the date the employer receives a claims for compensation from the worker in the form of weekly payments, or • the date the employer is notified by the authority that the worker has made a claim for compensation in the form of weekly payments, or • the date the employer is notified by the Authority that the worker has provided the Authority with a medical certificate issued in accordance with section 105(1).	Once suitable or pre-injury employment has been confirmed, employers must provide the worker with details of the return to work arrangements. The details of the return to work arrangements must be clear, accurate and up to date. Employers should include (but not limit themselves to including) details about: - the suitable employment being provided including modified or alternative duties that accommodate restrictions identified in medical information available such as Certificates of Capacity • commencement time and date • details of any tasks or duties the worker needs to avoid • the hours of work and the place of work • work breaks, rotations or exercise breaks • support, aids or modifications to the workplace to assist the worker's return to work • the Return to Work Coordinator contact details • details of the worker's supervisor or manager when returning to work, and • the review date (reviews may occur earlier than this date as appropriate). An employer must communicate the details of the return to work arrangements to the worker or other relevant parties in a way that is most appropriate for the worker and the other parties. Providing the worker with this information in writing is one way to comply, but it is not mandatory to do so. However, this may not always be adequate and other approaches may be required such as talking through the return to work arrangements with the worker.	RTW Compliance Code 1: Providing employment, planning and consulting about RTW	No

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
Queensland	(Act s220) The insurer, in consultation with worker, employer and treating medical professionals. (Reg s106A) An employer must develop a suitable duties program for a worker undertaking rehabilitation (as an element of the rehabilitation and return to work plan)	Reg s106 (1).A rehabilitation and RTW plan must be developed for all workers undertaking rehabilitation.	(Reg s106) The plan must contain clear and appropriate objectives with ways of achieving the objectives; details of rehabilitation needed to meet the objectives; the time frames for rehabilitation;review mechanisms and dates for review and progress to date.	Workplace Rehabilitation Standards	No
Western Australia	The Employer - Act: s155C; Code: cl7	s155C - As soon as praticable after • the treating doctor indicates the need for a return to work program; or • the worker's doctor signs a medical certificate to the effect that the worker has partial capacity for work or has total capacity but is unable to return to their pre-injury position for some reason	cl8(1)(a)-(d (a) Names of the injured worker and the employer, and any other details needed to identify them; (b) Description of the goal of the program (c) List of the action to be taken to enable RTW, identifying who has to take each action; and (d) A statement as to whether the worker agrees with the content of the program.	Injury Management: A Guide for Employers	No. A RTW program is an individualised program. An Injury Management System is developed by the employer for all workers describing the steps to be taken if an injury occurs
South Australia	The Corporation has the responsibility under Section 28A of the Act.	[section 28A(2)] An Injury Management Plan is not required under the South Australian Workers Rehabilitation & Compensation Act. A RTW Plan is required when a worker; "(a) is receiving compensation by way of income maintenance; and (b) is (or likely to be) incapacitated for work by a compensable disability for more than 13 weeks (but has some prospect of returning to work)"	Regulation 2010, number 23 defines the standards & requirements of RRTW Plans: The plan must specify: worker name, DOB, claim number, employer name, nature of disability, DOI. As its objectives: a RTW at the earliest practicable time to suitable employment. RTW aligned to pre injury employer or new employer. Suitable employment to be specified on the RRTW plan. The RRTW plan must specify action the worker and pre injury employer/workplace must undertake to achieve plan objectives eg training, workplace modifications. Other inclusions are: rehabilitation services provided to worker, commencement and completion period, review times and the prescribed "Important Notice to Employers" and "Important Notice to Workers".	Section 28C of the WRC Act & Workers Rehabilitation & Compensation Regulations 2010.	No. An Injury Management Plan is not required in South Australia
Tasmania	The injury management coordinator (section 143E)	(section 143E) A RTW plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 5 working days but less than 28 days. An injury management plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days.	• contact details for: the worker, worker's supervisor or RTW coordinator, the primary treating medical practitioner; and the injury management coordinator. • details of the worker's employment, medical assessment, capacity to work, any current RTW or injury management plan that the worker has been participating in, medical management, barriers or impediments to RTW; suitable duties identified and available, RTW /injury	Guideline for Preparing Return to Work Plans and Injury Management Plans (G-020) Return to Work Plan/Injury Management Plan - Sample	(section 143E) Yes. An injury management plan is required if the worker is, or is likely to be, totally or partially incapacitated for work for more than 28 days.

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
			management goals, strategies for achieving goals and agreement to comply with the plan from the worker and employer.		
Northern Territory	Not Legislated	Not Legislated	Not Legislated	Not Legislated	Not Legislated
Australian Capital Territory	The insurer carries the primary responsiblity under s97 Workers Compensation Act 1951.	s97 Workers Compensation Act 1951 - all significant compensable injuires (incapacity for seven days or more) must have an personal injury plan. If the worker is not back at work in pre-injury duties at pre-injury hours by 4 weeks post injury notification a rehabilitation provider must be appointed. (s99A Workers Compensation Act 1951)	The plan is for the coordinating and managing the aspects of injury management that relate to medical treatment and rehabilitation services for the worker to achieve a timely, safe and durable RTW for the worker. The content of the plan is not prescribed.	Workers Compensation Act 1951	The RTW plan and the injury management plan are integrated into the personal injury plan.
C'wealth Comcare	The employer (defined in section 4 as the rehabilitation authority) - subsection 37(1)	• The guidelines (8a) recommend that a rehab assessment to dertermine the need for a rehab program be arranged for any expected absence from work greater than 10 days or for a severe injury. • When a rehabilitation authoritymakes a dertermination that an employee should undertake a rehabilitation program - subssection 37(1) .	• The Guidelines require a return to work plan to be individualised, outcome-based and set out the steps to be followed in achieving the return to work Rehabilitation Guidelines, 10b.	Rehabilitation Guidelines for Employers	No
C'wealth Seacare	the employer - s50(1)	s49 (1) If the injury lasts, or is expected to last 28 days or more	• where practical, suitable employment • an outline of steps by the employer or on the employers behalf • a start and review date	A best practice guide: Seafarers Rehabilitation and Return to Work	No
C'wealth DVA	(s.39) The rehabilitation authority who at a time is: (a) the person's service chief for a time when the person: (i) is a Permanent Forces member or a continuous full-time Reservist; and (ii) has not been identified by or on behalf of the person's service chief as being likely to be discharged from the Defence Force for medical reasons; or (b) the MRCC for any other time.	(s.51) Rehabilitation Authority may determine that the person is to undertake a rehabilitation program if an assessment has been made of the person's capacity for rehabilitation	(s.5) A program that consists of or includes any one or more of the following: (a) medical, dental, psychiatric and hospital services; (b) physical training and exercise; (c) physiotherapy; (d) occupational therapy; (e) vocational assessment and rehabilitation; (f) counselling; (g) psycho-social training. (s.5) Vocational assessment and rehabilitation consists of or includes any one or more of the following: (a) assessment of transferable skills;	Rehabilitation services in DVA	No

	Responsibility for ensuring that a return to work plan is in place	When is a return to work plan or injury management required?	Contents of the plan	Further information	Requirement to have a separate injury management plan
			(b) functional capacity assessment; (c) workplace assessment; (d) vocational counselling and training; (e) review of medical factors; (f) training in resume preparation, job-seeker skills and job placement; (g) provision of workplace aids and equipment.		
New Zealand	The Injured Employee-s70 Claimant's and Corporation's obligations in relation to rehabilitation A claimant who has suffered personal injury for which they have cover- (a) is entitled to be provided with rehabilitation, to the extent provided by this Act, to assist in restoring health, independence, and participation to the maximum extent practicable; but (b) is responsible for their own rehabilitation to the extent practicable having regard to the consequences of their injury.	(s86) After an assessment has been done and the corporation decides that it is reasonably practicable to return the injured employee to the same employment in which they were engaged.	Various forms of Rehabilitation based on type of injury, severity, duties normally performed.	-	-

Table 5.2c: Suitable duties

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
New South Wales	Suitable duties are short-term work duties, agreed between the employer and the injured worker to assist the injured worker's rehabilitation. Refer s43A of the 1987 Act	No	Yes - 2 years. S247 of the 1987 Act.	Yes. S248 (3) of the 1987 Act.	No
Victoria	Suitable employment means work that is suited to the worker's current abilities taking into account their capacity for work and, amongst other things, their medical condition, age, skills, work experience, place of residence and pre-injury employment Pre-injury employment means employment that is the same as, or equivalent to, the job that a worker was employed in before they sustained their injury or illness (see definitions in s5(1) and s192).	52 weeks of the worker's incapacity	52 weeks of the worker's incapacity. For the duration of the employment obligation period the employer has to provide suitable employment if the worker has a current work capacity and pre-injury if the worker no longer has an incapacity for work.	Yes s193.	No
Queensland	(Act s42) Suitable duties are work duties for which the worker is suited, having regard to (a) nature of the worker's incapacity and pre-injury employment; (b) relevant medical information; (c) rehabilitation and RTW plan for the worker; (d) provisions of the employer's workplace rehabilitation policy and procedures; (e) worker's age, education, skills and work experience; (f) if duties are available at a location other than the location in which the worker was injured— whether it is reasonable to expect the worker to attend the other location; (g) any other relevant matters	No. The employer has an obligation to provide rehabilitation, which includes suitable duties, while the worker is receiving workers' compensation (Act s228). Weekly payments stop when the workers' incapacity stops, or after the worker has received compensation for 5 years, or when the maximum compensation payment is reached (Act s144).	Yes. The employer must hold the worker's former position open for 12 months (the employer must not dismiss the worker solely or mainly because the worker is not fit for employment in a position because of the injury within 12 months of the worker sustaining the injury) (Act s232).	No	No
Western Australia	Employer required to provide pre-injury position to injured worker if worker attains total or partial capacity within 12 months. If that job is no longer available, or worker can no longer perform, employer must offer a similar position for which worker is qualified, and capable of doing – s84AA(1). Employers are required to notify worker and WorkCover WA of any intention to dismiss the worker 28 days before the dismissal is due to take place – s84AB.	Previous position offered if reasonably practicable to do so.	Yes -12 months.	Yes, -if the employer proves that the worker was dismissed on the grounds of serious or wilful misconduct. s84AA(2)	Yes: s84AB
South Australia	Section 3 of the Act states; "suitable employment, in relation to a worker, means employment in work for	There is no time limit except under Section	No. The employer must continue to provide suitable employment unless	Section 58B(2) states the requirement to provide suitable employment does not apply in	The employer must provide at least 28 days

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
	which the worker is currently suited, whether or not the work is available, having regard to the following: (a) the nature of the worker's incapacity and previous employment; (b) the worker's age, education, skills and work experience; (c) the worker's place of residence; (d) medical information relating to the worker that is reasonably available, including in any medical certificate or report; (e) if any rehabilitation programs are being provided to or for the worker; (f) the worker's rehabilitation and RTW plan, if any;"	58B(2)(e) which limits responsibility for providing suitable employment if: "the employer currently employs <10 employees, and the period that has elapsed since the worker became incapacitated for work is > 1 year."	exempted under Section 58B(2).	the following circumstances; (a) it is not reasonably practicable to provide employment in accordance with that subsection; or (b) the worker left the employment of that employer before the commencement of the incapacity for work; or (c) the worker terminated the employment after the commencement of the incapacity for work; or (e) the employer currently employs less than 10 employees, and the period since worker became incapacitated for work is more than 1 year.	notice to the Corporation of the intention to terminate a worker under Section 58C(1)
Tasmania	Suitable alternative duties, in relation to a worker, are those duties for which the worker is suited, having regard to the following: nature of the worker's incapacity and pre-injury employment; worker's age, education, skills and work experience; worker's place of residence; any suitable duties for which worker has received rehabilitation training; and any other relevant circumstances. Suitable alternative duties specifically exclude duties that are merely of a token nature or do not involve useful work having regard to the employer's trade or business; or duties that are demeaning in nature having regard to the worker's incapacity, pre-injury employment, age, education, skills and work experience and to the worker's other employment prospects. (section 143M(5)).	No	Yes - for a period of 12 months commencing on the day on which the worker becomes totally or partially incapacitated by a workplace injury. (section 143L(1)).	Yes. The employer does not have to hold the worker's position open if: there is medical evidence indicating that it is highly improbable that the worker will be able to perform the employment in respect of which the worker was engaged immediately before becoming incapacitated; or the work for which the worker was employed is no longer required to be performed. (section 143L(2)).	No
Northern Territory	S 68 Assessment of most profitable employment. In assessing what is the most profitable employment available to a worker for the purposes of section 65 or reasonably possible for a worker for the purposes of section 75B(3), regard shall be had to: (a) his or her age; (b) his or her experience, training & other existing skills; (c) his or her potential for rehabilitation training; (d) his or her language skills; (e) in respect of the period referred to in section 65(2)(b)(i)—the potential availability of such employment; (f) the impairments suffered by the worker; and (g) any other relevant factor.	No.	No for both, but must take all reasonable steps to provide suitable employment.	Not Legislated	Not Legislated
Australian Capital Territory	Suitable duties is not defined.	s 105 within 6 months after the day the worker became entitled to	The employer has an obligation to provide duties for up to six months (s105 Workers Compensation Act 1951)	The employer does not have an obligation to provide duties if (s106(4) Workers Compensation Act 1951):	Insurer must notify Minister prior to ceasing compensation payment

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
		weekly compensation.		worker leaves voluntarily after the injury; • employer ends worker's employment after the injury for a reason other than because the worker was not fit for employment because of the injury; • the employer is a non business employer; • the employer cannot provide suitable employment.	for non-compliance with personal injury plan (s113 Workers Compensation Act 1951). Employer should notify insurer prior to dismissing worker. Employers can be penalised for failure to provide suitable employment (s106 Workers Compensation Act 1951)
C'wealth Comcare	Suitable employment, in relation to an employee who has suffered an injury in respect of which compensation is payable under this Act, means: (a) in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed—employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to: (i) the employee's age, experience, training, language and other skills; (ii) the employee's suitability for rehabilitation or vocational retraining; (iii) where employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and (iv) any other relevant matter; and (b) in any other case—any employment (including self employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv). -s4 of the SRC Act	The Guidelines state that the employer should develop a system that enables the early and safe return to work of their injured employees - Rehabilitation Guidelines, 12b.	Where an employee is undertaking, or has completed, a rehabilitation program, the relevant employer shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find suitable employment - subsection 40(1)	Where the employer, other than a self-insurer, considers it is not practicable to provide the employee with suitable employment, the employer should outline to Comcare that it has undertaken a proper process for evaluating options and that a decision has been made by a relevant senior manager that providing suitable employment is not practicable. - Rehabilitation Guidelines, 13	No, although employers who are premium paying agencies are required to consult Comcare before offering redundancy to current employees with a compensation claim - Operational Advice 99/013.
C'wealth Seacare	Any employment (including self-employment) for which the employee is suited having regard to: (a) employee's age, experience, training, language and other skills (b) employee's suitability for rehabilitation or vocational retraining (c) if the employment is available in a place that would require the employee to change his or her	Not specified	Not specified	No	No

	What constitutes suitable duties	Any time limits on the provision of suitable employment?	Does the employer have an obligation to hold the injured worker's former position open? For how long?	Exemptions	Requirement for the employer to notify the authority before dismissing the injured worker?
	place of residence-whether it is reasonable to expect the employee to change his or her place of residence; and (d) any other relevant matters.				
C'wealth DVA	Work for which the person is suited having regard to the following: (a) the person's age, experience, training, language and other skills; (b) the person's suitability for rehabilitation or vocational retraining; (c) if work is available in a place that would require the person to change his or her place of residence—whether it is reasonable to expect the person to change his or her place of residence; (d) any other relevant matter.	No	No	No	No
New Zealand	Providing the injured employee with a working environment in which they can perform duties that will not further injure or prohibit recovery of the original injury.	Must be in agreement with the Employee, work as a partnership toward full RTW.	No requirement for employers to keep a position open for an injured worker.	-	

Table 5.2d: Other requirements of employers

	Other requirements of employers
New South Wales	Obligation to participate in establishment of injury management plan s46 1998 Act. Employer to provide suitable duties s49 1998 Act. Category 1 employer must have return to work co-ordinator Cl 23 Reg 2010.
Victoria	s196 Consult about the RTW of a worker s197 Nominate a RTW Coordinator - must have sufficient seniority and be competent to perform the role s199 Host to cooperate with labour hire employer s207 Resolution of RTW issues
Queensland	Employers must appoint a Rehabilitation and Return to Work Coordinator if they meet the same wages threshold that applies for having a workplace rehabilitation policy and procedures. The Rehabilitation and Return to Work Coordinator must also be located in Queensland (Act s226).
Western Australia	No
South Australia	Section 28D requires an employer to appoint a Rehabilitation and RTW Coordinator if the employer has 30 or more employees. Section 28D(4) lists the functions and responsibilities of the coordinator which is further expanded in the Rehabilitation & RTW Coordinator Guidelines. Section 28A(3) requires the Corporation to consult with the employer or Rehabilitation & RTW Coordinator (if appointed) when preparing a RTW Plan. Section 28A(6) states the Return to Work Plan is binding on the employer. Section 58A of the Act states the employer must notify the Corporation when; " (a) a worker who has been receiving weekly payments for total incapacity returns to work; or (b) there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity; or (c) there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity."
Tasmania	S143a An employer must notify its insurer within 3 working days of becoming aware that one of the employer's workers has suffered a workplace injury that results in or is likely to result in the worker being totally or partially incapacitated for work; or is required to be reported under the employer's injury management program. section 143B(3) and (4) If the employer is a self-insurer and/or submitted it's own injury management program to the Board, the employer must appoint an injury management coordinator. Section 143D An employer who employs more than 50 workers must appoint a return to work coordinator and must assign workers with significant injuries to the return to work coordinator as soon as practicable. Section 143E(7) An employer must take all reasonable steps to comply with the requirements of a return to work plane or injury management plan. Section 143P(1) As soon as practicable after making a significant decision in relation to the injury management of a worker, the employer is to notify the worker of the decision and the reason/s for the decision
Northern Territory	If unable to provide suitable duties, the employer must refer injured worker to the Alternative Employer Incentive Scheme- S 75A(3).
Australian Capital Territory	No
C'wealth Comcare	36 Assessment of capability of undertaking rehabilitation program (1) Where an employee suffers an injury resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a rehabilitation program.

Other requirements of employers	
C'wealth Seacare	Employers must appoint an approved rehabilitation provider (s50(1))
C'wealth DVA	No
New Zealand	-

Table 5.3: Responsibilities of workers

	Responsibilities of the worker in relation to the return to work/ injury management plan	Obligations in relation to participating in medical treatment and/ or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
New South Wales	S47 1998 Act. Must participate and cooperate in the establishment of an injury management plan. Must comply with obligations under an injury management plan. Must nominate treating doctor. Must authorise treating doctor to provide information for the purposes of injury management.	S47 1998 Act. Must participate.	S119 1998 Act A worker who has given notice of an injury or receiving weekly payments of compensation, must if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.	s48 1998 Act. Must make all reasonable efforts to return to work	S57 1987 Act. If in receipt of weekly compensation, must notify of return to work or commencement of own business or any change in employment.	If a worker is fit for suitable duties and the employer cannot provide them the worker must: take reasonable steps to find suitable work with some other employer and if they find suitable work they must accept it or their workers compensation benefits will be stopped; be willing to accept work that is within their abilities and circumstances, or undertake rehabilitation and/or retraining needed to improve their chances of getting suitable work.
Victoria	Div 3 obligations of workers s200 - Participate in planning for RTW s203 - RTW s204 - Participate in an interview	s201 - Use occupational rehabilitation services	s202 - Participate in assessments.	s203 - Make reasonable efforts to RTW	s206	Failure to comply with Division 3
Queensland	(Act s231) The worker must participate in rehabilitation (including suitable duties programs), while they are entitled to compensation. The worker must also mitigate their loss (for the purposes of common law claims) by participating in rehabilitation, RTW program or suitable duties programs..	(Act s232) The worker must participate in rehabilitation while they are entitled to compensation. If they do not, the insurer may suspend the worker's compensation payments	(Act s135) An insurer may require a worker to be examined by a person registered to provide medical treatment. A worker's compensation may be suspended if they fail to attend or refuse examination. (Act s500) An insurer may also refer a matter relating to an injury to a Medical Assessment Tribunal for decision. A worker must attend a Medical Assessment Tribunal if requested by the insurer, and must submit to examination by the tribunal. (Act s510) If a worker does not attend or refuses to be examined, their compensation may be suspended. An insurer must request the examination in the way specified by Reg s88.	(Act s232) A worker must satisfactorily participate in rehabilitation and a worker must mitigate their loss by participating (Act s 231) in any RTW program or suitable duties	(Act s 136) A worker receiving compensation for an injury must notify the insurer within 10 business days of returning to work	

	Responsibilities of the worker in relation to the return to work/ injury management plan	Obligations in relation to participating in medical treatment and/ or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
Western Australia	• s72B participate in RTW program • To the best of ability carry out agreed actions as outlined in the RTW program • Immediately inform Injury Management Coordinator and manager of any difficulties carrying out the RTW program	WorkCover WA guidance notes that workers should: • s64 & 65 Attend medical examinations • Provide medical certificates in timely fashion • Attend medical and other treatment appointments arranged by treating doctor, or arranged by the employer • If referred to a workplace rehabilitation service, participate in all aspects of the service and work cooperatively with the service provider • Advise of any changes to treating doctor or other treatment providers WorkCover WA guidance			• s59 notify employer within 7 days if returning to employment .	• Communicate with parties in open and honest manner and reply to reasonable levels of communication • Advise of any changes in contact details
South Australia	Section 28A(4) the RTW Plan may impose obligations on worker.Section 28A(6) the RTW Plan is binding on worker. Section 36(1)(f) a worker's income maintenance can be discontinued if the worker 'breaches mutuality' Section 36(1a)(e) this includes if a worker fails to comply with an obligation under the Rehabilitation & RTW Plan.	Section 36(1a)(a) worker's income maintenance can be discontinued if worker fails to submit to an examination by a recognised medical expert nominated by the Corporation, and s36(1a)(c) refuses or fails to submit to proper medical treatment for the worker's condition. Section 36(1b) states a worker has not breached mutuality if they reasonably refuse surgery or the administration of a drug or if they chooses one form of treatment over another.	Section 36(1a)(a) worker may be discontinued if they fail to submit to an examination organised by the Corporation with a recognised medical expert nominated by the Corporation. Section 36(1)(fa) states a worker has breached mutuality if the worker fails to participate in assessments of the worker's capacity, rehabilitation progress or future employment prospects (including by failing to attend)	Section 36(1a)(e) worker may be discontinued if they fail to comply with an obligation under the Rehabilitation and RTW Plan Section 36(1a)(f) worker may be discontinued if they refuse to undertake work that has been offered that the worker is capable of performing or if they fail to take reasonable steps ot find or obtain suitable employment.	Not defined in the Act.	Section 51 - Upon injury the worker must give notice to the employer within 24 hours after the disability occurred or as soon as practicable. (Section 41) If the worker will be absent from Australia in excess of 28 days must notify the Corporation the prescribed details of the proposed absence at least 28 days before leaving.
Tasmania	section 143G(1) Worker to notify employer as soon as practicable after a workplace injury of the primary treating medical practitioner. Section 143E(7) and section 143N(1) worker is to take all reasonable steps to comply with requirements of the RTW plan or injury management plan and to	(section 143E(7)) Worker to take all reasonable steps to comply with requirements of the RTW or injury management plan. (section 90A(7)) If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment will terminate or shorten the period of incapacity, the worker must submit to treatment. (section 90C) If worker fails to submit to treatment (with the exception of surgical treatment) the worker's right to compensation and to take any proceedings	(sections 90A and 90C) In relation to medical reviews, a worker is to submit to an independent medical review at a reasonable time provided the worker has been given reasonable notice. If the worker objects to the review, he/she can refer it to the Tribunal for consideration	(section 143N(3)) If worker is unable to perform an action, they are to seek medical advice and if appropriate undergo treatment that may enable the action, and advise the employer and injury management coordinator of the worker's inability and of any medical advice or treatment sought or undergone . A worker who is assigned reduced hours. (section 143N(4)) in accordance with plan must take all	Not applicable	(section 143J) A worker must not wilfully fail to disclose to any treating medical practitioner any information that the worker knows or ought reasonably be expected to know is relevant to the diagnosis or treatment of the worker's workplace injury.

	Responsibilities of the worker in relation to the return to work/ injury management plan	Obligations in relation to participating in medical treatment and/ or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
	perform any actions that the worker is required to perform under the plan	under the Workers Rehabilitation and Compensation Act 1988 can be suspended		reasonable steps to ensure attending a medical practitioner does not interfere with worker's employment during those hours.		
Northern Territory	s75B RTW /Injury management plan not regulated but worker must cooperate with reasonable RTW process	S75B Worker must cooperate with reasonable medical, surgical and rehabilitation treatment and participate in rehabilitation training or a workplace based RTW program	s75B Must present at reasonable intervals for assessment of employment propects -	No obligation for worker to be proactive - obligation is on employer to provide or arrange. Worker must then cooperate.	s 90 Worker must notify employer if returns to work with another employer or circumstances change in a way likely to affect entitlement	N/A
Australian Capital Territory	s113 The worker must: • s101)participate in development of personal injury plan • s101 nominate treating doctor • s113 participate in vocational rehabilitation or a RTW program	s101(2) the injured worker must comply with reasonable obligations under the plan, including any obligation to recieve medical treatment or rehabilitation services.	• s113 attend assessments of the worker's employment prospects • s113 attend a medical assessment of the worker's injury	s 104 an injured worker must make all reasonable efforts to return to work with the workers pre-incapacity employer • s113 undertake suitable alternative duties provided • s113 take up an offer of suitable work for which worker is qualified and worker can perform.	No	No
C'wealth Comcare	Participate actively in any RTW program developed by case manager or approved provider. Implement any professionally recommended and agreed changes to work practices, workplace environment and/or home environment in consultation with employer to minimise the chance of further injuries or accidents (refer to RTW Plan form).	No legislative requirements	Employee shall cooperate in the assessment of the capacity to undertake a rehabilitation program • S36(3) employee shall undergo a required examination - • employee should cooperate and actively participate with case manager and/or rehabilitation provider in development of rehabilitation program • S36(4) all rights and proceedings under the act are suspended if an employee fails, without reasonable excuse, to undergo a rehabilitation examination	S19(4) Employee has a responsibility to actively seek suitable employment where that employee has a capacity to RTW	No legislative requirements	Rehabilitation Guidelines • find out about agency's rehabilitation policy • inform supervisor or case manager know if going to be away from work for an extended period due to a work related injury • talk to case manager about obligations and rights regarding rehabilitation • may need to undergo an assessment for rehabilitation

	Responsibilities of the worker in relation to the return to work/ injury management plan	Obligations in relation to participating in medical treatment and/ or rehabilitation	Obligations in relation to participating in assessment	Obligations in making efforts to return to work	Obligations in relation to notifying about a return to work	Other obligations
						• actively participate in the return to work program • talk to case manager or rehabilitation provider if there are any concerns about the return to work plan
C'wealth Seacare			(s49(3)) The employer may require the employee to undergo a examination in relation to an assessment. (s49(4)) If the employee does not attend, without reasonable excuse, or obstructs the examination, compensation can be suspended.	(s50(5)) If the employee, without reasonable excuse, does not undertake a rehabilitation program provided for them, compensation can be suspended		
C'wealth DVA	s.52 If rehabilitation authority requires person to undertake a rehabilitation programand person refuses or fails to undertake the program, authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment) is suspended until person undertakes the rehabilitation program.	as adjacent	s.50 If the rehabilitation authority requires the person to undergo an examination and the person: (a) refuses or fails to undergo the examination; or (b) in any way obstructs the examination; the authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment) is suspended until the examination takes place.	as adjacent	N/A	N/A
New Zealand	Yes-s72	Yes-s72	No	No		A Claimant who receives any entitlement must, when reasonably required to do so by the Corporation,: authorise the Corporation to obtain medical and other records that are or may be relevant to the claim:

Table 5.4: Injured worker placement incentives

	Name of scheme	Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
New South Wales	JobCover Placement Program	Yes - $27000 over a 52 week period	Yes - injured workers wages not included in wages for premium calculation purposes for 2 years	Yes - changes to the existing injury are managed against the original claim for a period of 2 years	Yes - no limit to amount - justify against the principles for finding of equipment and workplace modification	Yes - no limit to amount - justify against the principles of retraining	Yes - work experience with a host employer for up to 12 weeks	Vocational rehabilitation programs
Victoria	WISE	WISE is a 12 month financial incentive of up to $26,000 payable to employers who offer ongoing employment of 15 hours + to workers with an accepted WorkSafe claim who cannot RTW with their pre-injury employer.	Employers are offered WorkSafe Injury Insurance protection if the worker ceases work because of a new injury. Additionally, the cost of that claim is excluded from the employer's injury insurance premium calculation, though the employer is still liable to pay an excess of the first 10 days' of weekly payments and indexed medical expenses.	If a worker on a WISE placement has a further injury during their placement, the WISE employer's WorkSafe Agent will determine whether this is a new injury or part of the original claim. Where the decision is that the injury is a continuation of the original injury, then any weekly payments, medical and like expenses will be paid against the original employer's policy.	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances	Not part of WISE but may be provided to the worker as an occupational rehabilitation service based on the claim circumstances.	No	WISE Brochure - Employers WISE Brochure - Workers
Queensland	Host Placement, run by WorkCover Queensland.	WorkCover continues to pay the workers' compensation entitlements while they participate in the program.	Nil	Any injuries sustained during the host program are covered by Workcover Queensland and do not affect the host employer's premium. At the end of the program, any aggravation to existing injury is covered by WorkCover Queensland for 6 months following the commencement of employment.	Is considered on a case by case basis. Reasonable costs will be paid by WorkCover.	WorkCover will pay for training/additional skills required to secure employment with the host employer.	The work trial will run for 6 to 8 weeks.	Host Placement
Western Australia	N/A							

	Name of scheme	Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
South Australia	RISE (re-employment incentive scheme for employers).	Reimbursement of 40% of gross wages for up to 52 weeks of employment.	No	If the worker aggravates their existing pre-existing injury & it has been medically established that it is an aggravation, the cost of the claim will not be recorded against the RISE employer.	Cost associated with minor site modifications/equipment.	This is considered under a RTW plan to meet the RTW objectives and suitable employment goal.	As adjacent for training cost.	Workplace Rehabilitation Forms and Guidelines. Information about RISE.
Tasmania	N/A							
Northern Territory	Alternative Employer Incentive Scheme - s75A	Yes	N/A	12 months	Yes reasonable and necessary costs - s76	Yes reasonable and necessary costs - s76	Alternative Employer Incentive Scheme provides for 12 week work trial	Alternative Employer Incentive Scheme
Australian Capital Territory	Second Injury Scheme (S108 Workers Compensation Act 1951).The scheme provides for private arrangements between insurers and employers.	The legislation provides for a wage subsidy and indemnity from injuries. Commercial arrangements can be made between insurers and employers	Yes	Yes - private arrangement between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	Not expressly provided for but can be negotiated between insurers and employers.	No guidance material has been published.
C'wealth Comcare	The Comcare Scheme	No legislative requirements	No legislative requirements	Yes	Yes	Yes	Yes	Comcare
C'wealth Seacare	N/A							
C'wealth DVA	Vocational Rehabilitation Employer Incentives	Yes	No	Yes	Yes	Yes	Yes	Rehabilitation Manual Chapter 9.8

	Name of scheme	Includes wage/ salary subsidy?	Premium exemption	Second injury costs from aggravation or recurrence of existing injury	Funding for equipment used for workplace modifications	Training costs	Work trials	Further information
New Zealand	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Table 5.5: Responsibilities of authority/ insurer

	Responsibilities of authority/ insurer
New South Wales	The insurer must within three working days of being notified that a worker has sustained a significant injury, contact the employer, worker and (if necessary) the nominated treating doctor. Subsequently, the insurer must develop an injury management plan in line with timeframes in the insurer's injury management program. Consultant with the injured worker, employer and nominated treating doctor in the development of an injury management plan. Provide the injured worker, employer and nominated treating doctor with information on the injury management plan initially and as the plan progresses. Consult with the injured worker, employer and nominated treating doctor when referring to a workplace rehabilitation provider. Ensure vocational retraining and/or assistance to obtain employment with a new employer is arranged for an injured worker as soon as it is identified that a return to pre-injury duties and provision of suitable duties is no longer possible.
Victoria	Agents do not have RTW obligations under the Act, while employers and workers do. While Agents can assist employers and workers to meet their RTW obligations, such as RTW planning, they cannot meet these obligations on the organisation's or individuals behalf. For instance, in relation to meeting s195 (providing the worker with clear and accurate details of the RTW arrangements) Agents can assist employers in developing arrangements. This could in some instances involve assistance in the writing of RTW arrangements provided the employer has ownership of the arrangements. Ownership includes the employer agreeing with and understanding the details of the RTW arrangements and ensuring that the worker and other people such as the worker's supervisor are aware of the arrangements.
Queensland	(Act s220) Insurers are responsible for securing an injured worker's rehabilitation and early return to suitable duties. An insurer is also responsible for coordinating the development and maintenance of a rehabilitation and RTW in consultation with the injured worker, the employer and treating registered persons. s221 Authorities responsibility for rehabilitation – (1) The Authority must – (a) provide rehabilitation and return to work advisory services for workers, employers and insurers; and (b)ensure employers and insurers comply with their rehabilitation requirements under the Act. (2) If the worker consents, the Authority must refer a worker for whom a notice has been given under section 220 (4) (i.e. workers who are unable to return to work when the payment of weekly compensation stops) to programs that may help return the worker to work.
Western Australia	Insurers' Responsibilities s155D Injury management: insurers' obligations • To make employers aware of their obligations in relation to RTW programs and injury management systems. • If requested by the employer either: 1. assist the employer comply with their obligations in relation to RTW programs and injury management systems 2. discharge the employer's obligations on behalf of the employer. WorkCover WA Responsibilities s157 To provide Information about injury management matters WorkCover WA is to: • Provide information and advice on injury management generally. • Make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management. • Make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters. • Provide information on injury management or related matters to an arbitrator.
South Australia	

	Responsibilities of authority/ insurer
Tasmania	(section 142) An insurer must ensure that there is an injury management program in place in respect of each of its employers (note - the insurer can submit an injury management program to the Board for approval that applies to a group of employers or to all of its employers), must comply with each injury management program and must review any programs it has submitted to the Board every 12 months. (section 143B(1)) An insurer must appoint an injury management coordinator in respect of its employers. (section 143B(2)) As soon as practicable after becoming aware that a worker (employed by one of its employers) has suffered a significant injury, the insurer must assign that worker to the injury management coordinator. (section 143P(1)) As soon as practicable after making a significant decision in relation to the injury management of a worker, the insurer is to notify the worker of the decision and the reason/s for the decision..
Northern Territory	S 75A provides for responsibilities on employers and the return to work process. As the insurer has full rights of subrogation over the management of the claim, the responsibilities on the employer apply equally to the insurer.
Australian Capital Territory	s 88 establish and review plan every 2 years; copy of plan to Minister, insurer must ensure that each employer is aware of the employer's obligations
C'wealth Comcare	s41 Rehabilitation authorities (employer) to comply with guidelines.
C'wealth Seacare	
C'wealth DVA	See Rehabilitation Authority
New Zealand	N/A

Functions and Training of workplace rehabilitation coordinators

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

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

Developing a RTW plan in consultation with the injured worker and the employer,
Assisting with the planning and implementation of a RTW program,
Identifying suitable duties for the injured worker to enable RTW as soon as possible,
Managing the RTW process by liasing with treating doctors, rehabilitation providers and the employer, and
Monitoring the injured workers' progress towards successful RTW.

Jurisdictions that require the employment of a workplace rehabilitation coordinator can have specific training requirements. Most commonly, a short course is undertaken in order to gain a qualification as a workplace rehabilitation coordinator.

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

Table 5.6: Functions and training of workplace rehabilitation coordinators

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
New South Wales	**Clause 23 Workers Compensation Regulation 2010** Category 1 employers (see Appendix) must have RTW co-ordinator (1) A category 1 employer must: (a) employ a person to be a RTW co-ordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or (b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a RTW co-ordinator for injured workers of the employer. Maximum penalty: 20 penalty units. (2) The following are examples of the arrangements that the guidelines can permit for the purposes of this clause: (a) the engagement of a person under an arrangement with a person or organisation that provides RTW co-ordinators to employers, (b) an arrangement under which a person is engaged on a shared basis by 2 or more employers. (3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b). (4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be RTW co-ordinators under subclause (1) (b). **Clause 24 Workers Compensation Regulation 2010** **Functions of RTW co-ordinators** An employer's RTW co-ordinator has such functions as may be specified in the Guidelines. **Responsibilities** The responsibilities of RTW coordinators are outlined in WorkCover's Guidelines for workplace RTW programs. When Category 1 employers engage a RTW coordinator under shared arrangements, or under another type of work arrangement – eg. engaged a RTW coordinator through a labour hire company – it is essential that: • the employers have a common interest • the shared or outsourced arrangements provide improvements in the RTW services • workers are not disadvantaged • the RTW coordinator has appropriate qualifications and experience • WorkCover approval is obtained • the RTW program is reviewed every two years. There is no requirement for Category 2 employers to appoint a RTW coordinator, however, employer associations and unions may establish shared RTW coordinator positions to assist smaller employers to fulfil their obligations.	Guidelines for workplace RTW Programs The RTW coordinator must hold: • certificate certifying attendance at the WorkCover two-day course *Introduction to RTW coordination* or • certificate certifying attendance at a two-day WorkCover training course for rehabilitation coordinators conducted prior to February 1995 or • letter from Provider Services Branch agreeing to exempt the RTW coordinator from participating in above training. **Advanced RTW coordination** Advanced RTW coordination is a one-day course for experienced RTW coordinators. This is an interactive course with a focus on strategic case management and managing complex cases. **Trainers** Trainers of RTW coordination courses can be searched for on the WorkCover website by name and region. This facility specifies whether a trainer is registered to deliver both levels of training or just the introductory course. For information about availability of trainer services in a particular region, please contact the trainer direct. **Shared or engaged RTW coordinators** Shared/engaged RTW coordinators must have significant experience in workplace-based occupational rehabilitation, preferably as a RTW coordinator. It is also preferable that a shared RTW coordinator has tertiary qualifications. The shared/engaged RTW coordinator must have the skills and fulfil all the duties of a RTW coordinator as outlined in these guidelines, and have completed the WorkCover approved two-day course. **Training** Applications for registration as a trainer can be made to WorkCover's Provider Services Branch. The RTW coordinator must hold as stated above. Applications for exemption can be accessed on the WorkCover website.
Victoria	An employer's obligation to have a RTW Coordinator depends on their rateable remuneration: • An employer with a rateable remuneration of $2 million or more* must have a nominated RTW Coordinator appointed at all times. • An employer with a rateable remuneration of less than $2 million* must nominate and appoint a RTW Coordinator for the duration of the employer's RTW obligations to an injured worker. The Accident Compensation Act 1985 (the Act) requires that an employer must nominate and appoint a person to be a RTW Coordinator who has an appropriate level of seniority and is competent to assist the employer to meet the employer's obligations under Part VIIB of the Accident Compensation Act 1985. A person is competent to assist the employer to meet its obligations under Part VIIB of the Act if the person has knowledge, skills or experience relevant to planning for RTW, including: (a) knowledge of the obligations of employers and workers under Part VIIB of the Accident Compensation Act 1985 (b) knowledge of the compensation scheme provided for under the Acccident Compensation Act 1985 and the functions of WorkSafe and, if relevant, self-insurers under Part VIIB of the Acccident Compensation Act 1985. View WorkSafe's Return to Work Coordinator fact sheet	**RTW Coordinator Training** Completion of RTW Coordinator training is not mandated by WorkSafe. However, WorkSafe strongly encourages RTW Coordinators to complete the WorkSafe endorsed 2 day RTW Coordinator training course developed by WorkSafe in consultation with external stakeholders. Further information can be obtained at RTW Coordinator training calendar **Applying to become a provider of RTW Coordinator training** To become a provider of WorkSafe's endorsed RTW Coordinator training interested parties must complete a Provider Application for Approval to Conduct Role of a RTW Coordinator Training Program application form and satisfy the necessary requirements to gain approval **RTW Coordinator Register** RTW Coordinators registration on the RTW Coordinator Register is not mandated by WorkSafe. However, WorkSafe strongly encourages all RTW Coordinators to register on the RTW Coordinator Register in order to stay up to date with the latest RTW news, information and events, and in doing so build upon and maintain their competence as a coordinator.

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
	and the publication Return to Work Coordination - The basics you need to know for more detailed information.	
Queensland	**s41 Meaning of rehabilitation and RTW coordinator** A rehabilitation and RTW coordinator is a person who: (a) has met the criteria for becoming a rehabilitation and RTW coordinator prescribed under a regulation; and (b) has the functions prescribed under a regulation. **s226 Employer's obligation to appoint rehabilitation and RTW coordinator (see also 266(1) for high risk industries, high earners)** (1) An employer must appoint a rehabilitation and RTW coordinator if the employer meets criteria prescribed under a regulation. (2) The rehabilitation and RTW coordinator must be in Queensland and be employed by the employer under a contract (regardless of whether the contract is a contract of service). (3) The employer must appoint the rehabilitation and RTW coordinator within 6 months after workplace is established or workers are employed at a workplace. Later period can be granted. Maximum penalty—50 penalty units. (5) A rehabilitation and RTW coordinator is not civilly liable for an act done, or an omission made, in giving effect to the workplace rehabilitation policy and procedures of an employer. (6) If subsection (5) prevents a civil liability attaching to a rehabilitation and RTW, the liability attaches to the employer. The functions of a rehabilitation and RTW coordinator are outlined at: **r99B Functions of rehabilitation and RTW coordinator—Act, s 41(b)**	**r99A Criteria for becoming rehabilitation and return to work coordinator—Act, s 41(a)** A person meets the criteria for becoming a rehabilitation and RTW coordinator by satisfactorily completing a workplace rehabilitation course approved or conducted by the Authority.
Western Australia	**Not applicable**	Not applicable
South Australia	**WRC Regs 2010, reg 26—Rehabilitation and RTW co ordinators—exemptions from requirements (section 28D of Act)** (1) Subject to subregulation (2), an employer is exempt from the requirement to appoint a coordinator under section 28D of the Act (a) in respect of a particular financial year if (i) the employer, as at the relevant time, employs fewer than 30 workers; or (ii) holds an exemption from the Corporation under this paragraph granted on the ground that the Corporation is satisfied— (A) that the employer reasonably expects not to employ 30 or more workers during the financial year for any continuous period of 3 (or more) months; and (B) that in the particular circumstances it is appropriate to grant the exemption; or (b) in respect of part of a particular financial year if (i) the employer employs fewer than 30 workers at any time; and (ii) the employer obtains an exemption from the Corporation. Reg 26 of WRC Regs 2010 in force from 1 November 2010, preceded by identical reg 3C of the WRC (General) Regulations 1999. **Booklet: All you need to know about rehabilitation and RTW coordinators (see website)**	A coordinator will need to complete either a one-day (Level 1) or a three-day training course (Level 2) approved by WorkCover, depending on the industry in which the business operates. An employer who is considered low risk (excluding self-insured employers) will need to ensure that the coordinator satisfactorily completes Level 1 training. Any other employer who is required to appoint a coordinator (including self-insured employers) must ensure that the coordinator satisfactorily completes Level 2 training. An employer with an industry base levy rate of less than 4.5% is considered low risk. Coordinators may also be required to participate in ongoing professional development activities as determined by WorkCoverSA. **See recent developments section within this report for further information.**

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
Tasmania	**Injury Management Coordinator—Section 143B. Injury management co-ordinator to be appointed** (1) The licensed insurer of an employer of a worker must appoint an injury management co-ordinator in respect of the employer. (2) The licensed insurer of an employer of a worker, as soon as practicable after becoming aware that the worker has suffered a significant injury, must assign the worker to the injury management co-ordinator in respect of the employer. (3) If a worker's approved injury management program was submitted by the worker's employer to the employer's insurer under section 143(4): (a) subsections (1) and (2) do not apply to the employer's insurer; and (b) the employer must (i) appoint an injury management co-ordinator in respect of the employer; and (ii) assign a worker to the injury management co-ordinator, as soon as practicable after becoming aware the worker has suffered an injury. (4) If a worker's approved injury management program was submitted by the worker's employer to the Board under section 143(5) or (6) - see Section. **RTW coordinator—Section 143D RTW coordinator may be required to be appointed** (1) An employer who employs more than 50 workers must appoint a RTW co-ordinator. Penalty: Fine not exceeding 50 penalty units. (2) A person may only be appointed under subsection (1) to be a RTW co-ordinator if (see training and accreditation). (3) A worker's employer who employs more than 50 workers, as soon as practicable after becoming aware that a worker has suffered a significant injury, must assign the worker to the RTW co-ordinator appointed under subsection (1) in respect of the employer. Penalty: Fine not exceeding 50 penalty units. (4) A worker's employer may only assign a worker to a RTW co-ordinator if the co-ordinator is familiar with the workplace, and the management and staff of the workplace, in which the worker is employed.	**Injury Management Coordinator—Section 143B(5)** A person may only be appointed to be an injury management coordinator if, where the Board approves a course of training: (a) the person has successfully completed the course of training; or (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board. **WorkCover Tasmania Guideline for Injury Management Coordinator Training Requirements** An IMC is required to complete the following nine units of competency (recognised within the Australian Qualifications Framework) identified by WorkCover. These units focus on the skills required to fulfil the functions of an IMC. The identified units of competency are sourced primarily from the Financial Services Training Package at both diploma level and certificate IV level. The units are also inclusive of the units of competency recommended for RTW Co-ordinators. Guideline for Injury Management Coordinator Training Requirements (IMC-010) **RTW Coordinator—Section 143D(2)** A person may only be appointed under subsection (1) to be a RTW coordinator if, where the Board has approved a course of training: (a) the person has successfully completed the course of training; or (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board. While the WorkCover Tasmania Board has not approved a course of training for RTW Co-ordinators, it is recognised that this role requires certain knowledge and skills to enable the appointed person to effectively perform the role. For this reason, it is highly recommended that a RTW Co-ordinator completes the three units of competencies recognised within the Australian Qualifications Framework: The Role of the Return to Work Co-ordinator
C'wealth Comcare	**Rehabilitation Guidelines for Employers (Issued under s41)** 6. Employers should ensure that people with case management responsibilities: a. have the skills, experience and influence to achieve effective return to work outcomes b. are provided with adequate training to undertake their role c. have senior management support to enable the provision of suitable duties d. have the relevant delegations under section 41A of the SRC Act if they are making determinations for a rehabilitation assessment examination or rehabilitation program e. can refer to a delegated senior manager if a recommendation for suspension of compensation is required.	**Rehabilitation Guidelines for Employers (Issued under s41)** 6.Employers should ensure that people with case management responsibilities: a.have the skills, experience and influence to achieve effective return to work outcomes b.are provided with adequate training to undertake their role c.have senior management support to enable the provision of suitable duties d.have the relevant delegations under section 41A of the SRC Act if they are making determinations for a rehabilitation assessment examination or rehabilitation program e.can refer to a delegated senior manager if a recommendation for suspension of compensation is required.
C'wealth Seacare	Not applicable	Not applicable

	Workplace rehabilitation coordinator requirements and threshold	Training and accreditation
C'wealth DVA	The role of the DVA Rehabilitation Coordinator is to facilitate and monitor the program of activities for the client involved in the rehabilitation process so as to return the person to a level of functioning, consistent with medical advice in accordance with the relevant legislation, policies and procedures which apply to that individual's circumstances. The Rehabilitation Coordinator is a link between the client, treating medical practitioners, allied health workers, service providers, training organisations and the managing agency. The Rehabilitation Coordinator is a DVA staff member, or ADF if a serving member. The Australian Defence Force Rehabilitation Program (ADFRP) provides rehabilitation services for Permanent Force members and Reserve Force members on continuous full-time service (CFTS), irrespective of whether a member's injury or illness is related to work. Reservists not on CFTS who were eligible for health care provided by Defence at the time of their injury or illness are also eligible for rehabilitation assistance. These reserve members are expected to lodge a claim for compensation with DVA as soon as possible and will remain eligible for rehabilitation under the ADFRP until a determination in respect of their claim is made. If liability is accepted the MRCC becomes the rehabilitation authority.	
New Zealand	N/A	

Rehabilitation providers

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

Responsibilities

Rehabilitation providers are engaged to provide specialised expertise in addition to that generally available within the employer's and insurer's operations.

Depending on the jurisdiction, rehabilitation providers can undertake a range of services from functional and workplace assessments and advice concerning job modification to vocational retraining and assistance with job seeking. Table 5.7a provides information on the responsibilities of rehabilitation providers in each jurisdiction.

Nationally Consistent Approval Framework for Workplace Rehabilitation Providers

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

Qualifications and Fees Structure

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

Table 5.7a: Responsibilities of rehabilitation provider

	Responsibilities of rehabilitation provider
New South Wales	Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on NOHSC (1995) definition : Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment. Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by: • facilitating an early RTW of the worker • identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers • identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties • forging the link between the insurer, employer and treatment providers to ensure a focus on RTW • arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties.
Victoria	Section 5 of the Accident Compensation Act 1985 defines the meaning of the term occupational rehabilitation services. For injured workers, there are a number of specific return to work services known as occupational rehabilitation (OR) services to assist them return to work which can only be delivered by OR providers approved by WorkSafe Victoria. The type of OR services approved by an Agent for an injured worker depends on whether the RTW focus is to help them back to work with the injury employer (Original Employer Services - OES) or with a new employer (New employer services – NES). A request for OR services can be made by the worker or the worker's treating health care provider or their employer however, the WorkSafe Victoria Agent responsible for managing the injured worker's claim must approve the OR service before it is offered or provided to a worker. View OES provider service item codes and descriptions - Provide Original Employer services View NES provider service item codes and descriptions - Provide New Employer Services
Queensland	
Western Australia	To provide vocational rehabilitation services as prescribed in regulation 44 of the Workers' Compensation and Injury Management Regulations 1982: • support counselling • vocational counselling • purchase of aids and appliances • case management • retraining criteria assistance • specialised retraining program assistance • training and education • workplace activities • placement activities • assessments (functional capacity, vocational, ergonomic, job demands, workplace, aids and appliances) • travel • medical • general reports. Workplace rehabilitation providers must comply with the conditions of approval and code of conduct for workplace rehabilitation providers. These requirements are contained in: • WorkCover WA's Application for Approval as a Workplace Rehabilitation Provider Application for Approval as a Workplace Rehabilitation Provider Form • HWCA's Guide: Nationally Consistent Approval Framework for Workplace Rehabilitation Providers Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers

	Responsibilities of rehabilitation provider
South Australia	As set out in the Vocational rehabilitation service and fee specifications package (July 2009) – see publication, 'WorkCoverSA Workplace rehabilitation providers fee schedule and guidelines' dated 1 August 2011.
Tasmania	Workplace rehabilitation providers are responsible for providing the following workplace rehabilitation services: • initial workplace rehabilitation assessment • assessment of a worker's functional capacity • workplace assessment • job analysis • advice about job modification • rehabilitation counselling • vocational assessment • advice or assistance with job seeking • advice or assistance arranging vocational re-education or retraining - ss3 and 77A.
Northern Territory	Vocational rehabilitation providers must be accredited by NT WorkSafe. NT WorkSafe has adopted the Nationally Consistent Approval Framework for rehabiltation providers. Vocational providers must comply with the national framework. Information for Rehabilitation Providers
Australian Capital Territory	S99 WC Act 1951 The insurer must appoint an approved rehabilitation provider for the injured worker as part of the personal injury plan if the worker has not returned to the worker's pre-injury duties and pre-injury working hours, within 4 weeks after the day the worker gave notice of the injury. r17 Procedure for approval of rehabilitation provider Providers are accessed and approved inline with the Guide—Nationally Consistent Approval Framework for Workplace Rehabilitation Providers as in force from time to time Nationally Consistent Framework for Workplace Rehabilitation Providers. The requirements for the role and responsibilities of providers is outlined in the above guide.
C'wealth Comcare	Providers in the field of workplace rehabilitation have the qualifications, experience and expertise appropriate to provide services in accordance with the following definition based on NOHSC (1995) definition: Workplace rehabilitation is a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment. Providers are engaged to provide specialised expertise in addition to that generally available within the employer and insurer operations. Providers are engaged for those injured workers where return to work is not straight forward. Service provision is largely delivered at the workplace by: • facilitating an early RTW of the worker • identifying and designing suitable duties for the injured worker to assist employers to meet their obligations in providing suitable employment to injured workers • identifying and coordinating rehabilitation strategies that ensure workers are able to safely perform their duties • forging the link between the insurer, employer and treatment providers to ensure a focus on RTW • arranging appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties.
C'wealth Seacare	s48 states that approved rehabilitation program providers under Part 3 of the Seafarers Rehabilitation and Compensation Act 1992 has the same meaning as in the Safety, Rehabilitation and Compensation Act 1988. Therefore, the responsibilities of rehabilitation providers are the same as Comcare.

Responsibilities of rehabilitation provider	
C'wealth DVA	DVA Service providers are engaged by DVA to provide specific services to meet the rehabilitation needs of an individual. Rehabilitation service providers undertake a range of activities including assessment, plan development and management on behalf of DVA to optimise rehabilitation outcomes. Responsibility for the approval of these provisions recommended by the service provider are made by DVA Rehabilitation Coordinators. The Rehabilitation Coordinator has responsibility for the decision of who will provide what rehabilitation services for the client. The choice of support services will depend on the local services available and the specific needs of the client. Service providers used for a client's rehabilitation fall into four main categories: * Rehabilitation service providers are responsible for the daily management and the accessing of all approved services required by the client. Rehabilitation service providers have to be approved by Comcare Australia, or by the Military Rehabilitation and Compensation Commission (MRCC) to provide such services. * Health and Allied Health service providers are qualified and registered, general practitioners, medical specialists, dentists, psychologists, rehabilitation counsellors, occupational therapists, physiotherapists, osteopaths, podiatrists, prosthetists, orthotists, masseurs or chiropractors and dieticians. * Training providers are accredited educational institutions or training providers at state or national levels. * Support service providers include agencies or individuals who can provide services that assist in job preparation skilling or job placement for people seeking employment; services of a domestic nature (cooking, house cleaning, laundry and gardening services); other services, medical, nursing care, that are required for the essential and regular personal care of the client; and services which assist in altering a client's place of residence, work or training or can provide rehabilitation aids an appliances.
New Zealand	N/A

Table 5.7b: Rehabilitation provider qualifications and fee structure

	Minimum qualifications	Fee structure
New South Wales	NSW WorkCover Supplement to: Nationally Consistent Approval Framework for Workplace Rehabilitation Providers	WRP fee structure consultation paper and WRP fee structure response paper
Victoria	Providers must meet the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers requirements.	Original Employer Services New Employer Services
Queensland	There are no legislative minimum requirements for Workplace Rehabilitation Providers in Queensland. Q-COMP outlines general standards and principles workplace rehabilitation and return to work service providers.	Allied Health Fees
Western Australia	To provide vocational rehabilitation services as prescribed in regulation 44: Guide to the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers	Fees info for Workplace Rehabilitation Providers
South Australia	National framework requirements and a minimum of 12 months experience delivering workplace rehabilitation services or a comprehensive induction program and a minimum of 12 months supervision program. See WorkCoverSA's website	Workplace rehabilitation provider fee schedule and guidelines (August 2011)
Tasmania	Tasmanian Additional Requirements to Operate as a Workplace Rehabilitation Provider Ongoing requirements (self evaluation etc):	No fee structure. Under section 75(2A) a person who provides any services in respect of a claim for compensation must not charge a fee that is in excess of (a) the prescribed fee; or (b) if no fee is prescribed, the fee the person would normally charge (taking into account any discount that would normally be appliable) for that service if that service were to be provided for a matter not connected with a claim for compensation.
Northern Territory	As per Nationally Consistent Approval Framework NT Supplement	Not Regulated
Australian Capital Territory	ACT is compliant with NARP	No fees are payable in the ACT in 2011.
C'wealth Comcare	Criteria for initial approal or renewal of approval as a rehabilitation program provider- refer Criterion 1.	Safety, Rehabilitation and Compensation Amendment Regulations 2009 (No.1). The guidelines (8a) recommend that a rehabilitation assessment to determine the need for a rehabilitation program be arranged for any expected absence from work greater than 10 days or for a severe injury. When a rehabilitation authority makes a determination that an employee should undertake a rehabilitation program - subsection 37(1)
C'wealth Seacare	Minimum requirements the same as Comcare's	Providers are approved by Comcare

	Minimum qualifications	Fee structure
C'wealth DVA	Approved program provider means: (a) a person or body that is an approved program provider for the purposes of the Safety, Rehabilitation and Compensation Act 1988; or (b) a person nominated in writing by a rehabilitation authority, being a person the rehabilitation authority is satisfied has appropriate skills and expertise to design and provide rehabilitation programs.(s.41)	As per Comcare
New Zealand	N/A	N/A

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

	3-point contact	Return to work plan/ personal injury plan developed
New South Wales	1998 Act - s43(4) 3 working days for significant injury.	A return to work plan is developed for each injured worker on suitable duties (Guidelines for Employers Return to Work Programs).
Victoria	N/A	s195 Plan return to work– see more details above under 'Return to Work Plans' (1) An employer must, to the extent that it is reasonable to do so, plan the return to work of a worker from the date on which the employer knows or ought reasonably to have known of the worker's incapacity for work, whichever is the earlier date. Penalty: 120 penalty units for a natural person; 600 penalty units for a body corporate. Under s195(4), employer knows or ought reasonably to have known of the incapacity for work from the beginning of the employment obligation period under s 194- either the date a medical certificate or claim for compensation for weekly payments is received by the employer or the employer is notified of receipt of these documents by the insurer, whichever is the earliest.
Queensland	N/A	No time specified - S220(2).
Western Australia		As soon as practicable after doctor makes recommendation - S155C(1).
South Australia	Not specified within legislation. See: pp. 4-6, Chapter 6, Injury and Case Management Manual.	Section 28A(2)(b) - If an injured worker is receiving income maintenance, a rehabilitation and return to work plan must be established if the worker is or is likely to be incapacitated for more than 13 weeks (but has some prospect of returning to work) .
Tasmania	An injury management coordinator to ensure that contact is made with the worker, the employer and the primary treating medical practitioner as soon as practicable after a worker (suffering a significant injury) is assigned to the injury management coordinator - section 143C(2).	Return to work plan Where a worker is, or is likely to be, incapacitated for work for more that 5 working days but less than 28 days, a return to work plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 5 working days. (s143E(1)(a)) Injury management plan Where a worker is, or is likely to be, incapacitated for work for more than 28 days, an injury management plan must be prepared before the expiry of 5 days after the worker becomes incapacitated for 28 days. (s143E(1)(b))
Northern Territory	N/A	No time specified, - s75B(1).
Australian Capital Territory	3 business days for significant injury - s96.	Not specified, when suspected that injury is significant (7 days) - s97.
C'wealth Comcare	No time specified.	No time specified.

	3-point contact	Return to work plan/ personal injury plan developed
C'wealth Seacare		
C'wealth DVA	No time specified.	No time specified.
New Zealand		Not specified

Chapter 6: Self-insurer arrangements

Each jurisdiction provides for employers to self-insure for workers' compensation. 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.

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.

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

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

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

The tables in this chapter outline:

6.1 Workers' compensation and self-insurance coverage

6.2 Criteria for becoming a self-insurer

6.3 Application and approval process, ongoing costs and duration of license

6.4 Work health and safety requirements and auditing

6.5 Bank guarantees, prudential margins and excess of loss requirements

6.6 Restraints on company structure

6.7 Other ongoing license requirements

6.8 Reporting requirements, and

6.9 Requirements for surrendering a self-insurance licence and penalities for exiting the scheme

The laws and regulations which must be satisfied to become a self-insurer vary significantly between jurisdictions. If an employer operates in more than one jurisdiction, it must apply separately for self-insurance in each of the jurisdictions in which it operates. As at 30 September 2011, 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.

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

Table 6.1: Workers' compensation and self-insurance coverage

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
Employees covered by workers' compensation 2009-10[1]	3 089 100	2 447 800	1 892 100	1 070 500	710 400	205 300 (FTE)	112 900	130 600	364 400[5] (Cth total)	1 795 600[6]
Employees covered by self-insurance	715 000 (approx).[2]	148 350[3] (approx).	181 748	99 589	-	10 785 (FTE)	4 159	-	163 000 (2009-10)	-
% of employees covered by self-insurance	23.1%	6.1%	9.6%	9.3%	37.78%	5.2%	3.7%	-	44.7% (2009-10)	-
Number of self-insurer licences	60, plus 7 specialised insurers.	37	25	27	67	11	4	8	29 (2009-10)	-
Number of self-insured employers[1]	43 self-insurers, 17 group self-insurers with 118 subsidiaries and 7 specialised insurers.	157	253	27	67	11	Government is an exempt employer. -	8	29 (2009-10)	148
% of employers covered by self-insurance	N/A	0.09%[4]	0.16% (approx).	-	0.35%	N/A.	N/A.	0.07%	13% of employers	0.03%

1 - The figures in this 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.

2 - Includes number of employees covered by self and specialised insurer workers' compensation arrangements.

3 - For Victoria this figure does not include the self-insured employee numbers. This figure is provided in the next column and is an estimate only based on current FTE figures.4.

4 - Self-insurers represent 8.15% of the Victorian scheme by remuneration. Although there are a relatively small number of self-insured bodies corporate, they represent some of the largest companies in Victoria. The two biggest self-insurers, in terms of employee numbers, are Westfarmers and Woolworths..

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

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

Table 6.2: Criteria for becoming a self-insurer

	Number of employees	Financial/ prudential requirements
New South Wales	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.	Workers Compensation Act 1987, Part 7, Div 5 A self-insurer must have sufficient financial resources to meet its liabilities and be able to demonstrate long term financial viability by way of audited financial statements prepared in accordance with generally accepted accounting principles for the previous five years. WorkCover must be satisfied that self-insurers: (i) are adequately capitalised, without any undue reliance on external borrowings - i.e. are conservatively geared (ii) have a strong and sound financial position based on net tangible assets (iii) have a sound profit history and positive cash flow. In determining financial viability and strength, WorkCover is not restricted to the exclusive use of the above financial indicators.
Victoria	Not applicable.	Sub-section 142(4)(a) of the Accident Compensation Act 1985 Consideration given to both primary and secondary indicators dependent on industry sector i.e. Manufacturing, Finance, Retail, Transport & Other. Primary indicators: Balance Sheet Test (0.9 – 1.3), Current Liquidity(0.8 – 1.0), Quick Liquidity (0.5 – 0.6), Interest Coverage (2 – 4), Return on Investment (8 - 10%), Claims liabilities as % of Net Assets (4%), Gearing Ratio (55-80%), Bad Debt Ratio (2%). Secondary indicators: Excess Capital (10%), Stock Turnover (3.5-5%), Debtor Turnover (46-50%), Revenue Growth (2-16%) & Labour Costs (33%), Customer Loan ration (50), Net Interest Margin (1.5) & Operating Costs to Revenue (65%).
Queensland	2000 full time Queensland workers (s 71, Workers' Compensation and Rehabilitation Act 2003).	Workers' Compensation and Rehabilitation Act 2003 s 71, s 72, s 75, s 84, s 86 (s71) Employers must be considered fit and proper to be self insurers. (s75) This includes a consideration of the long-term financial viability of the employer, evidenced by its level of capitalisation, profitability and liquidity. Self insurers are required to: - (s84) lodge an unconditional bank guarantee or cash deposit with Q-COMP, for an amount the greater of $5 million or 150% of the self-insurer's estimated claims liability and - (s86) have reinsurance cover, where the self-insurer's liability is an amount chosen by the self-insurer that is not less than $300,000. or more than the set limit without approval.
Western Australia	Not applicable.	s164 & s165 Self-insurers are to maintain adequate financial resources to comply with the requirements of the WCIM Act 1981. Guidelines for the Approval and Review of Self-Insurers (the Guidelines) specify the financial resources required. Self-insurers are to provide audited financial statements, which include: • Balance Sheet Test (i.e. total tangible assets/total liabilities) • quick liquidity (i.e. current assets less stock/current liabilities) • current liquidity (i.e. current assets/current liabilities) • interest coverage (net profit before tax/net interest expense) • return on investment (net profit before tax/total equity) • claims liability as a percentage of net assets (outstanding claims/net assets), and • gearing ratio (loan capital/total capital employed). WorkCover WA, at its discretion, may apply further secondary financial indicators if there are doubts concerning the organisaiton's financial viability. These can be found in appendix 2 of the Guidelines. **Guidance material:** Guidelines for the Approval and Review of Self-Insurers Approved Self-Insurers Performance Indicators

	Number of employees	Financial/ prudential requirements
South Australia	There is no formal number specified in the legislation, but the number of workers is relevant to the decision to grant or renew self-insurance. The current WorkCover policy is that employment of a minimum of 200 workers is considered adequate without further evidence.	s60 & s61 • 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.
Tasmania	Not applicable.	Part IX, Div 2, s105 s105(2) In granting a self-insurer permit, the Board is to take into account the applicant's financial history and ability to satisfy such prudential standards as the Board determines . On applying for a self-insurer permit, the applicant must provide the Board with, amongst other things; • a completed financial indicators form (Self Insurers Financial Indicators Form) (Completing Financial Indicators Form (SI-110)) • a desktop review of financial information by an independent expert (Organising a desktop review of financial assessment indicators by an independent expert (SI-120)) • Copies of the organisation's last three annual reports There may be extra requirements for a new entity employer – see Additional financial requirements when applying for a permit to self-insure (SI-103) Once the Board has granted provisional approval for a self-insurer permit, the applicant must provide: • A financial undertaking from an APRA approved financial institution - see Providing a Financial Undertaking (SI-130); Methodology for determining the quantum of a Financial Undertaking (SI-140) and Financial Undertaking Form • Evidence of an Excess of Loss Policy secured by the organisation – see Securing an excess of loss policy (SI-150) • A Deed and Power of Attorney – see Completing the Deed and Power of Attorney (SI-160) For more information see Applying for a self-insurer permit (SI-020)
Northern Territory	Not applicable.	s119 & s120 Financial viability of the employer - s119(3)(d), which is to be demonstrated through: • 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 $1 million (indexed) for any one event, and • a three year history of the company's Northern Territory workers' compensation claims.
Australian Capital Territory	Not applicable.	Workers Compensation Regulation 2002, Part 10 Copy of employer's annual report and balance sheet for the previous 3 years. Actuarial report, containing: • 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. 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.

	Number of employees	Financial/ prudential requirements
C'wealth Comcare	As per any Ministerial section 100 guidelines.	Part VIII—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. • 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 principal officer that they are not aware of any likely events which may materially impact on the suitability of the applicant for approval. Prudential: • Must have actuary prepare a liability report to Commission's requirements. • Must estimate outstanding liability at the end of the first 2 years' of licence and the level of 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 or other guarantees in the form required by the Commission and before the commencement of the licence.
New Zealand	No specific minimum employee number. In practice, the pricing mechanism makes entry to the programme not financially viable to employer whose standard levy is less than NZ$150 000.	s185 Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme. ACC is required to satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years). The measures are: • 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. 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).

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

	Applications process	Application and ongoing costs	Duration of license
New South Wales	1. Acknowledge receipt of application fee. 2. Validate application information and request missing or additional information required for the review. 3. Review application in different areas including financial, injury and claims management (case management), and data management and, conduct OHS management system audit. 4. Prepare Board or CEO Submission to recommend either approving or rejecting application. 5. Prepare letter to notify the applicant of either granting the licence with the date of commencement or rejecting the application.	One-off cost on application of $25 000 for Single Self-Insurer licence, $30 000 for Group Self-Insurer licence. Insurers are required to contribute to the WorkCover Authority Fund under section 39 of the Workplace Injury Management and Workers Compensation Act 1998 and to the Dust Diseases Fund under section 6 of the Workers Compensation (Dust Diseases) Act 1942 an annual basis.	A licence will be granted for a standard period of 3 years and be capable of renewal for further three-year terms. WorkCover has discretion to grant licences for shorter terms if it believes circumstances are warranted.
Victoria	Section 140 of the Accident Compensation Act 1985 (the ACA) Assessment of organisation's eligibility to apply is undertaken: • The body corporate must be the ultimate holding company in Australia, and • Must satisfy prescribed minimum requirements as to financial strength and viability. If eligible, the organisation may submit an application for approval to WorkSafe Victoria. The assessment of the application may include on-site audits, interviews and inspections. Pre-application eligibility fee must be paid as prescribed in the schedule 4 of the ACA.	Application fee as prescribed in the schedule 5 of the Accident Compensation Act 1985 (the ACA). Application fee applies to all applications and is calculated as the lesser of: • an amount equal to 0.033%of the assessment remuneration of the employer as defined in schedule 5 of the ACA. calculated by reference to the most recent financial year preceding the date on which the application is made, or • $52,090 (as at 1 July 2011 and subject to indexation). A self-insurer must pay contributions into the WorkCover Authority Fund in accordance with section 146 of the ACA. Quarterly contributions payable by a self-insurer are determined by WorkSafe based on the rateable remuneration return submitted by a self-insurer pursuant to the Ministerial Order made under section 142A(3) of the ACA. The amount of contributions payable by a self-insurer pursuant to section 146 of the ACA is determined by the formula given in Regulation 23 of the Accident Compensation Regulations 2001.	Initial approval is for a period of three years and any subsequent approvals are for four years unless WorkSafe in its discretion determines that approval has effect for a period of six years. Sub-sections 144(2)(a) & (b) of the Accident Compensation Act 1985.
Queensland	s70 Workers' Compensation and Rehabilitation Act 2003 The application must (a) be made to the Authority in the approved form, and (b) for a group employer be made by all the members of the group wanting to be licensed, and (c) be accompanied by the fee prescribed under a regulation. s77 The Authority must decide an application within 6 months of receiving it. s71 the Authority may issue or renew a licence to be a self-insurer to a single employer only if satisfied that certain criteria have been met. see s 75: in deciding whether a single employer or group employer is fit and proper, the Authority may consider any relevant matter and must consider the following matters.	Initial application fee for setting up the licence: •$15 000 application fee for single employers. •$20 000 application fee for group employers. (s70 Workers' Compensation and Rehabilitation Act 2003, s19 Workers' Compensation and Rehabilitation Regulation 2003) A self-insurer must also pay a levy to Q-COMP each financial year under s81 of the Workers' Compensation and Rehabilitation Act 2003. The amount a self insurer must pay is calculated according to the formula in s20 Workers' Compensation and Rehabilitation Regulation 2003, and is dependent on their estimated claims liability, and the levy rate set by Q-COMP.	(s78 Workers' Compensation and Rehabilitation Act 2003) Original licence issued for a period of two years, on renewal, licence period can be up to four years

	Applications process	Application and ongoing costs	Duration of license
Western Australia	• 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. Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information. Guidelines for the Approval and Review of Self-Insurers	Self-insurers are required to contribute annually to the Authority's General Account. The contribution is a percentage (fixed by the Authority) of the total amount of the notional premium of the self-insurer. The minimum contribution is $40 000. Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information. Guidelines for the Approval and Review of Self-Insurers	No initial duration, however Section 165 of the Workers' Compensation and Injury Management Act 1981 requires that self-insurance arrangements be reviewed at least once a year or when so required by the Minister. The review of an exemption will be based on adherence to the conditions of approval set out under the Guidelines for the Approval and Review of Self-Insurers. Guidelines for the Approval and Review of Self-Insurers
South Australia	An indicative time line for the process and requirements are outlined in the Code: • Must satisfy prescribed minimum requirements as to financial strength and viability. • Unlikely to be accepted if employs less than 200 employees. • Application, accompanied by a fee, is submitted for evaluation and consideration. • 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. • Evaluators meet with the employer to outline and discuss the requirements of the evaluation process. See Chapter 8 of the 'Code of conduct for self insured employers of the WorkCover Scheme' http://www.workcover.com/site/employer/selfinsured/publications_and_forms.aspx for details. • The evaluation process proceeds until WorkCover determines whether the employer has met all appropriate Standards and criteria. • The employer and WorkCover agree on a target date for commencement of self-insured employer registration if the application is successful. • 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. • The employer and WorkCover agree the terms and conditions for the management of transitional liabilities (including all the necessary financial calculations and adjustments). • The Board of WorkCover considers the application, and if appropriate, grants self-insured employer registration. • The employer submits the required financial guarantee, and evidence of the existence of the excess of loss insurance policy.	• Section 62 of the Workers Rehabilitation and Compensation Act 1986 (SA). • A one off application fee applies of $10 000 (plus GST) plus $15 (plus GST) per worker employed by the applicant in the state. • 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 and may be differentiated between different self-insured employers by reference to: 1. the application of the natural consequences model 2. application of remedial levy paid to reflect additional cost to WorkCover of administering the Act where self-insured employers do not comply with their obligations as a self-insured employer.	Licence (registration) granted for an initial period of two years. A self-insurer may apply to WorkCover to renew its registration for further periods. (s60(4)(d) Maximum period of registration for each renewal is three years of WRC Act and WorkCover Policy on self-insured employer status within the Code of conduct for self insurers under the WorkCover Scheme (May 2011).
Tasmania	An employer must make application to the WorkCover Tasmania Board on the approved form (section 104) accompanied by: • Completed financial indicators form. • Desktop review of financial information by an independent expert. • Copies of the organisation's last three annual reports. • Evidence of high level safety management practices • Evidence of high level injury management practices. • Evidence of high level claims management practices. • Evidence of the organisation's capacity to meet the necessary data reporting requirements.	No application fee. However, the applicant is responsible for paying all expenses associated with applying for a self-insurer permit, including expenses associated with: • providing a desktop review of financial information by an independent expert • providing a National Audit Tool report by a certified auditor or evidence of JAZ-ANZ certification against AS/NZ 4801:2001 or the National Audit Tool • seeking approval of an Injury Management Program Once a permit is granted, there are ongoing expenses. These are	Initially one year and then depending on outcome of audit, it can range from one year to three years.

	Applications process	Application and ongoing costs	Duration of license
	Applying for a self-insurer permit (Guideline S1-020)	set out in detail in the Guideline. Requirement to make annual contributions to the WorkCover Tasmania Board and the Nominal Insurer Fund.	
Northern Territory	s120 Employer to write to Authority for approval to self-insure.	There is no cost to employers to lodge a self-insurer application. The only fee for employers is for an actuarial assessment to be provided to NT WorkSafe's actuary. Once approved a self-insurer will be required to pay the Territory an amount determined by the Authority as a contribution towards: • 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. They are also subject to contribution to the Nominal Insurer based on nominal market share.	One year.
Australian Capital Territory	• Submit application to WorkSafe ACT. • WorkSafe ACT will coordinate the review process. • Once applications have been reviewed recommendations will be made to the appropriate delegate. • Once the Delegate 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.	Application fee to be a self-insurer - $ 6,434.00 (updated each year) and approval fee - $ 6,434.00. The insurer must agree to participate in, and pay the costs of, an audit to establish that the insurer has adequate resources to meet the insurer's current and expected liabilities.. The insurer must agree to participate in, and pay the costs of, an audit to establish that the insurer has complied with its obligations under the Regulatory Framework. (from Dec 2011) Appropriate audit costs and application fee on renewal of licence.	Up to three years.
C'wealth Comcare	Process for applying for eligibility By Ministerial declaration and provided that the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that: • is, but is about to cease to be, a Commonwealth authority, or • was previously a Commonwealth authority, or • is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority. If the corporation is so declared by the Minister, the corporation is then eligible to apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence. Note: Since December 2007 there has been a moratorium on the Minister considering eligibility. Process for applying to become a self-insurer • 102 of the SRC Act: Once a corporation is declared an eligible corporation by the Minister, it may then apply to the Commission for a licence under section. • The Commission will consider the application and may grant a licence under ss103 and 104 of the SRC Act.	• One off application fee based on size, complexity, need for external financial assessment etc. • Annual licence fee payable. The fee varies based on contributions to regulatory management of the SRC Act scheme with special emphasis on issues relevant to licensees, plus costs specifically applicable to oversighting 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.	Initially for a period for two years and then four years.

	Applications process	Application and ongoing costs	Duration of license
New Zealand	• 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. Submit application to ACC (the Manager): • ACC will undertake the approval process. • Once approval process has been undertaken, ACC makes decision. • The applicant will be notified.	Pay a portion of the pre-entry audit costs. Cost of the independent audit of Health and Safety.	Approval may be for one to three years at the employer's option. Annual reviews are undertaken in order to ensure entry (including prudential) requirements are being maintained.

Ongoing Requirements

The majority of jurisdictions require an applicant for a self insurance licence to meet a minimum standard for work health and safety, rehabilitation and/or workers' compensation. In determining the minimum standard required for work health and safety most agencies require the employer to have in place an work health and safety management system or arrangements (i.e. NSW, Victoria, NT, ACT and Commonwealth), which is then audited against a work health and safety audit tool (see Table 6.4). The work health and safety audit tool varies significantly across the jurisdictions. NSW, Victoria, Tasmania and the Commonwealth measure the self-insurer's performance against the National Self-Insurers OHS Audit Tool.

Queensland requires a satisfactory work health and safety performance. Although no audit tool is stipulated, the administrative guidelines indicate that use of the national OHS Audit Tool is required. In South Australia compliance is required with the Self Insurer Standards which can be found at Annexure A to the Code.

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

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

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

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

Reporting requirements

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

Requirements for surrendering license and penalties for exiting

Self-insurance is not without risk, the predominant one being that if self-insurers fail, then governments may have to meet the costs of workers' compensation liabilities. Employers may, for a range of reasons, wish to cease being a self-insurer. Some jurisdictions impose penalties on employers who choose to leave their scheme or surrender their self insurance licence and move to the Comcare scheme. See Table 6.9 for a comparison of these requirements and penalities.

Table 6.4: Work health and safety requirements and auditing

	Work Health and Safety Requirements	Auditing
New South Wales	Workcover will measure the applicant's performance against the National Self-Insurers OHS Audit Tool. The applicant must satisfy all requirements, in 3 out of 5 categories during the initial OHS audit and achieve 75% conformance for each of the categories audited.	WorkCover will conduct a WHS Management System audit at time of self-insurance application against the National Self-Insurers OHS Audit Tool. Routine WorkCover audits every 3 years thereafter or more frequently if required. Annual self-audit requirements.
Victoria	Safety Management Systems are audited against the National Self-Insurer OHS Audit Tool for all new applicants and current self-insurers. Compliance with Occupational Health and Safety Act 2004 – Inspectorate field interventions including enforcement activity, prosecutions and incident notifications. Claims frequency rates and claims costs.	Annual self-audit requirements for the duration of the licence period – Claims Management & Occupational Rehabilitation & Occupational Health and Safety Management Systems. Regulatory audit at time of application for approval and renewal of approval against the National Self-Insurer OHS Audit Tool.
Queensland	• (ss 71(2) and 72(2)) The Authority must ask the chief executive of the department within which the Workplace Health and Safety Act 1995 is administered to prepare a report about the employer's work health and safety performance. • (ss 71(1)(g)(ii) and 72(1)(h)(ii) All workplaces of the employer must be adequately serviced by a rehabilitation and RTW coordinator who is in Queensland and employed by the employer under a contract (regardless of whether the contract is a contract of service) and have workplace rehabilitation policies and procedures.	Insurance performance management plan.
Western Australia	Work health and safety requirements are handled by WorkSafe WA. Occupational Safety and Health Act 1984 WORKSAFE WA PUBLICATIONS	Not applicable.
South Australia	Compliance with the Self Insurer Standards which can be found at Annexure A to the Code of conduct for self-insurers under the work cover scheme (19 May 2011). See s68(4) of the Workers Rehabilitation and Compensation Act 1986.	Evaluation (WHS and injury management/rehabilitation) against the standards will be carried out in preparation for each registration renewal, and at other times should something come to WorkCover's attention that indicates a need for a further evaluation. See 2.5.2 'Performance standards' within the Code of conduct for self insured employers under the WorkCover Scheme, (May, 2011). WorkCover also monitors self-insured employers throughout non-renewal years. Multi-national self-insurers can elect to be evaluated against the National Audit Tool for OHS but they must be evaluated against the standards for injury management/rehabilitation. See 3.5 'Assessment criteria' within the Code of conduct for self insured employers under the WorkCover Scheme, (May 2011).

	Work Health and Safety Requirements	Auditing
Tasmania	Must have an established work health and safety management system. Upon application to self insure, a National Audit Tool (NAT) audit report is provided by a certified auditor or evidence of JAS-ANZ certification against AS/NZ 4801:200 and the National Audit Tool. Must undertake annual self audits using NAT and forward results to the WorkCover Tasmania Board. (Where certification under a JAS-ANZ certification program has been achieved, the annual self audit will not normally be required). Meeting self-insurer permit conditions (Guideline S1-060) Undertaking annual self assessments (Guideline S1-170)	Work health and safety management system to be self-audited annually, with the use of the National Audit Tool as the audit tool. Undertaking annual self assessments (Guideline SI-170) Annual self-audits on injury and claims management systems using injuryMAP as the audit tool. Self assessment of Injury Management Programs (Guideline SI-210) WorkCover surveillance audits are conducted annually as well. WorkCover surveillance audits (Guideline SI-180)
Northern Territory	Evidence that the company's NT operation has in place a WHS management system and evidence that the company's WHS policy has been brought to the attention of the company's NT workers.	National Audit Tool is preferred.
Australian Capital Territory	Compliant with employer's duties under Work Safety Act 2008. (Work Health and Safety Act 2011) Copy of work health and safety policy and evidence that is has been brought to the attention of the employer's workers. Has in place a work health and safety management system that complies with Australian Standard 4801.	The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act. A. The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its obligations under the Regulatory Framework.
C'wealth Comcare	Previous 12 months performance in conforming and complying with WHS, rehabilitation and workers' compensation. The following will be examined: • Performance record under the 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. • (s41 of Act) Obligations as a rehabilitation authority, especially in relation to any rehabilitation guidelines issued by Comcare. • 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. Self-insurers are audited against the National Self-Insurer OHS Audit Tool.	• Pre and post licence evaluations occur in the period approaching and immediately after the grant of licence. External audits in WHS, 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 'tier' model framework. 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 provide Comcare with 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. • Data quality audits are conducted by Comcare to assess the accuracy of data submitted to the Commission Data Warehouse. Each licensee is required to be audited by Comcare at least once every two years or annually if circumstances require it.

	Work Health and Safety Requirements	Auditing
New Zealand	An audit of an employer's health and safety systems and practices is carried out as part of the entry requirements. A comprehensive entry audit is undertaken in order to satisfy ACC that an employer has the capacity and capability to manage and administer claims at least to the same standard as ACC. 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.	Monitoring and audit programme includes: • 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 claims management performance. • Regular meetings between the account 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.

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

	Bank guarantees/ prudential margins	Excess of loss requirements
New South Wales	Initial security equivalent to tariff premium (WIC rate X estimated wages) for the ensuing twelve months plus a prudential margin of 50%. WorkCover has discretion to seek additional security if it believes circumstances are warranted. For subsequent reviews 150% of self-insurer liabilities including a prospective component for the 12 months post balance date.	A self-insurer must obtain and maintain unlimited reinsurance cover during the currency of the licence, so as to restrict its liabilities under the Workers Compensation Act 1987 and independently of the Workers Compensation Act 1987 to a maximum amount approved by WorkCover in respect of any one event. The reinsurance cover must be provided by an insurance company authorised by the Australian Prudential Regulation Authority. A retention amount under the above policy or policies, provided that it is within the range of $100 000 to $1 000 000 per event is acceptable to WorkCover. 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.
Victoria	(Section 148 of the Accident Compensation Act 1985) 150% of the assessed liability or $3.0 million (whichever is greater). When determining the quantum coverage of a guarantee that a self-insurer must have in force at all times given by an Authorised Deposit-Taking Institution ("ADI") in respect of its assessed liability, the valuation of the self-insurer's assessed liability must include a prospective component.	The Ministerial Order "Terms and Conditions of Approval as a Self-insurer" made under section 142A(3) of the Accident Compensation Act 1985 (the ACA) has set out the requirement of a contract of insurance in respect of contingent liabilities that a self-insurer must have in force at all times under section 148(1)(b) of the ACA. A self-insurer may select an excess for its contingent liability insurance policy of any amount not greater than $5 million. There is no minimum excess amount.
Queensland	(s84 Workers' Compensation and Rehabilitation Act 2003) Provision of an unconditional bank guarantee or cash deposit of 150% of estimated claims liability, or $5 million (whichever is the greater) .	(s86, Workers' Compensation and Rehabilitation Act 2003) Retention of reinsurance for an unlimited amount in excess of the self-insurer's liability for each event that may happen during the period of reinsurance. The self-insurer's liability must be not less than $300 000 and not more than the limit set by the Authority's board on application by the self-insurer.
Western Australia	Bank guarantee to be determined by the Authority upon application or review. The minimum level for the bond is $1 million or 150% of the central estimate of outstanding claims liability, whichever is greater. Actuarial assessments of outstanding claim liability are required on an annual basis and used to determine security amounts. 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. Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information. Guidelines for the Approval and Review of Self-Insurers	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. Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information. Guidelines for the Approval and Review of Self-Insurers

	Bank guarantees/ prudential margins	Excess of loss requirements
South Australia	Outstanding liability multiplied by a prudential margin of 2. It is revised annually in accordance with an actuarial report the employer must submit within 3 months after the end of the financial year. Minimum guarantee applies 2011 - $750 000 indexed. Refer Schedule 1 of the Workers Rehabilitation and Compensation Regulations, 2010. See Annexure C, Schedule 1 of the 'Code of conduct for self insured employers under the WorkCover Scheme' (May 2011) entitled 'Self insured employers terms and conditions of registration'.	Self-insurers need to maintain an excess of loss insurance policy that must satisfy: • $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: • three times the individual incident excess, or • 10% above the average incurred claim cost for the prior 3 years. Refer Annexure C, Regulation 9, Schedule 1 of the Workers Rehabilitation and Compensation Regulations, 2010. Section 60 of WRC Act.
Tasmania	For self-insurers with less than 3 years experience: Bank guarantee equal to: Yr 1: Notional Premium x 100% Yr 2: Notional Premium x 140% Yr 3: Notional Premium x 180% + the greater of: 30% of the adjusted notional premium, or the quantum of the catastrophe deductible (per event retention), or $500 000. For self-insurers with more than 3 years experience: Minimum of 150% of central estimate of outstanding claims liabilities or $1m whichever is greater. Providing a financial undertaking (Guideline S1-130) Methodology for determining the quantum of a Financial Undertaking (Guideline SI - 140)	Excess of loss policy for a minimum amount of $50 million and power of attorney over policy. Securing an Excess of Loss Policy (Guideline SI-150)
Northern Territory	150% of self-insurer liabilities on application and as assessed at each review.	Not applicable.
Australian Capital Territory	Guarantee from an authorised deposit-taking institution for the greater amount of: • $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%.	The application must provide evidence that the employer has reinsurance of $500,000 (CPI indexed) for a single event to cover the employer's future liability under the Act.
C'wealth Comcare	The guarantee must be for an amount calculated by the actuary as the greater of: 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. subject to a minimum amount of $2 500 000. *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.	Variable retention based on actuarial advice.

	Bank guarantees/ prudential margins	Excess of loss requirements
New Zealand	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.	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 work place injury with no ability to offload any of this risk.

Table 6.6: Self-insurance restraints on company structure

	Restraints on company structure
New South Wales	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. For group licences a cross guarantee or a holding company guarantee is required.
Victoria	Ultimate holding company in Australia and all wholly owned subsidiaries. s141(1)
Queensland	Group licences are restricted to groups of employers that are made up as follows: • employers who are in the same industry and have a pre-existing stable business relationship, or • related bodies corporate (as defined by the Corporations Act 2001).
Western Australia	Not applicable.
South Australia	A group of employers may apply for registration as a group of self-insured employers providing they are related corporations. Registration must include all related corporations.
Tasmania	Not applicable.
Northern Territory	Not applicable.
Australian Capital Territory	Not applicable.
C'wealth Comcare	A licence is required for each legal entity.
New Zealand	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. 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.

Table 6.7 Outsourcing of Case Management

	Outsourcing allowed
New South Wales	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.
Victoria	Under section 147A of the ACA, 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).
Queensland	Yes - s92(4).
Western Australia	Yes - see the Guidelines for the Approval and Review of Self-Insurers.
South Australia	Decisions must be made by the self insurer itself and this cannot be delegated.
Tasmania	Yes
Northern Territory	Not applicable
Australian Capital Territory	Yes
C'wealth Comcare	Licensees are allowed to outsource their claims management if they receive authorisation from the Commission. Licence does not cover claims with a date of injury which pre-dates the date of the licence and the licensee must continue to manage these claims as per state/territory arrangements.
C'wealth Seacare	Decisions must be made by the self insurer itself and this cannot be delegated.
C'wealth DVA	
New Zealand	Although Accredited Employers may, with the consent of the Manager, retain third party providers to assist in the management of workplace injuries this is subject to them maintaining direct personal involvement with the claimant.

Table 6.8: Other ongoing licence requirements

	Compliance with legislation	Ongoing licence requirements	Other matters
New South Wales	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. Failure to meet such requirements may constitute a basis for licence suspension, cancellation or non-renewal. Before taking such action, WorkCover will provide the self-insurer a reasonable opportunity to rectify any breach.	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity. WorkCover undertakes ongoing monitoring and review of self-insurers. Self-insurers provide specified information four months after their financial year end to enable an annual review (refer Tables 6.8a - e Reporting Requirements).	-
Victoria	WorkSafe will monitor the self-insurer's compliance with the Accident Compensation Act 1985, a Ministerial Order, 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 WorkSafe Agents); including but not limited to claims frequency rates, claims costs, injured worker satisfaction survey and self-audit results.	Self-insurers must comply with the Accident Compensation Act 1985, a Ministerial Order, the regulations, any terms and conditions of approval and other legislation (e.g. Occupational Health and Safety Act 2004). Self-insurers are also required to provide specified information at specified times to WorkSafe. Refer to Tables 6.4, 6.5 and 6.8 for details.	A self-insurer should notify WorkSafe as soon as they become aware of any strategically significant matter.
Queensland	(s83 Workers' Compensation and Rehabilitation Act 2003) A licence may be subject to: (a) the conditions prescribed under a regulation, and (b) any conditions, not inconsistent with the Act, imposed by the Authority: (i) on the issue or renewal of a licence, or (ii) at any time during the period of the licence.	• Ability to provide data in the format and at time intervals required by Q-COMP. • A self-insurer must supply Q-COMP summary information about claims processed on their system. (s93 Workers' Compensation and Rehabilitation Act 2003) When requested, provide copies of: • documents relating to all claims made • documents that may assist in assessing the quality and timeliness of claims and rehabilitation management • documents that may assist in assessing the self-insurers financial situation • any other documents required to be kept under the licence.	-
Western Australia	WA WorkCover monitors self-insurer activities and performance and conducts periodic checks to ascertain if self-insurers maintain an acceptable level of compliance against the Guidelines for the Approval and Review of Self-Insurers and the Workers Compensation and Injury Management Act 1981. If a satisfactory performance is not indicated, a nominated person of the self-insurer may be called before the Authority to show just cause why the approval and exemption of the self-insurer should not be cancelled in accordance with sections 165 and 166 of the Act. Refer to WorkCover WA's Guidelines for the Approval and Review of Self-Insurers for more information. Guidelines for the Approval and Review of Self-Insurers	Self-insurers are required to meet their financial, reporting and claims management obligations as specified under the Workers' Compensation and Injury Management Act 1981 and the Guideline for the Approval and Review of Self-Insurers. Refer to tables 6.8a -e for further information. Guidelines for the Approval and Review of Self-Insurers	Self-insurers must: • Demonstrate expertise to determine claims within the State in time limits specified. • Effect weekly payments within frequency specified. • Carry out responsibility with respect to injury management. • Submit accurate and timely statistical returns/information. • Provide and maintain a copy of their organisational chart • Demonstrate that an injury management programme is in place • Confirm that information management systems utilised by the self insurer are able to meet the compliance standards as defined in the Q1 specifications including the provision of data and returns. Guidelines for the Approval and Review

	Compliance with legislation	Ongoing licence requirements	Other matters
			of Self-Insurers
South Australia	Self-insurers must comply with all statutory requirements and conditions of registration for registration continuity. Failure to meet requirements may result in reduction, revocation or non-renewal of self-insured registration. Furthermore, any proven systemic abuse of a delegation under the Act may result in the delegation being removed. See s60 of the WRC Act and 3.6 within Code of conduct for self insurers under the WorkCover Scheme (May 2011).	Self-insurers must comply with all statutory requirements and conditions of registration for registration continuity.See Code of conduct for self insurers under the WorkCover Scheme (May 2011).	-
Tasmania	s107 - Self-insurers must comply with permit conditions imposed by the Board. A self-insurer who fails to comply or contravenes any permit condition is guilty of an offence and liable on summary conviction to a fine not exceeding 100 penalty units . The Board may revoke or suspend a permit if it is satisfied that the self-insurer has failed to comply with any provisions of the Act and the failure constitutes a significant breach of the Act or the self –insurer has been convicted of an offence against the Act - s111. Meeting self-insurer permit conditions (Guideline SI-060) Self-insurer permit conditions	Self-insurers are to comply with the legislation and with permit conditions: Self-Insurer Permit Conditions Meeting self-insurer permit conditions (SI-060)	-
Northern Territory	s124 - The Authority may at any time, in its absolute discretion, by notice in writing to an approved insurer or self-insurer, revoke or suspend approval.	Not applicable.	Ongoing satisfactory demonstration of the employer's ability to: • provide statistical and other information required • provide financial contributions as requested, • adequately provide for and manage the company's Northern Territory workers' compensation claims. Adequate expertise to determine claims within the Territory in the time limits specified. Effect weekly payments within the frequency specified. Carry out responsibility with respect to injury management. Submit accurate and timely statistical returns/information. S 119 and s 122

	Compliance with legislation	Ongoing licence requirements	Other matters
Australian Capital Territory	Continue to meet obligations under the Act and Regulations, and any other protocol approved by the Minister that relates to self-insurers. Ensure that workers' compensation claim form, register of injuries and early injury notification form comply with Workers' Compensation Insurer's Form Specifications. Comply with Workers' Compensation Insurers Download Specifications.	Self-insurers must comply with all statutory requirements and conditions of licence for licence continuity.	The self-insurer must agree to participate in, and pay the costs of, an audit to establish that the self-insurer has adequate resources to meet its current and expected liabilities under the Act. The employer must agree to participate in, and pay the costs of, an audit to establish that the employer has complied with its obligations under the Regulatory Framework
C'wealth Comcare	Licensee must comply with the requirements of: • The SRC Act, Regulations and any other applicable guidelines issued by the Commission under s73A 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 safety and health of employees. • Any such guidelines dealing with covert surveillance of employees. • Conditions of licence relating to financial reporting and prudential arrangements.	Comply with any written directions given by the Commission. If claims are managed by a claims manager, provide a copy of the Commission's directions to the claims manager.Advise and provide a copy of the initiating process to Comcare as soon as possible of any court proceedings in relation to a matter arising in respect of a claim. Must notify Comcare in writing immediately that the licensee becomes aware: (a) licensee has not complied with, or not likely to comply with, a condition of the licence (b) of any event that may materially impact upon its sustainability to hold a licence, including its capacity to meets its liabilities under the SRC Act or of any material change in financial position (c) any material change to its legal structure, ownership or control (d) of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees. Provide Commission upon request, information relating to the licensee's operations. Ensure claims manager complies with the conditions of the licence. Be accountable for all claims management policies issued by the claims manager. 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. Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the Commission. Obligations imposed by the licence must be written into the contract between the licensee and the claims manager. Provide a yearly guarantee. Maintain an appropriate level of reinsurance.	-
New Zealand	Licensee must comply with the requirements of: • The AC 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.	Comply with any written directions given by ACC. Advise ACC of: • 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. Provide ACC upon request, information relating to the licensee's operations. Ensure claims manager complies with the conditions of the licence. Retain overall responsibility for claim and case management. Notify 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. Must enter into and maintain a written contract with the claims manager and provide a copy of the contract to the ACC.	-

Table 6.9: Reporting requirements

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
Claims data										
Frequency	Monthly	Quarterly	Monthly	Monthly	Fortnightly	Monthly Annually Annually	Monthly	Monthly	Monthly	Monthly
Timing	By the 10th day of the following month	31 March; 30 June; 30 September; 31 December	By the 8th day of the following month	Within 21 days from the end of the month	By fortnightly schedule agreed between WorkCover and employer	By the 21st day of the following month By 31 August each year By 30 September each year	By the 15th day of the following month	By the 10th day of the following month	By the 10th day of the following month	At the end of each month, and no later than 5 working days
Format	Electronic data interchange/ NDS3 format	Electronic data transfer: remuneration; count of standardised claims; count of > 10 day claims; count of > 15 day claims (or >13 weeks over excess claims); total standardised payments on standardised claims; total standardised payments on > 10 day claims; and number of companies in the comparator group.	Electronic data interchange	Electronic / meets Q1 specifications	Electronic Data Interchange. Claim data as detailed in Schedule 1 to the Workers Compensation Regulations	Annual data return Actuarial assessment of claims	Electronic data interchange	a. IBM formatted disk - either 3½" floppy or E-mail to workcoverdata@act.gov.au at WorkSafe ACT, after the file is encrypted with PGP	Electronic data interchange/ NDS3 format	The Accredited Employer must regularly report to the Manager on claims, entitlements and expenses arising during the Cover Period and ensuing Claim Management Period
More information			Reference material and links - Data specifications	Guidelines for the Approval and Review of Self-Insurers Approved Self-Insurers Performance Indicators	Schedule 1 to the Workers Compensation Regulations or the Self-Insured Code of conduct	WorkCover Tasmania website	Contact NT WorkSafe			Licensee must comply with the requirements of: • The AC Act, Regulations and any other applicable guidelines issued by ACC

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
				Insurer/Self Insurer Electronic Data Specification						• The Privacy Act 1993 • Health Information Privacy Code 1994 • The Code of ACC Claimants' Rights
Annual financial information										
Annual report/ financial statements	Audited financial statements by 31 August each year. Annual report within 4 months of end financial year.	Annual report within 6 months of end of financial year.	Audited financial statements within 20 business days of becoming publicly available. Annual report within 20 business days of becoming publicly available. Wages declaration for NDS purposes only be 31 August each year.	Return on investment required for initial application and for annual review.	Audited financial statements / Annual Report Within 5 months of the end of the employer's financial year.	Annual report by 31 July eacy year.	Audited financial statements by 31 August each year. Annual report by 31 August each year.	-	Audited financial statements by 31 october each year.	
Actuarial report/ assessment of claims liabilities	Actuarial assessment of claims liabilities by 30 April each year.	Actuarial assessment of claims liabilities Within three months of the end of the financial year	Actuarial assessment on claims liabilities within 20 business days after the end of each year of the Licence or such other time as agreed between Q-COMP and the licensee.	Claims liability as a % of net assets required for initial application and for annual review. Gearing ratio required for initial application and for annual review.	Actuarial report on outstanding claim liability within 3 months of the end of the employers financial year or at such other time as may be agreed between WorkCover and the		Actuarial assessment of claims liabilities by 31 August each year	-	Actuarial assessment of claims liabilities by 31 August each year Letter addressed to the Commission signed by the Principal Officer of the licensee certifying that the actuarial assessment has been made in accordance with the licence conditions, a provision has been made in the	The measures are: 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

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
					employer				accounts for meeting the estimated liabilities, and that the licensee has the capacity to meet any single claim up to the reinsurance retention amount.	return on equity. 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).
Guarantees/ audit certificates		Certified remuneration by 31 August each year. Guarantee to cover tail claims Within 4 weeks of WorkSafe notification for guarantee adjustment Audit certificates within 6 months of end financial year. Annual report		Balance sheet test, quick liquidity, current liquidity, interest coverage, return required for initial application and for annual review.	Update financial guarantee As required in correspondence, normally within one month of submission of actuarial report	Independent financial Audit Report by 31 August each year.		-		Employers must provide evidence to prove their solvency and their ability to meet their obligations under the programme prior to acceptance in to the programme. ACC is required to satisfy itself in respect of an employers net worth, that the employer's contingent liabilities are not excessive, that it has satisfactory solvency, liquidity and profitability ratios over a period of time (usually three years).
Evidence of excess of loss insurance or reinsurance	Evidence of existence of Excess of Loss insurance within 3 months of the commencement of each policy	Evidence of existence of Excess of Loss Insurance Within 21 days of the commencement of each policy	Excess of loss insurance - varies from insurer to insurer.		Evidence of existence of Excess of Loss Insurance policy As required in correspondence, normally within	Evidence of existence of Excess of Loss Insurance by by 31 August each year.	Claims liabilities and evidence of Excess of Loss Insurance by 31 August each	-	Deed between the Commission, Comcare and a bank or insurer for an amount that can be called upon by the Commission in	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
	year.	year			one month of submission of actuarial report		year.		the event a self insurance licence is suspended or revoked by 30 September each year.	
Other company information										
Number of employees/FTE	Number of employees by 31 August each year.	Number of FTE's Remuneration	Number of FTE's (Minimum 500 if licence issues pre March '99 and 2000 if licence after March '99) annually and at licence renewal - reporting annually and varies by insurer.	Internal dispute resolution services Material resources (organisational chart) Security obligations (claims liabilities, etc) Insurance obligations (common law cover) Terrorism arrangements (contribution as a result of terrorism)			Number of employees by 31 August earch year.	Number of employees by 31 August each year.	Number of employees by 31 August each year.	
Remuneration or wages declaration	Remuneration by 31 August each year.	Remuneration by 31 August each year			Remuneration by 31 July each year.	Workers and wages report by 21 July each year.	Remuneration by 31 August each year.		Remuneration by 31 August each year.	
Other	Workplace location by 31 August each year. Predominate industry/Workcover Industry Classification by 31 August each year.	Opened/Closed workplace during the reporting period by 31 August each year. Workplace location; Predominate industry/Workcover Industry Classification; Open/closed workplace during the reporting period - by 31 August each	Rehabilitation policy and procedures (once per licence period - up to 4 years) - reporting annually and varies by insurer.	Internal dispute resolution services Material resources (organisational chart) Security obligations (claims liabilities, etc) Insurance obligations (common law cover) Terrorism arrangements (contribution as a result of terrorism) - reporting annually	Advice of any change in structure or financial relationships that may affect the consideration of the viability of the employer by 31 July earach year or as soon as possible after a change has occurred.	Financial undertaking by 30 September each year.	Claims paid and occupation of workers by 31 August each year..	Workplace location, predominate industry/Workcover Industry Classification by 31 August each year. Insurer data specification reported monthly by the 10th day of the following month.	Workplace location and predominate industry/Workcover Classification by 31 August each year.	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
		year. National Self-Insurer OHS Audit Tool - self-audit results by 31 August each year. Claims Administration self-audit results by 31 August each year.		for initial application & for annual review.						
More information				Part of KPIs - audited on as an needs basis. Assessed on application only					Licensees must notify Comcare of notifiable incidents arising out of the conduct of the business or undertaking. A notifiable incident is: the death of a person; the serious personal injury of a person; or a dangerous occurrence.	Frequency of reporting - upon entry.
Irregular reporting requirements										
Changes to Company structure ownership or control	Report within 28 days: if the employer ceases to be the holding company in relation to any of the subsidiaries; or if a receiver is appointed in respect of property or part of the property of the body corporate. Report within 10 business days of acquisitions & dispositions of	Notify within 28 days of the occurance of any circumstance under section 145 of the ACA. Notify within 1 week after becoming aware of thee strategically significant matters.	Report within 5 business days of the proposed change: Any event that could reasonably be expected to materially impact on the licensee's net tangible assets; Any event that could reasonably be expected to materially impact on the licensee's financial viability or ability to meet		Report financial and structural details as early as possible (or in advance) any action affecting the corporate structure of the group, including disposal of sibsidiary, acquisition of subsidiary, formation of new subsidiary, appointment of receivers, administrtors or	Report as soon as practicable any changes in ownership, directors, structure or financial circumstances.			Licensee must notify Comcare in writing immediately when it becomes aware of any changes to its legal structure, ownership or control	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
	wholly owned subsidiaries employing in NSW.		its liabilities for claims; Any intention of the licensee to withdraw or reduce the bank guarantee or cash deposit lodged with Q-COMP.		liquidators, takeover of the company etc.					
Changes to key personnel responsible for OHS or injury management	-		Report within 5 business days of the proposed change: Any event that reasonably could be expected to affect the licensee's occupational health and safety performance; Any intention to change the manner in which any claims are administered or the manner in which the rehabilitation of workers is managed;	Report one month prior to the commencement of any arrangement resulting in change in a self-insurer's outsoucing arrangement of claims management.						
Breaches or failures to comply with licence conditions or changes likely to result in same		A self-insurer must immediately notify WorkSafe if they are unable to pay any debts as & when they fall due or they become aware of any event that may prevent them from meeting any other						Immediately report any changesof the self-insurer that would impact the self-insurance licence.	Licensee must notify Comcare in writing immediately when it becomes aware that it has not complied with, or is not likely to comply with, a condition of licence Licensee must notify Comcare in writing immediately when it becomes aware of any event	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
		requirement for approval & operation as self-insurer in accordance with (i) the Act or the regulations; or (ii) any terms or conditions of its approval as a self-insurer; or (iii) a Ministerial Order; or (iv) anyother subordinate instrument made under the Act or regulations.							that may materially impact upon its suitability to hold a licence, including its capacity to meet its liabilities under the SRC Act or of any material change in its financial position	
Changes to predominant industry/employee numbers/risk profile of work	-		Report within 5 business days of the proposed change: Any event that could reasonably be expected to materially impact on the number of fulltime workers employed in Queensland by the licensee; Any proposed changes to personnel responsible for managing and deciding claims.						Licensee must notify Comcare in writing immediately when it becomes aware of any significant change in its employee numbers or significant change in the risk profile of the work undertaken by its employees Licensee must notify Comcare in writing immediately when it acquires another company and intends on transferring the employees of that company to the licensed company, or merges with another company and intends on transferring the employees of that company to the licensed company	

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Territory	C'wealth Comcare	New Zealand
Other	-	Notify WorkSafe (within 28 days of wholly acquiring a scheme-insured body corporate) whether or not the self-insurer elects to assume the liability for the tail claims of a scheme-insured body corporate acquired by a self-insurer.	Report within 5 business days of the proposed change: Any event that reasonably could be expected to affect the licensee's occupational health and safety performance; Any intention to change the resources and systems used by the licensee for the provision of information to Q-COMP.						licensees must inform Comcare as soon as practicable of court or tribunal proceedings in relation to a claim managed by a licensee under the SRC Act. The licensee must not make any submission to a court or tribunal in relation to the interpretation of a provision of the SRC Act that Comcare or the Commission requests the licensee not to make. Clause 18 of the licence conditions requires licensees to report certain workers' compensation and other data to Comcare on a regular basis.	
More information	-	-	-	-	-	-	-	-	-	-

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

	Requirements for surrendering a self-insurer licence	Penalties for exiting the scheme (and/ or moving to Comcare scheme
New South Wales	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: (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. (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. 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 Workers Compensation Act 1987. Legislation pursuant to section 213 of the Workers Compensation Act 1987 now allows WorkCover to require additional security from former self-insurers.	As an alternative to the making of a contribution to the Insurance Fund, the self-insurer may enter into an agreement with WorkCover to assume responsibility for the outstanding claim liabilities that would otherwise be payable by the licensed insurer who previously insured the employer. Penalties exiting State scheme and moving to Comcare scheme Extra charges: N/A. Time for payment: N/A. Specific review provisions: N/A. Penalties: N/A.
Victoria	Accident Compensation Act 1985 – Sections 151, 151A, 151B, 151C, 151D & 151E Where a self-insurer requests that their licence be revoked or approval is revoked, WorkSafe assumes the liability in respect of the tail claims. The former self-insurer must ensure all claims are given to WorkSafe and all new claims are lodged with WorkSafe. Where WorkSafe assumes liability for tail claims, the liability shall, within 28 days after being assumed by WorkSafe be assessed by an actuary appointed by WorkSafe; 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 WorkSafe. If the self-insurer fails to pay the amount due within the period, WorkSafe may recover that amount under the guarantee. Where the liability of the self-insurer is assessed or determined, WorkSafe shall undertake an assessment of the tail claims liabilities at the end of each year for during the liability period. If the revised assessment at the end of the third year exceeds the initial assessment, the employer must pay the difference to WorkSafe. If the revised assessment is less than the initial, WorkSafe must pay the difference to the employer. This process will be repeated at the end of the six year liability period and if the revised assessment exceeds the assessment at the end of third year, the employer must pay the difference to WorkSafe. If the revised assessment is less, WorkSafe must pay the difference to the employer.	Accident Compensation Act 1985 - Part VIA Application: Former premium payers and self insurers. Specific reference to exiting employers who join the Comcare scheme. Applies from 1 July 2005. 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 WorkSafe and employer must pay any assessed increase in the cost of tail claims at the end of the third and sixth year. Extra charges: Actuarial charges and any extra assessment if employer disputes the WorkSafe assessment. Time for payment: 28 days to pay tail claim liability. Specific review provisions: Employer may appoint its own actuary to review WorkSafe's final revised assessment of liability. Ability to seek judicial review at common law and actions under the *Administrative Law Act 1978* are excluded. Penalties: Interest payable on unpaid amounts as per the Accident Compensation Act 1985.
Queensland	Workers' Compensation and Rehabilitation Act 2003) (s97) 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 (S98). 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. (s99 Workers' Compensation and Rehabilitation Act 2003) 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. . **Recovery of ongoing costs from former self-insurer (s101 Workers' Compensation and Rehabilitation Act 2003)** 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. **Assessing liability after cancellation (s102 Workers' Compensation and Rehabilitation Act 2003)** 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. **Return of bank guarantee or cash deposit after cancellation (s103 Workers' Compensation and Rehabilitation Act 2003)** 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	Workers' Compensation & Rehabilitation Act 2003 - s105B Application: Solely to former self insurers who join the Comcare scheme. 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. Extra charges: Levy fee for 12 months, share of actuary charges, and share of any arbiter costs. Time for payment: Interim payment 12 months after exit date needs to be made within 20 business days of receiving written assessment from WorkCover. 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. Specific review provisions: If WorkCover and the employer cannot agree on the recalculated amount they may refer to an arbiter. Penalties: No penalties specified for late payment.

	Requirements for surrendering a self-insurer licence	Penalties for exiting the scheme (and/ or moving to Comcare scheme
	written notice, ask the Authority to return the balance of the bank guarantee or cash deposit.	
Western Australia	An employer or group of employers that cease to be exempt is required to insure in accordance with section 160 of the Workers' Compensation and Injury Management Act 1981. Where cancellation occurs, the bond will be held until all claims relevant to the period of self-insurance are satisfied. Guidelines for the Approval and Review of Self-Insurers	No specific provisions .
South Australia	**Assumption of liabilities** WorkCover must undertake the liabilities of any self-insured employer that ceases to be registered as a self-insured employer. 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. Section 50 of the WRC Act. See 7.4 of 'Code of conduct for self insurance under the WorkCover Scheme' (May 2011). **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. **Run off of claims** 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. 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.	Workers Rehabilitation and Compensation Act 1986 - s50, s67AA A discontinuance fee was put in place in 2008 under section 67AA of the WRC Act and the regulations under it at the time. These regulations were disallowed by Parliament in July 2010. In relation to moves to Self-Insurance, the prior provisions relating to a balancing payment were revived by the disallowance. These provisions are in the Self-Insurer Code and remain applicable at this time. WorkCoverSA and the South Australian Government plan to consult with self-insured employers on possible alternatives in the near future. Any employer wishing to obtain updates on this matter should contact WorkCover.
Tasmania	Exit provisions are set out in the following Guideline Exit provisions for self-insurer permit holders (Guideline SI-280).	No specific provisions.
Northern Territory	Employer retains responsibility for run off of claims incurred during period of self-insurance.	No penalties.
Australian Capital Territory	Under s94 of the Workers Compensation Regulation 2002, the Minister may revoke or suspend a self-insurers exemption. r95 This must be done in writing and is effective 7 days after notice has been given.	No specific provisions.

	Requirements for surrendering a self-insurer licence	Penalties for exiting the scheme (and/ or moving to Comcare scheme
C'wealth Comcare	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.	Not applicable.
New Zealand	ACC has the right to terminate in respect of: • any insolvency event, or • a material breach, if the Accredited Employer no longer complies with the framework of the AC Act.	Not applicable.

Chapter 7: Scheme administrative and funding arrangements

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

This chapter includes:

Scheme administrative arrangements

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

During the 2010-11 financial year, workers' compensation schemes operated under separate laws in each jurisdiction, as shown in Table 7.1.

Transitional provisions

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

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

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

Unique provisions and other workers' compensation schemes

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

Table 7.3 lists the minor schemes extant in each jurisdiction. Tables 7.3a to 7.3g expand on the specific arrangements in each jurisdiction for the minor schemes.

Table 7.1: Applicable workers' compensation legislation

	Applicable workers' compensation legislation
New South Wales	Workers Compensation Act 1987 Version valid from 8 July 2011 to 30 September 2011 Historical versions can be accessed from the same link. Workplace Injury Management and Workers Compensation Act 1998 Version valid from 1 March 2011 to 30 September 2011 Historical versions can be accessed from the same link.
Victoria	Refer Victorian Law Today Accident Compensation Act 1985 - Version 183 is valid from 1 January 2012 Accident Compensation (WorkCover Insurance) Act 1993 - Version 70 is valid from 1 July 2011. Historical versions can also be accessed at here
Queensland	Workers' Compensation and Rehabilitation Act 2003 (permalink to current reprint) (Reprint 5D, valid 4 April to 5 June 2011). (Reprint 5C, valid 1 January 2011 to 3 April 2011). (Reprint 5B, valid 1 November 2010 to 31 December 2010). (Reprint 5A, valid 14 October 2010 to 31 October 2010). (Reprint 5, valid 1 July 2010 to 13 Oct 2010). (Reprint 4C, valid 1 July 2010 to 1 July 2010). (Reprint 4B, valid 17 Jun 2010 to 30 Jun 2010). (Reprint 4A, valid 29 Mar 2010 to 16 Jun 2010). (Reprint 4, valid 10 Dec 2009 to 28 Mar 2010). (Reprint 3G, valid 3 Nov 2009 to 9 Dec 2009). (Reprint 3F, valid 26 Oct 2009 to 2 Nov 2009). (Reprint 3E, valid 1 Jul 2009 to 25 Oct 2009).
Western Australia	Workers' Compensation and Injury Management Act 1981 (Version 09-g0-00 as at 01 Dec 2011) Other versions of this Act can be found at here
South Australia	Workers Rehabilitation and Compensation Act 1986 (Version valid 1 Feb 2010 to 30 Sept 2011). (Version valid 1 Jan 2010 to 31 Jan 2010). (Version valid 15 Oct 2009 to 31 Dec 2009). (Version valid 1 July 2009 to 14 Oct 2009). WorkCover Corporation Act 1994 (Version valid 1 Feb 2010 to 30 Sept 2011). (Version valid 1 Jan 2010 to 31 Jan 2010). (Version valid 1 July 2009 to 31 Dec 2009).
Tasmania	Workers Rehabilitation and Compensation Act 1988 (Version valid 1 July 2010 to 4 Feb 2011). (Version valid 1 July 2009 to 30 June 2010). (Version valid 1 July 2010 onwards) Workers' (Occupational Diseases) Relief Fund Act 1954 (No. 45 of 1954) (Version valid from 1 Jan 2004).

	Applicable workers' compensation legislation
Northern Territory	Workers Rehabilitation and Compensation Act Version valid 1 Feb 2011 to 1 September 2011 (Version valid 1 July 2010 to 1 Feb 2011). (Version valid 16 September 2009 to 30 June 2010). (Version valid 18 June 2009 to 15 September 2009).
Australian Capital Territory	Workers Compensation Act 1951 (Republication No. 52, 21 September 2011 - 11 December 2011) (Republication No. 51, 13 September 2011 - 20 September 2011) (Republication No. 50, 1 July 2011 - 12 September 2011) (Republication No.49, Effective 1 December 2010 - 30 June 2011) (Republication No.48, Effective:30 Sept 2010 to 30 Nov 2010). (Republication No.47, Effective:10 July 2010 to 29 Sept 2010). (Republication No.46, Effective:1 July 2010 to 9 July 2010). (Republication No.45, Effective:31 Mar 2010 to 30 June 2010). (Republication No.44, Effective:17 Dec 2009 to 30 Mar 2010). (Republication No.43, Effective:22 Oct 2009 to 16 Dec 2009). (Republication No.42, Effective:1 Oct 2009 to 21 Oct 2009). (Republication No.41, Effective:3 Sept 2009 to 30 Sept 2009). (Republication No.40, Effective:2 July 2009 to 2 Sept 2009). (Republication No.39, Effective:8 April 2009 to 1 July 2009).
C'wealth Comcare	Safety, Rehabilitation and Compensation Act 1988 Version valid from 5 January 2012 Version valid 18 December 2010 to 04 Jan 2011. (Version valid 1 July 2010 to 17 Dec 2010). (Version valid 19 April 2010 to 30 June 2010). (Version valid 24 February 2009 to 18 April 2010). (Version valid 1 November 2009 to 23 February 2010). (Version valid 15 July 2009 to 31 October 2009). (Version valid 1 July 2009 to 14 July 2009).
C'wealth Seacare	Seafarers Rehabilitation and Compensation Act 1992 (Version valid 8 February 2010 to 19 October 2011). (Version valid 15 July 2009 to 7 February 2010). (Version valid 5 June 2009 to 14 July 2009).
C'wealth DVA	Military Rehabilitation and Compensation Act 2004
New Zealand	Accident Compensation Act 2001 No 49 (current) (Version valid 1 April 2002 onwards) Accident Compensation Amendment Act 2010 No 1 (Version valid 3 March 2010 onwards) Injury Prevention, Rehabilitation, and Compensation Act 2001 No 49 (Was renamed Accident Compensation Act 2001 on 3 March 2010)

Table 7.2: Transitional legislation provisions as at September 30 2011

	Transitional legislation provisions
New South Wales	Workers Compensation Act 1987, Schedule 6.
Victoria	Workers Compensation Act 1958.
Queensland	Workers' Compensation Act 1916. Workers' Compensation Act 1990. WorkCover Queensland Act 1996.
Western Australia	Workers' Compensation and Injury Management Act 1981.
South Australia	The Workers Compensation Act 1971 may still apply to injuries with a date of injury prior to 30 September 1987, the date on which the 1986 Act commenced.
Tasmania	Workers Compensation Act 1927 (for injuries prior to 15 November 1988). Workers' (Occupational Diseases) Relief Fund Act 1954.
Northern Territory	Workmen's Compensation Ordinance 1949. Workmen's Compensation Act 1979.
Australian Capital Territory	The ACT legislation is a consolidation of previous enactments.
C'wealth Comcare	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.
C'wealth Seacare	A person who has a date of injury under the Seamen's Compensation Act 1911 is entitled to compensation under the 1992 Act provided compensation for that injury would have been payable under the earlier Act. A person is not entitled to compensation under the 1992 Act if compensation was not payable in respect of an injury suffered under a previous Act. Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992
C'wealth DVA	Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004
New Zealand	Accident Insurance (Transitional Provisions) Act 2000. Accident Insurance Act 1998. Accident Rehabilitation and Compensation Insurance Act 1992. Accident Compensation Act 1982. Accident Compensation Act 1972.

Table 7.3a: Minor schemes - New South Wales*

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Associated general contractors insurance company Limited Act 1980	NSW WorkCover.	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 Workers' Compensation Act 1926.	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 policy of insurance issued by the Company is entitled to payment of that amount: (a) out of the fund, and (b) after the fund is closed, out of the Contribution Fund.	Not specified.	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	NSW WorkCover.	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.	Any worker suffering from Brucellosis.	N/A	To establish an industry specific fund to compensate workers who have contracted Brucellosis. Type of compensation is based on the Workers Compensation Act 1987.
Workers' compensation (Bush fire, emergency and rescue services) Act 1987	NSW WorkCover.	To continue the special compensation scheme for bush fire fighters, emergency service workers and rescue association workers.	Bush fire fighters, emergency service workers and rescue association workers.	147,844 Rural Fire Service, State Emergency Service and Surf Life Saving volunteers.	Unique Scheme.
Workers' compensation (Dust diseases) Act 1942	Workers Compensation (Dust Diseases) Board.	This Act makes provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to a dust disease specified in Schedule 1 of the Act, including any pathological condition of the lungs, pleura or peritoneum, that is caused by dust that may also cause a disease so specified, to validate certain payments. The ACT	Any worker who has developed a 'dust disease' as defined in Schedule 1 of the Act from occupational exposure to dust as a worker in New South Wales.	As at 30 June 2011 compensation benefits are being provided to a total of 3822 clients: 1100 workers and 2722 dependants of deceased worker.	A system of no fault compensation for workers and their dependants where a worker suffers death or disability from dust diseases.

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Coal industry Act 2001	Coal Services Pty Limited.	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.	Workers employed in or about a mine – definition from 1987 Act.	N/A	Unique Scheme.
Treasury managed fund (TMF)	NSW Self-Insurance Corporation, a branch of NSW Treasury.	TMF clients are the NSW Government budget dependent agencies. Other non-budget dependent public sector agencies may join the TMF on a voluntary basis.	Workers' compensation as per NSW statute.	Employees of 133 member agencies.	Unique Scheme.

Table 7.3b: Minor schemes - Victoria

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Volunteers - recoupable claims	Claims by volunteers under the: • Country Fire Authority Act 1958 are administered by the Country Fire Authority. • Police Assistance Compensation Act 1968 (PAC Act) are administered by the Police Department. Except for claims under the Acts above, WorkSafe Victoria administers claims of volunteers as an agent on behalf of the Crown. The claims agent responsible for managing claims for the Department of Justice manages claims by volunteers under the following Acts: • Victorian State Emergency Services Act 1987 (applies to registered and casual emergency workers). • Juries Act 2000 (applies to jurors). • Emergency Management Act 1986 (applies to casual emergency workers). The agent responsible for managing claims for the Department of Education manages claims by volunteers under the Education Training and Reform Act 2006 (applies to volunteer school workers or volunteer student workers). WSV is reimbursed from the Consolidated Fund for any compensation payments made and the costs and expenses associated with administering these claims.	Under certain Acts, volunteers assisting Government Agencies are entitled to compensation in accordance with the Accident Compensation Act 1985 if injured while carrying out specified duties.	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. Workers assigned to emergency organisations by their employers as part of their contract of service, remain workers of the employer. They will only be entitled to compensation as volunteers if they are covered by the aforementioned Acts. While carrying out the relevant duties, volunteers in prisons and offenders working or participating in a correctional order or diversion program are entitled to compensation for personal injury if it would be payable under the Accident compensation Act if they were a worker employed by the Crown and the personal injury had arisen out of or in the course of employment.	Not known.	The aforementioned Acts provide that volunteers and other persons assisting government agencies are entitled to compensation if injured while carrying out relevant duties. Go to Victorian Legislation and Parliamentary Documents.

Table 7.3c: Minor schemes - Western Australia

Administered by	Purpose	Coverage	Number covered	Basis for legislation
WorkCover WA.	This Act applies to a waterfront worker in respect of whom there is an entitlement to make a claim for a relevant injury under 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.	Waterfront workers, within the meaning of the Compensation Act, employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.	N/A	N/A
WorkCover WA.	The Supplementation Fund provides for payments to injured workers in the event of the failure of an approved insurer.	The Supplementation Fund is administered by WorkCover WA and is funded through a levy on insurance premiums which is applied as and when required. No levy is currently in place.	N/A	N/A

Table 7.3d: Minor schemes - South Australia

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Statutory reserve fund	WorkCoverSA.	Was established under the Workers Compensation Act 1971 (1971 Act) for the administration of claims in the event of insolvent insurance companies or the insolvency of an uninsured employer. Clause 5A Schedule 1 Workers Rehabilitation and Compensation Act 1986 re-established this fund.	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	No new policies issued after 4.00pm 30 September 1987. There were no 'run-off' 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.	It makes WorkCoverSA the insurer of last resort under the 1971 Act. It also ensures that an employer could meet their obligation to be fully insured against liability to pay compensation under the 1971 Act – See Clause 5A Schedule 1 Workers Rehabilitation and Compensation Act 1986.
Insurance assistance fund	WorkCoverSA.	Exists to support policies issued under section 118g of the repealed Workers Compensation Act 1971 (1971 Act).	Statutory workers' compensation benefits and liabilities at common law in respect of injury prior to 4.00pm 30 September 1987.	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.	Insurer of last resort under 1971 Act. To make provision to assist employers who were unable to obtain satisfactory workers compensation insurance under the 1971 Act – See Clause 5A Schedule 1 Workers Rehabilitation and Compensation Act 1986.

Table 7.3e: Minor schemes - Tasmania

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Workers' compensation Act 1927	Department of Justice.	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.	N/A	N/A	N/A
Workers' (Occupational diseases) relief fund Act 1954	Department of Justice.	This Act contained specific provisions for certain occupational diseases that were relevant to employees working in particular industries, e.g. mining. Most provisions of the Act have been repealed and no new claims are permitted.	N/A	N/A	N/A

Table 7.3f: Minor schemes - Commonwealth

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Administrative scheme for the purposes of compensating persons present at British nuclear test sites in Australia	Department of Education, Employment and Workplace Relations.	To compensate those persons who can establish that they were in the region of the tests at the time of the testing, who sustained an injury or a disease which can be demonstrated to have arisen as a result of exposure to radiation, etc emanating from the British Nuclear Tests in the 1950s and 1960s. This scheme was formed by Executive Government in 1986.	Non-Commonwealth employees, pastoralists and indigenous persons who were present at or near the test sites at the time of the testing in the 1950's and early 1960's are covered under the scheme.	N/A	As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal, although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
Scheme for the payment of special compensation for injury in exceptional circumstances	Department of Education, Employment and Workplace Relations.	To compensate those persons (listed below) who suffer injuries or contract diseases, under exceptional circumstances, such as injuries which arise a result of actual or threatened acts of violence because the claimant was identified with the Australian Government. It also provides compensation for diseases contracted because of changes in the person's environment arising out of their connection with the Government, who would not have incurred such injuries or diseases but for the claimant's connection with the Australian Government – and for which they have no claim for compensation under a statutory scheme. This scheme was formed by Executive Government in 1986.	The Special Compensation Scheme provides compensation to Commonwealth government employees and/or their dependents, Commonwealth contractors, people undertaking actions at the direction of the Commonwealth and judges.	N/A	As there is no legislative basis to the scheme, any determination of a claim involves an exercise of the Government's executive power. There is no right of appeal, although claimants may seek common law redress against the Government. The scheme references Commonwealth workers' compensation legislation to determine the types and quantum of benefits paid under the scheme.
Asbestos related claims (management of Commonwealth liabilities) Act 2005	Comcare.	Manages the Commonwealth's asbestos-related claims liabilities for claims made outside the SRC and MRC Acts.	Claimants with asbestos-related conditions such as asbestosis, an asbestos-induced carcinoma, an asbestos-related non-malignant pleural disease, mesothelioma etc.	There were 103 open claims being managed at 30 June 2009.	A focal point for the Commonwealth to manage its asbestos liabilities.

	Administered by	Purpose	Coverage	Number covered	Basis for legislation
Veterans' Entitlements Act 1986	Department of Veterans' Affairs.	Provides entitlements to compensation and rehabilitation for members and former members of the Australian Defence Force injured in the course of their duties. Injury, disease or death related to the following service: • 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 to 30 June 2004, and • war-like operations (for example in East Timor) and non war-like operations to 30 June 2004.	To be eligible for compensation payments under the VEA a person must first qualify as a 'veteran', a 'member of the Forces' or a 'member of a Peacekeeping Force'. Certain civilians also have access to the VEA. A member who had not completed the three-year qualifying period before 7 April 1994 is not covered under the VEA, unless he/she was medically discharged within that time.	319,805 (as at September 2011)	Eligible veterans, serving and former defence force members, their war widows and widowers and dependants have access to: appropriate compensation and income support in recognition of the effects of war and defence service, and; to health and other care services that promote and maintain self-sufficience, well-being and quality of life.

Table 7.3g: Minor schemes - New Zealand

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

Scheme funding arrangements

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

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

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

In Privately underwritten schemes, most, if not all, insurer functions are provided by the private sector, through approved insurance companies and self-insuring employers who meet the appropriate prudential and other prerequisites. This includes underwriting. In the NT scheme, a public insurer competes with private insurers for provisions of workers' compensation. The degree of regulation of privately underwritten schemes by government varies. Table 2.3 on page 12 outlines the scheme funding arrangements in each jurisdiction.

Net funding ratio

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

Net assets

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

Net liabilities

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

financial year. Net liabilities are used in the calculation of funding ratios. Table 7.4 shows each jurisdiction's scheme funding position as reported in their annual reports.

Table 7.4: Schemes' funding positions as at 30 June 2011 and 30 June 2010

	30 June 2011	30 June 2010
New South Wales	Assets: $13 319 m. Liabilities: $15 682 m. Funding Ratio: 85%.	Assets: $12 464m. Liabilities: $14 047m. Funding Ratio: 89%
Victoria	Assets: $9662m. Liabilities: $8991m. Funding Ratio: 108%.	Assets: $8728m. Liabilities: $8768m. Funding Ratio: 100%.
Queensland	Assets: $3285m. Liabilities: $2942m. Funding Ratio: 112%.	Assets: $3082m. Liabilities: $2697m. Funding Ratio: 114%.
South Australia	Assets: $1754m. Liabilities: $2705m. Funding Ratio: 64.8%	Assets: $1571m. Liabilities: $2553m. Funding Ratio: 61.5%.
Northern Territory	Assets: $245.2m. Liabilities: $267.3m. Funding Ratio: 92%.	Assets: $252.3m. Liabilities: $248.2m. Funding Ratio: 101.6%.
C'wealth Comcare	Assets: $1516m. Liabilities: $1671m. Funding Ratio: 91%.1	Assets: $1465m. Liabilities: $1411m. Funding Ratio: 103.8%.1
C'wealth DVA		
New Zealand[2]	Assets: NZ$5189.5m. Liabilities: NZ$5477.5m. Funding Ratio: 94.7%.	Assets: NZ$4450.9m Liabilities: NZ$5818.9m. Funding Ratio: 76.5%.

1 - With prudential margin removed according to the Australian Equivalents to International Financial Reporting Standards (AEIFRS).
2 - Figures for 30 June 2011 include Residual claims.

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

Premiums

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

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

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

Employers who operate in more than one jurisdiction have to pay the relevant premium in each jurisdiction.

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

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

In 2009-10 the Australian standardised average premium rate was 1.53% of payroll, same as last year.

Table 7.5 below shows the standardised average premium rate in each jurisdiction over the last five financial years as reported in the CPM report 13th edition (Indicator 15).

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

Table 7.5: Standardised average premium rates 2005-06 to 2009-10 (% of payroll)

	New South Wales	Victoria	Queens-land	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory*	C'wealth Comcare	C'wealth Seacare	New Zealand
2005-06	2.50	1.77	1.36	1.69	2.88	1.90	2.03	2.93	1.20	5.86	0.88
2006-07	2.14	1.60	1.13	1.64	2.84	1.77	1.81	2.66	1.15	5.68	0.93
2007-08	1.93	1.46	1.09	1.38	2.83	1.49	1.81	2.28	0.97	4.87	0.92
2008-09	1.83	1.38	1.06	1.22	2.81	1.38	1.77	2.14	0.95	3.81	0.85
2009-10	1.82	1.39	1.12	1.22	2.76	1.40	1.82	2.03	0.93	3.59	0.93

* ACT Private

Premiums vary from industry to industry. Table 7.6 provides an indication of some selected premium rates. Apart from WA and Tasmania (i.e. NT and ACT), industry rates are not provided for jurisdictions with full private insurance underwriting, as each individual insurer sets their own industry rates. In the Comcare jurisdiction industry rates are not applicable as all employers are experience rated.

Further information on industry premium rates calculations are available for:

- New South Wales - Insurance Premiums Order 2011-2012
- Victoria - Industry descriptions are available in the periodical Victorian Government Gazette P1 - Premiums Order (No. 19) 2011/12 and Industry Rates in the special Victorian Government Gazette No. S268.
- Western Australia - The Gazetted industry premium rates for WA.
- Australian Capital Territory - ACT recommended reasonable premium rates for 2011/12 premium year.

Table 7.6: Selected industry premium rates as at 30 September 2011 (% of payroll)

	New South Wales[1]	Victoria[2]	Queensland[3]	Western Australia[4,7]	South Australia[5]	Tasmania	New Zealand[6]
Average levy/ premium rate	1.68	1.338	1.42	1.569	2.75	2.19	1.47
Highest published rate	11.672	11.790	9.771	6.51 (Carpentry Services).	7.50	9.27 (meat processing).	9.01
Highest experienced rate	N/A	N/A	18.0	N/A	N/A	N/A	N/A
Lowest published rate	0.215	0.310	0.192	0.25	0.40	0.44	0.04
Lowest experienced rate	N/A	N/A	0.029	N/A	N/A	N/A	N/A
House construction	5.040	1.908	2.793	1.13	2.80	4.00	3.29
Non-residential construction	3.928	2.185	2.905	2.13	2.90	3.39	3.03
Meat products	7.265 (Abattoirs). 7.591 (Meat packing and freezing). 7.252 (Meat processing).	7.465 (Meat Processing)	7.219 (Meat processing).	4.34 (Meat processing).	7.50	9.27 (meat processing).	1.24 (Inspection). 5.62 (Processing). 1.77 (Wholesaling).
Rubber products manufacturing	6.009% (Rubber tyre manufacturing). 4.197% (Other rubber product manufacturing nec).	2.787 (Natural Rubber Product Manufacturing) 2.135 (Synthetic Resin And Synthetic Rubber Manufacturing) 3.622 (Tyre Manufacturing)	3.277	3.06 (Rubber tyre manufacturing). 2.93 (Rubber product manufacturing n.e.c.).	4.80 (Rubber tyre manufacturing) 4.60 (Rubber product manufacturing nec)	1.97 (Products). 1.97 (tyre man).	1.35 (Natural rubber product manufacturing). 1.35 (Tyre manufacturing).

	New South Wales[1]	Victoria[2]	Queensland[3]	Western Australia[4,7]	South Australia[5]	Tasmania	New Zealand[6]
Plastic products	4.094 (Plastic product manufacturing).	3.811 (Rigid And Semi-Rigid Polymer Product Manufacturing) 3.353% (Other Polymer Product Manufacturing) 3.462 (Polymer Film And Sheet Packaging Material Manufacturing)	3.221% (Rigid and semi-rigid polymer product manufacturing).	2.05 (Plastic blow moulded product manufacturing).	5.30	4.20 (plastic blow moulded product manufacturing).	1.26
Basic iron and steel products	4.607 (Basic iron and steel manufacturing).	3.803 (Iron Smelting And Steel Manufacturing)	3.290 (Iron smelting and steel manufacturing)	3.74	5.80	2.98	1.46 (Manufacturing).
Steel casting	4.482 (Iron and steel casting and forging).	6.431 (Iron And Steel Casting)	3.290% (Iron and steel casting and forging).	2.98 (Iron and steel casting and forging).	6.90	2.98 (Iron and steel casting and forging).	1.46 (Iron and steel casting and forging).
Steel pipes and tubes	4.483 (Steel pipes and tubes manufacturing).	1.408	3.290	3.16	4.00	2.98	1.46 (Manufacturing).
Pulp paper and paperboard	3.326 (Pulp paper and paperboard manufacturing).	2.117	2.764	3.80	7.50	1.05	0.77 (Manufacturing).
Paints	2.985 (Paint manufacturing).	1.953 (Paint And Coatings Manufacturing)	2.009 (Paint and coating manufacturing).	1.27 (Paint manufacturing).	3.40	3.39% (Paint manufacturing).	0.60 (Manufacturing).
Soap and detergents	2.708 (Soap and other detergent manufacturing).	3.322 (Cleaning Compound Manufacturing)	2.009 (Cleaning compound manufacturing)	1.49	3.00	3.39	0.75 (Manufacturing)
Glass and glass products	4.516 (Glass and glass products manufacturing).	2.743	3.070	3.49	3.40	3.18	1.70 (Manufacturing).

	New South Wales[1]	Victoria[2]	Queensland[3]	Western Australia[4,7]	South Australia[5]	Tasmania	New Zealand[6]
Cement	2.851 (Cement and lime manufacturing).	2.912 (Cement And Lime Manufacturing)	2.244 (Cement and lime manufacturing).	2.95 (Cement and lime manufacturing).	5.70	2.27 (Cement and lime manufacturing).	1.70 (Cement & Lime Manufacturing).
Clothing manufacturing	4.110 (Men's and women's clothing manufacturing)	2.065	1.775	3.06	3.40	2.47	0.90
Beer	2.868 (Beer and malt manufacturing).	0.943	1.925	2.22	1.90	2.37 (Beer and malt manufacturing).	0.93 (Beer & malt manufacturing).
Hotels	2.831 (Pubs, taverns and bars).	1.849 (Accommodation)	2.345 (Accommodation)	1.62 (Pubs, taverns and bars).	2.90	1.86 (Pubs, taverns and bars).	1.09 (Pubs, taverns & bars).
Bread manufacturing	3.785	2.898 (Bread Manufacturing (Factory Based)	3.731	4.68	7.40	2.37	1.53
Footwear manufacturing	4.265	5.487	1.775	2.25	3.80	2.47	0.90
Nursing homes	5.055	3.612 (Aged Care Residential Services)	2.918 (Aged care residential services).	3.60	7.50 (Personal care services) 4.60 (Residential care services nec)	4.71	1.90 (Retirement village operation).
Department stores	2.080	1.641	1.545	2.77	1.90	2.07	0.66
Medical practice	0.566 (General practice medical services). 0.541 (Specialist medical services).	0.369 (General Practice Medical Services) 0.310 (Specialist Medical Services)	0.309 (General practice medical service).	0.43 (General practice medical services).	0.50	0.55 (General practice medical services).	0.10 (General practice medical services).

	New South Wales[1]	Victoria[2]	Queensland[3]	Western Australia[4,7]	South Australia[5]	Tasmania	New Zealand[6]
Secondary schools - private	0.771 (No distinction is made between private and government schools).	0.681	0.710 (Secondary education).	0.84 (No distinction is made between private and government schools).	1.00 (Secondary education)	0.85 (Secondary education - no distinction is made between private and government schools).	0.29 (Secondary education).
Secondary schools - government	0.771 (No distinction is made between private and government schools).	1.354	0.710 (Secondary education).	0.84 (No distinction is made between private and government schools).	1.00 (Secondary education)	0.85 (Secondary education).	0.29 (Secondary education).

1 - New South Wales - Average levy/premium rate excludes GST and additional costs arising from The New Tax System. All industry premium rates quoted include GST.

2 - Victoria - All rates exclude GST
3 - Queensland - Published rates exclude stamp-duty and GST. Average premium rates include stamp-duty and exclude GST.
4 - Western Australia - All published premium rates are exclusive of GST.
5 - South Australia - All listed rates are exclusive of GST. All other listed rates include GST and The New Tax System effects.
6 - New Zealand - All published levy rates are exclusive of GST and excludes residual levy.
7 - WA at 1 Oct to reflect adjustments

Premium setting: Notes relating to the industry rates comparison table

It is difficult to make exact comparisons between states, the following qualifications should be noted:

- Industry classifications vary from jurisdiction to jurisdiction.
- On 1 July 2010, WorkCover Queensland moved from ANZSIC 1993 to ANZSIC 2006 to better reflect the evolution of technology and changes in industry during that period. Current rates are published by Gazette notice.
- On 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. Current industry classes and rates were published in a NSW Gazette notice on 10 June 2011. Refer to the Insurance Premiums order on the WorkCover NSW website, WorkCover Authority of New South Wales.
- On 1 July 2011, Victoria introduced an industry classification system based on ANZSIC 2006 to better reflect the evolution of technology and changes in industry. Current rates are published by Gazette notice.
- In 2011, the ACT published estimated reasonable premium rates. These actuarially determined rates are released to the community and provided to the Approved Insurers who underwrite the Scheme to assist in the determination of premium rates for the coming year.
- Levy/Premium category comparisons are done on a ‘best match’ basis and should not be regarded as exact equivalents.

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

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

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

Jurisdictions vary in their application of GST to premiums. NSW published industry rates include 10 per cent GST. Other jurisdictions generally exclude GST from their published industry premium rates.

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 experience rating in NSW is based on the size of the employer's tariff premium and Victoria is based on the employer's remuneration.
- The extent to which insurance companies may discount or load premiums according to experience may vary. For example, amendments to WA's legislation, effective from 4 January 2005, mean that recommended premium rates can be surcharged up to 75 per cent, and with the WorkCover WA Authority's (Board) approval can be surcharged in excess of 75 per cent. There are no limitations on discounting.
- Figures given for highest and lowest experience-rated premium rates should be treated with some caution. Those for SA 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 but will have from 1 April 2011. WorkCoverSA will have a mandatory experience rating system for medium and large employers and optional retro-paid loss arrangements for large employers from 1 July 2012.

Calculation of industry rates

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

The NT 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.

NSW

In 2011-2012, 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 model is applied to small industry classes. The rates are calibrated to achieve the Scheme target collection rate.

Victoria

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

Queensland

There are currently 561 WorkCover Industry Classifications (WIC). Rates are annually calculated based on an actuarially verified methodology considering seven years of wages and claims data.

WA

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

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

South Australia

In 2010-2011 SA had 512 industry classes. Industry rates are established to reflect the relative experience of each class by way of claim costs and recent wages declared from the experience of each industry using data-based rating methodology. Industry rates are reviewed annually by external actuaries. The rates are calibrated to achieve the average levy rate.

Tasmania

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

- analysis of claim numbers, claim frequency and claim size
- calculation of required premium pool
- examination of effect of legislative change
- analysis of economic assumptions and insurers expense and profit assumptions, and

- a comparison with insurer filed rates.

Australian Capital Territory

In 2011, the ACT released estimated reasonable rates by ANZSIC. These rates are determined annually according to independent actuarial analysis of claims and wages data provided by current and former approved insurers and self-insurers.

New Zealand

In New Zealand, there are 537 classification units and 143 levy risk groups. For each classification unit, the levy relativities are compared by year for the last four years. As a result of this comparison (and taking into account such things as the impact of large claims, the number of years experience for a new classification unit, the volume of claims, 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. All the expected ultimate cost of claims and wage quantities used for this calculation are weighted averages of the most recent six years of experience. The levy rate relativities are credibility-adjusted (as required) to the self-insurers, then to the levy risk groups, then to the industry groups, and finally to the aggregate rate. The absolute level of the levy rates is set so that the expected costs of the Scheme will be met.

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

Appendix 1

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

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

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

The national perspective

In Australia, there are 11 main workers' compensation systems. Over time, each of the eight Australian States and Territories has developed their own workers' compensation laws. There are also three Commonwealth schemes: the first is for Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self insurers under the Safety, Rehabilitation and Compensation Act 1988; the second is for certain seafarers under the Seafarers Rehabilitation and Compensation Act 1992; and the third is for Australian Defence Force personnel with service on or after 1 July 2004 under the Military Rehabilitation and Compensation Act 2004.

The origin of these Australian workers' compensation systems lies in 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 injures, containing insurance premiums, underwriting arrangements and administrative efficiency.

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

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

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

New South Wales (NSW)

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

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

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

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

The improved performance of the NSW WorkCover Scheme saw the target premium collection rate for NSW employers reduced by an average 30 per cent between November 2005 and 2008.

A 10 per cent increase in lump sum compensation benefits for permanent impairment was also implemented for injuries received on or after 1 January 2007.

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

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

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

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

Recent Developments (NSW)

The existing seven WorkCover Scheme Agents have entered into new five-year contracts commencing from 1 January 2010. The new contracts build on the contracts that have been in place since 2006 by more closely aligning the remuneration paid to Scheme Agents with their performance in key areas.

Victoria

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

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

1992

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

1993

- introducing the premium system.

1997

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

2000

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

2004

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

2005

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

2006

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

2007

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

2008

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

2009

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

Recent Developments (Vic)

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

- almost a doubling of lump sum death benefits, and improved access to pensions for dependants of deceased workers
- for injured workers who suffer a permanent impairment, the reforms provided:
    - a 10 per cent increase in no-fault lump sum benefits for workers with spinal impairments
    - a 25 per cent increase in the maximum impairment benefit, increasing no-fault lump sum benefits for the most profoundly injured workers, and
    - a five-fold increase in benefits awarded to workers who suffer a serious psychiatric impairment
- for injured workers who receive weekly payments:
    - an increase in the rate of compensation from 75 per cent to 80 per cent of income after workers have received compensation for 13 weeks
    - a superannuation contribution for long term injured workers
    - the extension of the inclusion of overtime and shift allowances from 26 weeks to 52 weeks when calculating a worker's weekly payments
    - increasing the statutory maximum for weekly payments to twice the State average weekly earnings
    - payment of limited further weekly payments for workers who have returned to work, but who require surgery for their work-related injury.

Other changes include:

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

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

- streamline the provision that sets out the calculation of pre-injury average weekly earnings (PIAWE) and correct an anomaly in relation to the incorporation of commissions into PIAWE
- codify WorkSafe's current policies that relate to the impact on remuneration of salary packaging and injury prior to taking up a promotion, on the calculation of PIAWE
- restructure and streamline the provisions that govern the coverage of contractors
- align the value of impairment benefits for injured workers assessed at 71% whole person impairment (WPI) or above with the equivalent value of common law damages payable for pain and suffering on an ongoing basis
- introduce greater clarity and equity for dependants of deceased workers in relation to medical and like benefits, how earnings are calculated and how partial dependent partners of deceased workers are compensated
- improve the usability of provisions relating to medical expenses, and

- extend an existing provision in the Act to allow the making of a Governor in Council Order that would permit the introduction of a fixed costs model (FCM), with built-in increases linked to inflation, for plaintiff's legal costs in the litigated phase of serious injury applications.

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 "effected 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.

Western Australia (WA)

WA 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 WA.

Recent Developments (WA)

Premium rates for 2010-11

Recommended premium rates for 2010-11 were gazetted on 13 April 2010 and came into effect on 30 June 2010. The revised rates resulted in an overall 13.9% decrease in average recommended premium rates from 1.738% of total wages in 2009-10 to 1.497% for 2010-11, which is the lowest ever experienced in WA.

Continued strong wage growth across the WA workforce over the past year has resulted in a downward pressure on the recommended premium rates. The decrease is largely due to improved economic circumstances and reflects the latest available data on real rates of return and claim costs.

Annual statistical report

WorkCover WA released its annual statistical report covering workers' compensation claim statistics for the period 2005-06 to 2008-09 in June 2010. The statistical report is part of a series of reports that provide information on the incidence of accidents, injuries and diseases in WA. In addition to providing an overview of workers' compensation in WA, the report provides detailed information on the characteristics of lost-time claims to assist individuals and organisations in their endeavours to prevent workplace injury and to minimise the social and economic impact of claims.

Copies of WorkCover WA's statistical reports can be accessed at www.workcover.wa.gov.au.

Revised fees for medical and allied health treatment costs

Revised fees for medical and allied health treatment services in the WA workers' compensation system came into effect from 2 November 2009. The revisions brought about a 4.60% increase to fees derived through application of the medical and allied health fees composite index, which is used by WorkCover WA for annual indexation purposes.

Addition of pleural plaques to Schedule 3

In September 2009, pleural plaques (diffuse pleural fibrosis) were added to the list of specified occupational diseases under Schedule 3 (Specified industrial diseases) of the Workers' Compensation and Injury Management Act 1981 (the Act).

Legislative Review

In December 2009, WorkCover WA completed a review of the Act which contained 66 recommendations for change in the following broad areas:

- the overall structure of the legislation through a two stage redrafting of the statute
- technical amendments to address legislative anomalies and inefficiencies
- policy based changes covering age discrimination, access to common law damages for injured workers employed by uninsured employers, the role of WorkCover WA, and medical assessment processes, and
- significant changes to dispute resolution arrangements.

In March 2010 the Government endorsed, with one exception, all recommendations and approved a two phase process of legislative reform. The exception related to measures to address age discrimination within the workers' compensation scheme. While WorkCover WA recommended an incremental change based on retention of the current age threshold (subject to an increase in entitlements) the Government decided to completely remove age based limits.

WorkCover WA is working towards finalising a draft bill for presentation to Cabinet in early 2011.

Injured Workers Survey

In 2010, WorkCover WA commissioned an independent survey of injured workers to obtain information about RTW outcomes and satisfaction with services provided throughout the WA workers' compensation scheme.

A total of 704 workers who had lodged a workers' compensation claim between 1 October and 31 December 2009 participated in the telephone survey (91% response rate).

Overall results are positive and show that the majority of injured workers were satisfied with their overall experience of the WA workers' compensation scheme. Key results include:

- 87% of workers believed the WA workers' compensation process was open and honest
- 83% of workers believed the system treated them fairly
- 82% felt that the people and organisations they dealt with were caring, and
- 77% of workers had returned to work and were working at the time of interview.

South Australia (SA)

SA introduced 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 for which a worker could gain compensation.

In June 1978, the Government established a Committee of Inquiry, chaired by D E Byrne, to examine and report on the most effective means of compensating those injured at work. In September 1980 the Committee released the report entitled 'A Workers Rehabilitation and Compensation Board for South Australia – the key to rapid rehabilitation and equitable compensation for those injured at work ('Byrne Report'). Included 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 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, (WRC Act) 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 WRC Act.

In 1994 the Workers Rehabilitation and Compensation (Administration) Amendment Act 1994 was passed by the new State government. The amendments included:

- Compensability of psychiatric disabilities
- The test for employment contribution was strengthened to 'substantial cause'

Commutation / Redemption

The liability to make weekly payments could, on application of the worker, be commuted to a liability to make a capital payment. WorkCover had absolute discretion as to whether it allowed commutation. A commutation discharged all liability to make weekly payments to which the commutation relates. It was not possible to claim that a residual liability remains.

This was a new provision aimed at tightening eligibility for commutations. Beforehand, a worker (or dependent spouse) could ask WorkCover to commute his/her entitlements to weekly payments into a lump sum.

Hearing Loss

Hearing loss had to be a minimum of 5% to be compensable. Beforehand, there was no threshold to compensability for hearing loss.

On 26 October 1995 the then State government passed the Workers Rehabilitation And Compensation (Dispute Resolution) Amendment Act 1995. The objective of those amendments was to apply the principles of 'early intervention, conciliation, removal of duplication, administrative, arbitral and judicial efficiency and the minimisation of costs' in the dispute resolution process. These principles were balanced by 'the overriding need to ensure equity and natural justice in decision making, and no net increase in cost to the WorkCover scheme…'. There were some further amendments made to that Amendment Act in early 1996, with the overall amendment package commencing on 3 June 1996.

The amendments aimed to endorse the principles of the 1994 Industry Commission report into workers' compensation systems in Australia. This report advocated 'reliance on non-adversarial dispute resolution procedures (with the emphasis on conciliation and arbitration, although legal representation should not be excluded).' Judicial review was intended to be a last resort. Procedures were intended to be characterised by a prompt initial decision subject to non-judicial review by an independent internal arbitrator in the first instance, before appeal to external arbitration and/or resort to the courts.

Major features of the 1996 reforms included:

- abolition of the internal reviews and appeals process
- introduction of initial reconsideration
- a strengthened conciliation and arbitration framework, and
- introduction of the Workers' Compensation Tribunal, to preside over most stages of the dispute process.

In 1995, the Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995 made a number of amendments which came into effect in 1995 and 1996. The following arrangements were included among its provisions:

- It repealed and replaced section 6 of the Act on cross-border arrangements specifically tightening the requirement for a 'nexus' between a worker's employment and South Australia. In particular the new test included a requirement that if a worker usually works in no state or no one state, he/she had to live in South Australia to establish a nexus to that state. This requirement did not exist in other states and territories, leading to an inconsistency that lasted until 2007.
- Rehabilitation and RTW plans were introduced for injured workers in receipt of income maintenance and who were likely to be incapacitated for more than three months and who had some prospect of returning to work. The insertion of section 28A 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.

- Amendments to Section 30A were made, expanding coverage for psychiatric disabilities to cover all forms of psychiatric disability. Beforehand a more limited range were covered. Note that this amendment did not change the basic requirement, introduced in 1994, for employment to be a 'substantial cause' of a psychiatric disability.
- Compensation for medical expenses under section 32 was also amended to require the regulation of treatment protocols and scales of medical and allied health charges. Beforehand, such protocols only needed to be gazetted.
- Two year review processes under section 35(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 placed 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.
- Employer obligations were relaxed so that small employers were required to keep a position available for one year only and sexual incapacity lump sums were eliminated.

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 brought SA's cross-border provisions into line with those of the other states and territories, as part of a national model that featured two aspects:

- employers only need to register each worker in one scheme only, and
- every worker is covered by a scheme (no worker falls through the cracks).

Limited retrospectivity and 'ex gratia' payment provisions were included in the amendment legislation to ensure workers injured before 1 January 2007 who were previously not eligible were now covered. These particular provisions operated between 13 September 2007 and 12 March 2008.

The Statute Amendment (Domestic Partners) Act 2006 ('Domestic Partners Act'), which came into force on 1 June 2007, amended the 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 related variations).

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

Workers Rehabilitation and Compensation (Claims and Registration) Variation Regulations 2007 came into effect from1 June 2007. The amended regulation extended scheme coverage to all licensed jockeys while they are engaged in 'thoroughbred riding work'. 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.

On 17 June 2008, the SA Parliament passed the most significant legislative amendments to the WorkCover Scheme since 1986. The amendments affected both the WRC Act and the WorkCover Corporation Act 1994.

The legislation followed an independent review by the SA Government to reassess the fundamental structure of the Scheme for the first time in 20 years. The review was undertaken by Alan Clayton and John Walsh; their report was tabled in Parliament in February 2008. The report recommended a package of legislative and non-legislative changes to the Scheme designed to ensure:

- injured workers would 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 levy rate (paid by employers) would be reduced and contained within the range of 2.25% and 2.75% by 1 July 2009, and
- the Scheme would be fully funded as soon as practicable.

The new legislation aims to assist in significantly increasing return to work rates in SA, thereby minimising the negative impacts of injured workers remaining on the Scheme, enabling a reduction in levies paid by employers and ensuring full funding in the medium term. The legislative changes affect a number of areas, and the timetable for implementation varied.

A booklet entitled The WorkCover Scheme ... A Guide to the Changes has been published and is available from the WorkCoverSA website here:

Most of the 2008 changes came into effect on 1 July 2008. A handful of provisions came into effect later. The timing of introduction is outlined at page 5 of the Guide to the Changes booklet.

Recent Developments (SA)

WorkCoverSA Regulation Review

In 2008 WorkCoverSA commenced a review of all regulations supporting the WRC Act. All SA regulations expire after 10 years in force (Subordinate Legislation Act 1978). This expiry may be postponed by regulation by up to two years at a time and up to four years overall.

In June 2010 Cabinet approved the new Workers Rehabilitation and Compensation Regulations 2010. The new regulations were made by the Governor and published in the SA Government Gazette on 24 June 2010. The new regulations commenced on 1 November 2010.

WorkCover has produced A Guide to the Workers Rehabilitation and Compensation Regulations 2010 to provide more detail on changes. Updates will be made available on the website at: www.workcover.com/regulationreview.

New levy payment system

One important change passed in 2008 and starting 1 July 2009 was the new levy payment system. The new system requires employers to pay their levy in advance rather than in arrears. The changes are part of the SA Scheme’s commitment to meet national scheme harmonisation objectives, and bring the state’s provisions into line with every other Australian jurisdiction.

Another change is that the minimum levy is now set by the WorkCover Board, which has increased the minimum levy (exclusive of GST) from $50 to $200, phased in over a three-year period. The minimum levy applies to all employers who are required to register and pay levy. Employers are exempted from registration where the total remuneration payable by the employer to their workers in a calendar year does not exceed $10 200 indexed – for 2009 the amount is $10 800.

Restrictions on redemptions

Another recent change arising from the 2008 reforms was the restriction on use of redemptions. From 1 July 2009, redemptions have only been allowed where it will not undermine the Scheme's primary focus on return to work, specifically in circumstances where:

- the worker has returned to work but has an ongoing entitlement to a small top-up of $30 per week or less and the redemption will remove the administrative cost of the claim remaining open for WorkCover and the worker
- the worker is 55 years of age or older and has no current work capacity
- exceptional circumstances apply where there is an overwhelming social interest in finalising the matter (as determined by the Workers' Compensation Tribunal).

Initially these changes only applied to claims with injuries on or after 1 July 2006, but from 1 July 2010 the restrictions have applied to all claims.

Employer payment methods

On 30 June 2010 WorkCoverSA's 'Bonus/Penalty Scheme' (an experience rating system within the Scheme's levy framework) ended. While the WorkCoverSA Board considered this scheme flawed, it has supported WorkCover examining alternative options including those based on experience rating. Stakeholder consultation commenced in October 2010.

Information, Advice and Advocacy Arrangements

In 2007 the Clayton/Walsh report acknowledged existing information, advice and advocacy services for workers and employers but saw '…merit in extending the range and scope of these existing arrangements'. In March 2009 the Workers Rehabilitation and Compensation Advisory Committee made a number of recommendations to the Minister for Industrial Relations on this issue.

WorkCover has engaged an external consultant to build on this work. The consultant has been asked to develop options for information, advice and advocacy services in SA. This work is due to be completed in December 2010.

Rehabilitation and Return to Work Coordinators

The RTW Inspectorate recently released a new work-related injury guide for rehabilitation and RTW coordinators and their employers. The Guide can be downloaded from www.workcover.com .

Workplace Rehabilitation

New workplace rehabilitation agreements commenced in July 2010, aligned with the national framework of workplace rehabilitation. External evaluation of workplace rehabilitation providers is scheduled to commence from the beginning of 2011. SAI Global has completed one of two sessions in support of the new auditing requirements.

Mental health first aid training has been delivered to an initial group of RTW coordinators and workplace rehabilitation consultants.

The workplace rehabilitation electronic provider payment pilot has been completed. The payment system, which eliminates re-keying of data by the claims agent, has now been implemented for investigation and medical accounts.

A revised RISE (Re-employment Incentive Scheme for Employers) scheme was launched in September 2010. In addition to simplifying wage support payments, the new framework provides greater post return to work support for both employers and workers. This is aimed at improving sustained RTW outcomes.

Better Outcomes Research Project

WorkCoverSA completed an eight-week trial of the Better Outcomes Research Project. This was a medical peer-to-peer project that identified high-risk workers certified as unfit for work four to 13 weeks after the date of injury. The project is focused on supporting treating doctors in facilitating the earliest and best recovery and RTW. A formal review of the impact of the trial is underway and targeted for completion in late 2010.

Scheme Review

In 2011 there will be an independent review of the 2008 legislative reforms to the SA workers' compensation system. The Minister for Industrial Relations is required to, as soon as practicable after 31 December 2010, appoint an independent person to review the impact of the legislative reforms on:

- injured workers
- levies paid by employers
- the sufficiency of the Fund to meet its liabilities, and
- any other matter the Minister determines.

Tasmania

Tasmania first introduced workers' compensation in 1910.

The Workers' Compensation Act 1927

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.

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)
- rovision of payment of the costs of treatment, counselling, retraining or necessary modifications to an injured worker's home or workplace, and
- icensing of insurers and self-insurers.

1995 amendments

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

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

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

2000 amendments

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

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

2004 amendments

In 2003 the Government initiated a review to investigate concerns that the step-downs in weekly benefits were causing hardship for some workers. The Rutherford Report was completed in March 2004 and contained a number of recommendations for both the government and the WorkCover Tasmania Board. As a result of Rutherford's report, the legislation was amended to retain the first step-down provision of 85 per cent of normal weekly earnings but increase its duration to 78 weeks, and reduce the impact of the second step-down from 70 per cent to 80 per cent of normal weekly earnings. To

offset the additional cost to employers of this change, the maximum period of entitlement was reduced from 10 to nine years. The time limit for deciding initial liability was also increased from 28 days to 12 weeks.

2007 amendments

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

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

WorkCover Tasmania Board Return to Work and Injury Management Model

In late 2004, the WorkCover Tasmania Board commenced a project to develop an injury management model for the Tasmanian workers' compensation system. The model was endorsed by the Board in 2007 with some minor amendments made in 2008.

Review of the Tasmanian Workers' Compensation System (Clayton Report)

In July 2006 the Minister released terms of reference for a review of the workers' compensation system. Alan Clayton was appointed to conduct this review. The terms of reference were focussed on the adequacy of compensation for workers who could not establish negligence or meet the 30 per cent whole person impairment threshold.

The Report was released for public comment in January 2008 and included a number of recommendations for improving the level of compensation payable to more seriously injured workers. The major recommendations were:

- In order to encourage early reporting, there be a rebate of the employer excess to employers who report claims to their insurer within 48 hours of the receipt of the claim by the employer.
- Payment of a lump sum made in redemption or settlement of a worker's entitlement to compensation and/or in settlement of a worker's entitlement to damages in respect of any civil liability in the employer shall not be made unless the Tribunal has approved the payment/ settlement. The Tribunal may approve a lump sum settlement if it is satisfied that all reasonable RTW, rehabilitation and retraining options have been exhausted.

- Costing of three alternative weekly benefit extension options. First, an extension of weekly payments to age of retirement. Secondly, a model that involves an extension of the benefit duration limit to 12 years for workers with a whole person impairment (WPI) of between 15 percent and 19 percent; to 20 years for workers with a WPI of between 21 percent and 29 percent and until age of retirement for workers with a WPI of 30 percent or greater. Thirdly, vesting a discretion in the Workers Rehabilitation and Compensation Tribunal to extend payments beyond the existing circumstances for persons with a WPI of 15 percent or greater in cases of demonstrated need.
- Services encompassed under 'medical and other services' in section 74 of the WRCA include the recognition of 'counselling services' to the family members of a worker who suffers a work-related fatality.
- Discretion be vested in the Workers Rehabilitation and Compensation Tribunal to extend medical payments beyond 10 years for persons with a WPI of 15 percent or greater in cases of demonstrated need.
- Lump sum death benefit (now $208 370.61) be increased to $250 000.
- Weekly benefit for dependent children (now 10% of the Basic Salary - $56.47 per week) be increased to 15% of the Basic Salary ($84.70 per week).
- Maximum impairment benefit lump sum (which is linked to the death benefit lump sum) be raised to $250 000.
- WorkCover Tasmania Board undertake a review as to whether there should be a move from the current 4th edition of the AMA Guides to the Evaluation of Permanent Impairment.
- Consideration be given to the introduction of a narrative test of 'serious injury' to facilitate alternative access to common law damages for seriously injured and ill workers. That the regime for 'serious injury' set out in section 134AB of the Accident Compensation Act 1985 (Vic) be considered as the model for this purpose.

In July 2008 the Minister released two actuarial reports on the cost of the proposals and conducted further consultation on the report's recommendations.

The Clayton Report endorsed the RTW and Injury Management Model as the guiding framework for the achievement of optimal RTW outcomes.

WorkCover Tasmania, in conjunction with Workplace Standards Tasmania, is progressing an implementation plan consisting of five key elements:

- development of the legislative framework
- new licence and permit conditions for insurers and self-insurers
- review of WorkCover systems
- education and promotion of the Model, and
- review of data and monitoring systems.

Recent Developments (Tasmania)

2009 amendments

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

1. to implement the Government's response to the Clayton report
2. to establish the legal framework for the WorkCover RTW and Injury Management Model
3. to amend the timing and level of weekly payment step-downs, and
4. to reduce the common law threshold from 30% whole person impairment to 20%.

The amendments:

- introduced a statement of scheme goals
- encourage early reporting by holding the employer liable for claims expenses until the claim is reported
- provide for the payment of counselling services for families of deceased workers
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation (with the possibility of extension on application to the Tribunal)
- increase the maximum lump sum payable to a dependent on the death of a worker to $266 376.05 (indexed annually)
- increase weekly payments payable to a dependent child of a deceased worker from 10% basic salary to 15% basic salary
- increase the maximum lump sum payable for permanent impairment to $266 376.05 (indexed annually)
- provide for the extension of weekly payments from nine years to 12 years for workers with a WPI between 15 per cent and 19 per cent; to 20 years for workers with a WPI of between 20 per cent and 29 per cent and until the age of retirement for workers with a WPI of 30 per cent or more
- amend the first step-down to 90 per cent of normal weekly earnings rather that 85 per cent of normal weekly earnings
- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks
- provide that the step-downs are not to apply where a worker has returned to work for at least 50 per cent of his or her pre-injury hours or duties
- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties
- reduce the threshold for access to common law damages from 30 per cent whole person impairment to 20 per cent whole person impairment, and
- repeal section 138AB requiring a worker to make an election to pursue common law damages.

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

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

Northern Territory (NT)

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

Cross-Border Amendments

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

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

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

2007

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

The rehabilitation and workers' compensation provisions of the Work Health Act were transferred almost unchanged into the new Workers Rehabilitation and Compensation Act.

2008

A series of other amendments to the Work Health Act occurred during 2007, took effect on 1 July 2008 as parts of the Workers Rehabilitation and Compensation Act commenced. These relate to three areas:

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

- GIO became an approved insurer pursuant to section 121(1) of the Work Health Act on 30 June 2008, bring the total number of approved insurers in the jurisdiction to five.

Australian Capital Territory (ACT)

In 1951 the ACT introduced the Workmen's Compensation Ordinance 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.

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

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

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

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

Recent Developments (ACT)

During 2009 a range of legislative improvements were introduced to the ACT Scheme that are intended to achieve the objectives of the 2007 Review.

Workers Compensation (Default Insurance Fund) Amendment Act 2009

This Act was passed by the ACT Legislative Assembly in August 2009 and it amends the Workers Compensation Act 1951 to bring the Default Insurance Fund Manager's powers into line with those exercised by all private sector workers' compensation insurers in the ACT.

Workers Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)

This Act was passed by the ACT Legislative Assembly on 15 October 2009. The Workers Compensation (Default Insurance Fund) Bill 2009 (No 2) restores the Uninsured Employer Arm of the Fund to its original statutory purpose and introduces a revised funding arrangement for the Fund, which will align the operations of the Fund with standard insurance practices.

Workers Compensation Amendment Act 2009

This Act was passed by the ACT Legislative Assembly on 10 December 2009. The purpose of the amending legislation is threefold, to:

- reduce red tape and administration costs and streamline business requirements associated with the ACT private sector workers' compensation scheme (the ACT Scheme)
- implement the National Framework for the Approval of Workplace Rehabilitation Providers (the Framework) developed by HWCA, and
- strengthen the existing compliance framework by introducing new offences for sustained non-compliance that scale the penalties to be commensurate with an employer's operational size.

The amendments also clarify the broad definition of worker, thereby limiting the opportunity for premium avoiding and sham contracting.

Workers Compensation Amendment (Default Insurance Fund) Act 2010

This Act commenced 30 March 2010 and amends the membership and clarifies the role of the Default Insurance Fund Advisory Committee.

Note: Workers employed by the ACT Government are covered by the Commonwealth's Safety, Rehabilitation and Compensation Act 1988 (SRC Act).

The Commonwealth

In 1912, the Commonwealth introduced the Commonwealth Workmen's Compensation Act 1912 to provide compensation for Commonwealth workers. 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 SRC Act was the most significant reform in the Commonwealth jurisdiction, as it introduced a focus on rehabilitation, which was seen as the best way to reduce spiralling costs of compensation. It included incentives through tiered income support rates for employees, gave employers statutory powers and responsibilities for rehabilitation and was paired with more reviews and investigations of claims. It also replaced lump sum compensation for a limited table of maims with a more comprehensive permanent impairment compensation based on a whole person impairment concept.

In 1992 the SRC Act was amended to provide for Commonwealth Authorities and certain corporations to apply to the Safety, Rehabilitation and Compensation Commission for a licence to accept liability for workers' compensation and to manage workers' compensation claims. The first licensees were Telstra Corporation Ltd and Australian Postal Corporation Ltd, followed by a number of government business enterprises undergoing privatisation such as Australian Defence Industries (later ADI Limited and now Thales Australia), Commonwealth Serum Laboratories (later CSL Limited) and National Rail Corporation (later Pacific National (ACT) Limited, now Asciano). In 2005, Optus Administration Pty Ltd was the first licence granted to a corporation which had no previous connection to the Commonwealth, other than that it was in competition with Telstra.

By June 2009 there were 29 licensees in the Comcare scheme, including banks such as National Australia Bank and the Commonwealth Bank, transport companies such as Linfox, Border Express, Australian air Express and K&S Freighters, and construction or industrial companies such as John Holland and Visionstream Pty Ltd.

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

In early 2008 the Minister commenced a review of the Comcare scheme, focusing on whether the scheme provides appropriate work health and safety and workers' compensation coverage for workers employed by self-insurers. In announcing the outcome of the review, the Minister foreshadowed that the Government will seek to extend the moratorium on licensees seeking to join the scheme until 2012, conditional upon states and territories adopting harmonised work health and safety laws.

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

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

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

Under the MRC Act, DVA provides rehabilitation, treatment and compensation for current (in conjunction with the relevant Service Chief) or former ADF members who sustain a mental or physical injury or contract a disease as a result of military service rendered on or after 1 July 2004. DVA also provides compensation to their eligible dependants if their death, on or after 1 July 2004, is related to that service, if they were entitled to maximum permanent impairment compensation or had been eligible for a Special Rate Disability Pension.

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

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

2007

Changes to the 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, and
- 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 $9000) and an increase to weekly benefits paid to retired employees. In 2009 the Government increased the lump sum death benefit to $400 000 and backdated this to May 2008.

Recent Developments Legislation to increase the level of lump sum death benefits payable as a result of a workplace injury came into effect on 4 June 2009. The legislation increased the level of benefit to $412 000.

Recent Developments (DVA)

MRCA/SRCA Incapacity payments and Military Superannuation

In October 2009 the then-Minister for Defence Personnel, the Hon Greg Combet MP, announced that the Compulsory Retirement Age (CRA) for military personnel was being increased from 55 to age 60, with retrospective effect from 1 July 2007.

This change has flow-on effects to those ex-ADF personnel retired on medical grounds since July 2007. Their Military Superannuation (MilSuper) payments from ComSuper were re-calculated in line with the new CRA and are backdated to July 2007 or the date of discharge if after that date.

For DVA purposes, any increase to MilSuper payments results in:

- a corresponding dollar for dollar decrease in SRCA or MRCA Incapacity payment entitlements paid by DVA
- possible means-test impact to VEA Service Pension payments (as ordinary income and assessment of the lump sum arrears payment), and
- possible impact to those also in receipt of VEA Disability Pension (if it is already offset because of their MRCA or SRCA Incapacity Payment).

Recent Developments (Commonwealth)

F-111 deseal/reseal

Following a Parliamentary Inquiry into the concerns of Royal Australian Air Force

F-111 deseal/reseal maintenance personnel, the Commonwealth Government announced in the May 2010 Budget a package of measures at a cost of $55m in response to the Inquiry, including:

- expanding of the Tier 3 definition to include many more workers
- providing enhanced access to compensation and health care under ss7(2) of the SRCA for an estimated additional 2400 personnel, including the 'pick and patch' workers and other trades
- using Statutory Declarations to support claims
- reopening of the SHOAMP Health Care Scheme, with access now available to many more workers

- appointing a dedicated F-111 team within DVA to review and process claims
- tasking a senior DVA officer with health and F-111 claims background to oversee and report on implementation of the new measures
- expanding the counselling services available to workers and their families, through the VVCS - Veterans and Veterans Families Counselling Service, and
- providing a dedicated F-111 government website, jointly hosted by the Department of Defence and DVA.

The current ex-gratia payment scheme continues unchanged, with the exception that the estates of deceased personnel who died prior to 8 September 2001 are now eligible to apply for ex gratia payments.

British Nuclear Test Participants

The 2010-11 Budget also provided that Defence Force members who participated in British Nuclear Testing in Australia during the 1950s and 1960s will now be eligible for the disability pension and health care under the VEA. Their partners may also be eligible for the war widows/ers pension under the VEA. This change will potentially benefit an estimated 2700 ex-defence force members at an estimated impact of $24.2 million over five years. They will continue to have access to benefits under the SRCA and its predecessors.

Review of Military Compensation Arrangements (RMCA)

Military compensation arrangements are being reviewed in response to numerous concerns expressed by the veteran and ex-service community about the operation of, and support provided by, the current military compensation system. The RMCA steering committee, chaired by the Chair of the MRCC and reporting directly to the Minister for Veterans' Affairs, will provide a report to the Minister in early 2011.

The Terms of Reference of the RMCA are to examine and consider:

- the operation to date of the MRCA
- legislative schemes that govern military compensation prior to the MRCA, and any anomalies that exist
- the level of medical and financial care provided to Defence personnel injured during peacetime service
- the implications of an ADF compassionate payment scheme for non-dependants, and
- suitability of access to military compensation schemes for members of the Australian Federal Police who have been deployed overseas.

Treatment and Service Provision for Severely Injured ADF Clients and Transitioning ADF Clients

In consultation with the ADF Rehabilitation Program, a detailed communication and treatment management pathway policy has been developed in 2010 for the management of severely injured ADF clients and transitioning ADF clients who may fall into the 'high profile and or complex case' category.

The aims of this policy are to:

- define cases that require this high level of assistance

- define the specific roles and responsibilities of all key stakeholders, and
- provide guidance for the ongoing treatment and management for this complex client group.

Touchbase

The touchbase program has been developed jointly by the DVA and the Department of Defence. It commenced in December 2010. It is in response to a recommendation by Professor David Dunt in both his Independent Study into Suicide in the Ex-Service Community for DVA and in his Review into Mental Health Care in the ADF and Transition to Discharge for Defence.

Professor Dunt highlighted the need for Defence and DVA to work cooperatively to ensure continued recognition of ADF members after they separated and to give them access to information and links to resources that supported their ongoing wellbeing, particularly mental health.

The aim of the initiative is:

1. To ensure DVA and Defence can continue to make contact, inform and support ex-service members and their families after they leave the ADF, including years down the track, especially to proactively address mental health issues as they arise, and

2. To create a forum through which the ex-service community has access to information and links to resources that are helpful to them in civilian life.

The program is aimed at helping separating and separated ADF members, either recent or longer term. It is also aimed at their partners and other family members.

New Zealand

The first example of periodic earnings-related payments in New Zealand had its origins in the Workers' Compensation for Accidents Act 1900. This was the first in a long line of legislation that eventually prompted Sir Owen Woodhouse's 1967 Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry (the Woodhouse Report). This led to the Accident Compensation Act 1972, which was updated in 1982 and replaced by a substantially amended scheme in1992.

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

Recent Developments (NZ**)**

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

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

Appendix 2

Diseases

Diseases 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, all jurisdictions, except Queensland and DVA, have in their legislation tables of diseases which are deemed to be caused by work.

Appendix Table 1 provides a jurisdictional comparison of these lists.

Appendix Table 1: Occupational diseases as prescribed at 30 September 2011 - Occupational diseases caused by agents arising from work activities

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Chemical agents									
Alcohols, glycols or ketones			Diseases caused by alcohols, glycols or ketones.		Poisoning by alcohols, glycols or ketones.			Diseases caused by alcohols, glycols or ketones.	
Antimony				Antimony poisoning or its sequelae [antimony or its preparations or compounds].			Poisoning by antimony or a compound of antimony; any of the sequelae of such a poisoning.		
Arsenic	Arsenic poisoning by arsenic or its compounds, and its sequelae.	Arsenic poisoning or its sequelae [arsenic or its preparations or compounds].	Arsenic poisoning [arsenic or its preparations or compounds].	Arsenic poisoning or its sequelae [arsenic or its preparations or compounds].	Poisoning by arsenic or its toxic compounds.	Diseases caused by arsenic or its toxic compounds.	Poisoning by arsenic or a compound of arsenic; any of the sequelae of such a poisoning.	Diseases caused by arsenic or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by arsenic or its toxic compounds.
Asphyxiants: carbon monoxide, hydrogen sulphide, hydrogen cyanide		Carbon monoxide poisoning.	Poisoning by cyanogen compounds. Poisoning by carbon monoxide. Diseases caused by asphyxiants: carbon	Carbon monoxide poisoning or its sequelae.	Poisoning by asphyxiants: carbon monoxide, carbon dioxide, hydrogen sulphide, hydrogen cyanide, nitrogen.	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives,	Poisoning by carbon monoxide. Poisoning by hydrogen cyanide or a compound of	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide.	

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
			monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulphide,			hydrogen sulphide.	hydrogen cyanide. Poisoning by hydrogen sulphide.		
Benzene	Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae.	Poisoning by benzol, its homologues, or its nitro and amido derivatives, and the sequelae of these poisonings.	Poisoning by benzol. Poisoning by a homologue of benzol.	Benzene poisoning (i.e. poisoining by benzene or its homologues or their nitro- and amdio-derivatives) and its sequelae.	Poisoning by benzene or its toxic homologues.	Diseases caused by benzene or its toxic homologues.	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning	Diseases caused by benzene or its toxic homologues.	Diseases of a type generally accepted by the medical profession as caused by benzene or its toxic homologues.
Beryllium					Poisoning by beryllium or its toxic compounds	Diseases caused by beryllium or its toxic compounds.	Poisoning by beryllium or a compound of beryllium; any of the sequelae of such a poisoning.	Diseases caused by beryllium or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by beryllium or its toxic compounds.
Cadmium					Poisoning by cadmium or its toxic compounds.	Diseases caused by cadmium or its toxic compounds.	Poisoning by cadmium or a compound of cadmium; any of the sequelae of such a poisoning.	Diseases caused by cadmium or its toxic compounds.	Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes.
Carbon disulphide		Carbon bisulphide poisoning.	Poisoning by carbon bisulphide.		Poisoning by carbon disulphide.	Diseases caused by carbon bisulphide.	Poisoning by carbon bisulphide.	Diseases caused by carbon disulphide.	Diseases of a type generally accepted by the medical profession as caused by carbon bisulfide or its toxic compounds.
Chromium		Chrome ulceration or its sequelae [chromic acid, bichromate of ammonium, potassium or	Chrome ulceration [chromic acid or bichromate of ammonium, potassium or sodium or their preparations].	Chrome ulceration or its sequelae [chromic acid, bichromate of ammonium, potassium or sodium or their	Poisoning by chromium or its toxic compounds.	Diseases caused by chromium or its toxic compounds.	Chrome ulceration of skin or mucous membrane; any of the sequelae of such an ulceration	Diseases caused by chromium or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by chrome or its toxic compounds.

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
		sodium or their preparations].		preparations].			[chromic acid, bichromate of ammonium, potassium or sodium or their preparations].		
Copper		Copper poisoning or its sequelae [copper or its preparations or compounds].		Copper poisoning or its sequelae [copper or its preparations or compounds].			Poisoning by copper or a compound of copper; any of the sequelae of such a poisoning.		Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes.
Ethylene oxide									Diseases of a type generally accepted by the medical profession as caused by ethylene oxide.
Fluorine			Poisoning by fluorine.		Poisoning by fluorine or its toxic compounds.	Diseases caused by fluorine or its toxic compounds.		Diseases caused by fluorine or its toxic compounds.	
Halogen derivatives of aliphatic or aromatic hydrocarbons	Poisoning by the halogen derivates of hydrocarbons of the aliphatic series.	Poisoning by the halogen derivates of hydrocarbons of the aliphatic series.	Poisoning by a halogen derivates of a hydrocarbon of the aliphatic series.	Halogen poisoning (ie poisoning by the halogen derivatives of hydrocarbons of the aliphatic series) and its sequelae.	Poisoning by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	Poisoning by a halogen derivate of a hydrocarbon of the aliphatic series.	Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons	Diseases of a type generally accepted by the medical profession as caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series.
Lead	Poisoning by lead, its alloys or compounds, and its sequelae.	Lead poisoning or its sequelae [lead or its preparations or compounds].	Lead poisoning [lead, or its preparations or compounds].	Lead poisoning or its sequelae [lead or its preparations or compounds].	Poisoning by lead or its toxic compounds.	Diseases caused by lead or its toxic compounds.	Poisoning by lead or a compound of lead; any of the sequelae of such a poisoning.	Diseases caused by lead or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by lead or its toxic compounds.

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Manganese					Poisoning by manganese or its toxic compounds.	Diseases caused by manganese or its toxic compounds.	Poisoning by manganese or a compound of manganese; any of the sequelae of such a poisoning.	Diseases caused by manganese or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by manganese or its toxic compounds.
Mercury	Poisoning by mercury or its amalgams or compounds, and its sequelae.	Mercury poisoning or its sequelae [mercury or its preparations or compounds].	Mercury poisoning [mercury, or its preparations or compounds].	Mercury poisoning or its sequelae [mercury or its preparations or compounds].	Poisoning by mercury or its toxic compounds.	Diseases caused by mercury or its toxic compounds.	Poisoning by mercury or a compound of mercury; any of the sequelae of such a poisoning.	Diseases caused by mercury or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by mercury or its toxic compounds.
Nitro- and amino-derivatives of benzene	Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae.	Poisoning by benzol, its homologues, or its nitro and amido derivatives, and the sequelae of these poisonings.	Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others).	Benzene poisoning (i.e. poisoining by benzene or its homologues or their nitro- and amdio-derivatives) and its sequelae.	Poisoning by nitro- or amino- or chloro-derivatives of benzene or its derivatives.	Diseases caused by nitro- and amino-derivatives of benzene or its homologues.	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning.	Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues.	Diseases of a type generally accepted by the medical profession as caused by nitro- and amido- toxic derivatives of benzene or its homologues.
Nitroglycerine or other nitric acid esters					Poisoning by nitroglycerine or other nitric acid esters.	Diseases caused by Nitro glycerine or other Nitric Acid Esters.	Diseases caused by nitroglycerine or other nitric acid esters.	Diseases caused by nitroglycerine or other nitric acid esters.	
Organic solvents									Chronic solvent-induced encephalopathy diagnosed as caused by organic solvents, particularly styrene, toluene, xylene, trichloroethylene, methylene chloride or white spirit. Peripheral neuropathy diagnosed as caused by organic

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
									solvents such as n-hexane, carbon disulphide, or trichloroethylene, pesticides such as organophosphates; acrylamide.
Oxides of nitrogen			Poisoning by nitrous fumes.	Nitrous fumes poisoning and its sequelae.	Poisoning by nitrous fumes.		Poisoning by an oxide of nitrogen; any of the sequelae of such a poisoning.		
Phosphorus	Phosphorus poisoning by phosphorous or its compounds, and its sequelae.	Phosphorous poisoning or its sequelae [phosphorous or itspreparations or compounds].	Phosphorus poisoning [phosphorus, or its preparations or compounds].	Phosphorus poisoning or its sequelae [phosphorus or its preparations or compounds].	Poisoning by phosphorus or its toxic compounds.	Diseases caused by phosphorus or its toxic compounds.	Poisoning by phosphorus or a compound of phosphorus; any of the sequelae of such a poisoning.	Diseases caused by phosphorus or its toxic compounds.	Diseases of a type generally accepted by the medical profession as caused by phosphorus or its toxic compounds.
Tungsten									Diseases of a type generally accepted by the medical profession as caused by tungsten.
Zinc		Zinc poisoning or its sequelae [zinc or its preparations or compounds].		Zinc poisoning or its sequelae [zinc or its preparations or compounds].			Poisoning by zinc or a compound of zinc; any of the sequelae of such a poisoning.		
Other chemical agent at work not mentioned in the preceding terms			Arsenic, phosphorus, lead, mercury or other mineral poisoning [arsenic , phosphorus, lead, mercury, or other mineral, or their preparations or compounds].						

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Hearing impairment caused by noise			Noise induced hearing loss.	Noise induced hearing loss		Hearing impairment caused by noise. Diseases caused by ionizing radiations.			
Ionizing radiations	Pathological manifestations of a kind that are due to or contributed to by: (a) radium and other radioactive substances. (b) X-rays.	Pathological manifestations due to radium and other radioactive substances, or X-rays.	Pathological manifestations due to: (a) radium and other radioactive substances. (b) X-rays. (c) Lasers.	Pathological manifestations due to: (a) radium and other radioactive substances. (b) X-rays.	Disease caused by ionizing radiations.	Diseases caused by ionizing radiations.	Pathological condition caused by: (a) radium or other radioactive substance, or (b) X-rays.	Diseases caused by ionising radiations.	Diseases of a type generally accepted by the medical profession as caused by ionising radiations.
Vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves			Effects of vibration (including Raynaud's phenomenon and dead hand).			Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).		Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	Hand-arm vibration syndrome diagnosed as caused by hand and/or arm vibration.
Work in compressed or decompressed air			Compressed air illness.		Compressed air illness including avascular necrosis [underground, underwater, high altitude].	Diseases caused by work in compressed air.		Diseases caused by work in compressed air.	
Diseases caused by other physical agents at work not mentioned in the preceding terms			Effects of insolation [prolonged exposure to sunlight]. Effects of electrical currents.						
Biological agents and infectious or parasitic diseases									
Anthrax	Anthrax infection.	Anthrax.	Anthrax.	Anthrax.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to	Anthrax.	Anthrax.		Anthrax infection.

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
					the agent responsible				
Brucellosis	Brucellosis.	Brucellosis (Undulant fever).		Brucellosis.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible. Note – section 25(2)(b) provides that compensation is not payable in respect of the disease known as undulant fever or brucellosis unless an accredited medical practitioner has certified in writing that he is satisfied as to the result of the pathological examination of the blood that the worker is suffering from that disease.	Brucellosis.			Brucellosis diagnosed as caused by working with animals or their carcasses.
Hepatitis viruses			Hepatitis B.		Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible.	Hepatitis A and B.			
Human immunodeficiency virus (HIV)			HIV (s31F).		Infectious or parasitic diseases contracted in an occupation where there is a particular risk of	A.I.D.S.			

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
					exposure to the agent responsible.				
Leptospirosis	Leptospirosis.	Leptospirosis.	Leptospirosis.	Leptospirosis.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible	Leptospirosis.			Leptospirosis diagnosed as caused by working with animals or their carcasses.
Diseases caused by other biological agents at work not mentioned in the preceding terms	Q fever.	Q fever as caused by the micro-organism Coxiella burnetii (also known as Rickettsia burneti), in any of its clinical manifestations [abattoirs, slaughterhouses, knackeries]. Septic poisoning or its sequelae [from meat, meat products, animal products].	Communicable diseases. Endemic typhus. Scrub typhus. Brill's disease. Swineherds disease. Plague. Mite dermatitis. Scrub itch. AIDS (s31F).	Ankylostomiasis [mining]. Q fever. Septic poisoning or its sequelae [from meat, meat products, animal byproducts].	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of exposure to the agent responsible	Q fever.	Ankylostomiasis [mine]. Q fever [exposure to Coxiella burnetii].	Occupational infectious or parasitic diseases [health or laboratory work, veterinary work, handling of animals].	Orf diagnosed as caused by working with animals or their carcasses. Streptococcus suis diagnosed as caused by working with animals or their carcasses.
Asthma caused by recognised sensitizing agents or irritants inherent to the work process			Occupational asthma caused by sensitizing agents or irritants inherent to the work process.	Asthma or asthmatic attacks [dust of red pine, western red cedar, blackwood, flour, flour dust].				Occupational asthma caused by sensitizing agents or irritants.	Occupational asthma diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, isocyanates, certain wood dusts, flour dusts, animal proteins, enzymes and latex.

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal or sugar cane	Byssinosis[3]. bagassosis[3].		Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust.			Bronchopul-monary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal, dust.		Bronchopulmonary diseases caused by cotton dust (byssinosis), or flax, hemp or sisal dust.	Byssinosis diagnosed as caused by working with cotton, flax, hemp, or sisal dust.
Bronchopulmonary diseases caused by hard-metal dust	Hard metal pneumoconiosis[3].					Bronchopul-monary diseases caused by hard metal dust.		Bronchopulmonary diseases caused by hard-metal dust.	
Chronic obstructive pulmonary diseases caused by inhalation of coal dust, dust from stone quarries, wood dust, dust from cereals and agricultural work, dust in animal stables, dust from textiles, and paper dust arising from work activities	coal dust pneumoconiosis[3]. Farmer's lung[3].								Chronic obstructive pulmonary disease diagnosed as caused by coal, silica, cotton dust or grain dust.
Diseases of the lung caused by aluminium	Aluminosis[3].				An asthmatic condition caused by fumes resulting from the primary aluminium smelting process.				
Extrinsic allergic alveolitis caused by the inhalation of organic dusts or microbially contaminated aerosols			Extrinsic allergic alveolitis caused by the inhalation of organic dusts.					Extrinsic allergic alveolitis and its sequelae [exposure to the inhalation of organic dusts].	Extrinsic allergic alveolitis diagnosed as caused by work involving the inhalation of organic dusts.

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Pneumoconioses caused by fibrogenic mineral dust (silicosis, anthraco-silicosis, asbestosis	asbestosis[3]. silicosis[3].	Asbestosis, with or without mesothelioma. Silicosis, with or without pulmonary tuberculosis.		Asbestosis. Pneumoconiosis, including silicosis.	Pneumoconioses caused by silica dust (silicosis, anthraco-silicosis, Asbestosis,). Note – diseases caused by occupational exposure to asbestos are covered by the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011 from 31 Oct 2011	Pneumononioses caused by sclerogenic mineral dust (including silicosis, anthracosilicosis and asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.	Asbestosis. Pneumoconiosis [matter].	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that slilcosis is an essential factor causing the resultant incapacity, impairment or death.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that slilcosis is an essential factor causing the resultant incapacity or death.
Pnemoconioses caused by non-fibrogenic mineral dust	talcosis[3]. berylliosis[3].		Pneumoconiosis [mineral dusts].				Pneumoconiosis [matter].		Pneumoconiosis diagnosed as caused by tin, iron oxide, barium or cobalt.
Silicotuberculosis	silico-tuberculosis[3].	Silicosis, with or without pulmonary tuberculosis.			Silicotuberculosis.			silico-tuberculosis [see above].	silico-tuberculosis [see above].
Other respiratory disease not mentioned in the preceding items	asbestos related pleural diseases[3]. asbestos induced carcinoma[3]. mesothelioma[3].								
Allergic contact dermatoses and contract urticaria caused by other recognised allergy-provoking agents arising from work activities not included in other									Occupational allergic contact dermatitis diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
items									to, nickel and other metals, rubber additives, resins, petroleum distillates, solvents, soaps, detergents, and plant allergens.
Vitiligo caused by other recognised agents arising from work activities not included in other items									Vitiligo diagnosed as caused by para-tertiary-butylphenol, para-tertiary-butylcatechol, para-amylphenol, hydroquinone, or the monobenzyl or monobutyl ether of hydroquinone.
Other skin diseases caused by physical, chemical or biological agents at work not included in other items		Dermatitis venenata [contact with vegetable or mineral matter].	Any dematosis, ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn.	Dermatitis [dust of blackwood].				Skin diseases caused by physical, chemical or biological agents at work not included under other items.	
Chronic tenosynovitis of hand and wrist due to repetitive movements, forceful exertions and extreme postures of the wrist		Tenosynovitis (inflammation of the tendon sheaths of the hand, wrists, forearm or elbow.					Tenosynovitis [hand, forearm].		

	New South Wales[1]	Victoria	Western Australia	South Australia	Tasmania	Northern Territory	Australian Capital Terrirory	C'wealth[2]	New Zealand
Olecranon bursitis due to prolonged pressure of the elbow region		Subcutaneous cellulitis or acute bursitis over the elbow [mining].							
Prepatellar bursitis due to prolonged stay in kneeling position		Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee) [mining].							

Glossary

Administrative scheme
A scheme put in place where no legislation applies.

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

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

Category 1 employers (NSW)
(a) an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed $50,000, if the period of insurance to which the premium relates were 12 months, or

(b) an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed $50,000, if the period of insurance to which each premium relates were 12 months, or

(c) an employer who is self-insured, or

(d) an employer who is insured with a specialised insurer and who employs more than 20 workers.

category 2 employer means an employer who is not a category 1 employer

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

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

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

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

Cross-border arrangements
Provisions 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 (compared with partially incapacitated).

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

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

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

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

Disease (DVA) means:
(a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or

(b) the recurrence of such an ailment, disorder, defect or morbid condition; but does not include:

(c) the aggravation of such an ailment, disorder, defect or morbid condition; or

(d) a temporary departure from:

(i) the normal physiological state; or

(ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

Dispute resolution
Processes for resolving disputes between parties in the claims process.

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

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

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

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

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

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

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

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

(a) a disease; or

(b) the aggravation of a physical or mental injury.

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

Levy
The term used in 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 under written schemes, the central estimate of outstanding claims for the scheme at the end of each financial year.

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

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

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

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

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

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

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

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

Q-COMP
The Queensland Workers' Compensation regulatory authority.

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

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

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

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

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

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

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

State of connection
The jurisdiction decided through applying the test in section 5.8, when an injured worker has been working in more than one state or territory.

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

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

Threshold test
A level of impairment an injured worker must reach.

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

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

Underwriting
The process of writing and signing a policy of insurance.

Worker
A person who is covered for workers' compensation benefits.

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

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

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

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

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

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

Acronyms and abbreviations

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

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

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

* stated-based statistics

Enquiries

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Appendix F: Workplace bullying research

The National Hazard Exposure Workers Surveillance (NHEWS) survey 2008 – Safe Work Australia

The NHEWS survey was a first attempt at a national survey on worker exposure to workplace hazards. 4500 workers from across Australia were interviewed by telephone and asked to report their exposure to nine workplace hazards / hazard groups. Participants were also asked about some of the controls that may have been provided in their workplaces to eliminate or minimise these hazards. The survey though limited provided valuable information to inform the development of further hazard surveillance work and work health and safety policy.

One of the hazard groups included in the survey was psychosocial hazards and there were three questions on bullying and harassment. The question used to estimate bullying prevalence was very general – participants were asked to respond to the statement "I was bullied" on a five-point scale from never to all of the time. Participants who reported being bullied were asked who did it and all participants were asked whether or not their employer provided anti-stress or anti-bullying policies to prevent workers becoming too stressed at work.

Results of the NHEWS study relevant to workplace bullying include:

- 14 per cent of respondents said that they were bullied in their current workplace at least rarely to all the time.
- 2 per cent of workers said that they were bullied often or all the time.
- Bullying was most commonly reported in the Health and community services industry (21 per cent of workers reported bullying in their current workplace)
- 48 per cent of the respondents who had reported they were bullied said that they had been bullied by their supervisor / manager
    - 40 per cent said co-workers
    - 10 per cent said customers
    - 5 per cent said patients
    - 5 per cent said employees / contractors
    - 4 per cent said a patient's family member
- 56 per cent of workers said that they had anti-stress and anti-bullying policies in their workplaces.

The report is available from the Safe Work Australia website at:
http://www.safeworkaustralia.gov.au/sites/swa/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/RR200803NHEWSSurveyResults.aspx

The Australian Workplace Barometer Project – Centre for Applied Psychological Research, University of South Australia

The Australian Workplace Barometer (AWB) survey was developed and conducted by Professor Maureen Dollard of the University of South Australia. Funding for this project has come from a variety of grants and organisations including Safe Work Australia. Prompted by variations in bullying definitions and associated bullying prevalence rate estimates, the AWB was designed to collect nationally representative information on psychosocial risk factors in Australian workplaces. Data was collected between 2009 and 2011 from employed workers over the age of 18. Respondents were randomly selected from NSW, SA, WA, TAS, ACT and NT resulting in 3513 participants from a wide range of occupations and industries. Despite not including participants from Victoria and Queensland this study currently provides the most up to date and comprehensive data on the prevalence of workplace bullying in Australian workplaces.

The main objectives of the AWB project were to:

- develop a nationally representative database of psychosocial risk at the population level; identify psychosocial risk groups within Australian workers by industry, occupation and demographics (e.g. gender, employment status)
- identify psychosocial risk factors by industry
- determine the cost of stressful jobs e.g. depression related workplace productivity loss in dollar terms
- design and evaluate interventions, inform prevention campaigns, policies and practice
- benchmark progress at national levels, and monitor changing trends (track cohorts over time), and
- develop national standards.

Although the AWB study is not yet published (a book will be published mid 2012), broad results are now available and have been provided to Safe Work Australia by the lead researcher, Professor Maureen Dollard. According to Dollard, the prevalence of workplace bullying and harassment in Australia varies from 3.5 per cent to 21.5 per cent in the academic literature. This broad range is due to variations in the way bullying is defined and how the survey questions are asked. More restrictive questions that define bullying tend to elicit lower rates of bullying and the more general questions like "have you been bullied in the last six months" result in higher percentages.

This study chose to ask a restrictive set of questions that included a narrow definition of bullying. Bullying was defined as: "*Bullying is a problem at some workplaces and for some workers. To label something bullying, the offensive behaviour has to occur repeatedly over a period of time, and the person confronted has to experience difficulties defending him or herself. The behaviour is not bullying if two parties of approximately equal 'strength' are in conflict or the incident is an isolated event*". Further, the bullying had to take place at least once a week for at least half a year or more. The questions asked in the survey were: *Have you been subjected to bullying at the workplace during the last six months?* [yes / no]; *How often were you exposed to these bullying behaviours overall?* [five-point scale from never to daily]; and *How long were you exposed to these bullying behaviours overall?* [five-point scale from less than one month to more than two years].

The results include several notable findings related to bullying, harassment, discrimination and other psychological stressors. With respect to bullying 6.8 per cent of respondents reported that they experienced bullying in the previous six months, with 3.5 per cent experiencing bullying for longer than a six month period. Females reported significantly higher levels of bullying and stated they experienced bullying for significantly longer periods of time than male workers. It should be noted that this estimate of 6.8 per cent is a conservative estimate because it did not include people who witnessed bullying or those that were bullied by co-workers of equal power.

Results relating to harassment include:

- 33.8 per cent of participants had been sworn at or yelled at while at work
- 22.8 per cent of participants reported being humiliated in front of others
- 19.1 per cent reported experiencing discomfort due to sexual humour
- 9.7 per cent advised that they had experienced unfair treatment due to gender
- 6.3 per cent had experienced negative comments regarding ethnic or racial background
- 6.3 per cent reported that they had been physically assaulted or threatened by a co-worker, supervisor, or manager in their workplace
- 4.6 per cent experienced unwanted sexual advances at some stage in their workplace
- females reported experiencing significantly more unwanted sexual advances, humiliation, and unfair treatment due to gender than men, and

- men reported significantly higher rates of physical violence and being yelled at or sworn at.

Results across different states and territories were consistent meaning the prevalence of bullying is unlikely to be different in Victoria and Queensland. Therefore 6.8 per cent is a robust Australian estimate.

Comparison of bullying rates as determined in the AWB study with bullying compensation rates do not show a perfect match by industry. For example bullying in the Construction industry is reported at a much higher rate in the AWB than in compensation data. In addition Government administration and defence which is the industry where bullying is most frequently compensated has considerably lower rates of reporting bullying in the AWB study than other industries. Like in the compensation data industries identified in the AWB study that are associated with high rates of reporting bullying include: Health & community services, Electricity, gas & water supply, Personal & other services and Education.

Preliminary analysis of the AWB data suggests that bullying compensation is less likely to occur in industries characterised by physical demands and where being sworn at or yelled at is most frequent. On the other hand bullying shows higher rates of compensation in industries associated with higher levels of physical threat, work pressure, serious bullying and greater levels of engagement (dedication and absorption) and reward.

The AWB study involved some calculations of costs to Australian employers, although none specifically for bullying. The study reported that depression related to bullying and job strain is estimated to cost Australian employers approximately $8 billion annually due to sickness, absence and presenteeism. The majority of dollars are lost due to workers who report only mild symptoms of depression when compared to those reporting moderate to severe depression.

The Personality and Total Health (PATH) through Life project – Centre for Research on Ageing, Health and Welfare, the Australian National University

The PATH project is a longitudinal study on mental health and includes subjective and objective measures of physical health. It follows three cohorts or groups of people, initially aged in their early 20s, early 40s and early 60s, randomly sampled from the Canberra and Queanbeyan regions. This study has been running for 12 years out of a planned 20 years (dependent on funding[1]).The research involves surveys and physical measurements of health.

The PATH research has a strong focus on employment and work. The workplace represents an important context for health, wellbeing and identity as well as being a potential source of risks and adversities. The PATH study enables a population perspective allowing comparison and consideration of the intersection of work and personal/family circumstances. In 2011 questions on bullying were added to the fourth wave of the study. These questions included a general global question on bullying and 21 detailed questions on bullying that assess different bullying behaviours. More information is provided on these below.

Safe Work Australia contributed funding to the fourth wave of the 20+ cohort survey. As the project has been running for about 12 years this group are now aged in their early to mid thirties. 474 respondents from both public and private sectors completed the detailed bullying questions. The value of these data is that they examine a wide range of different types of bullying. This helps in overcoming some of the problems with other surveys on bullying where just one or two very broad questions are asked.

Although not yet published the following preliminary results from analysis of the fourth wave 20+ cohort survey have been provided to Safe Work Australia by the researchers at the Australian National University.

[1] After collecting three waves / 12 years of data, the research team has had difficulty sustaining the funding base for the PATH study. The Centre is awaiting the results of an Australian Research Council funding application to continue the PATH research.

The PATH study included a global measure of bullying which provides a general measure of prevalence that can be compared across studies, countries and workplaces. The question used in PATH was: *Mental violence or workplace bullying refers to isolation of a team member, underestimation of work performance, threatening, talking behind one's back or other pressurising. Have you experienced such bullying?* [Never; Yes-currently; Yes-previously in this workplace; Yes-previously in another workplace; Cannot say]. In the face-to-face sample, 6.8 per cent of respondents reported being bullied in the last 6 months, 15 per cent reported previous bullying in their current workplace and 22 per cent reported that they had been bullied but in a previous workplace. Just over half of employed respondents reported no (prior or current) experience of workplace bullying.

The PATH survey also included 21 questions to assess different bullying behaviours and asked respondents to indicate whether in the past six months they had experienced each of the behaviours *never*, *a few times*, *sometimes* or *often*. The use of this scale produces different estimates of bullying to the global question. Consistent with previous international research, analysis of the 21-item bullying scale identified three different types of bullying:

- **Work-related bullying**: items such as *withholding necessary information from you, unreasonable pressure to produce work, constant undervaluing of your efforts,* and *removal of areas of responsibility without consultation.*
- **Person-related bullying:** items such as *persistent attempts to humiliate you in front of colleagues, destructive innuendo and sarcasm,* and *spreading gossip and rumours about you.*
- **Violent or intimidating bullying:** items such as *verbal threats to you, threats of violence to your property,* and *threats of violence to you.*

Nearly 12 per cent of respondents reported four or more types of bullying sometimes or often. Overall, 12 per cent of respondents reported at least one experience of person-related bullying and over a quarter (28 per cent) reported at least one experience of work-related bullying. Experience of violence or physically intimidating bullying was much rarer (3 per cent).

Mental health and bullying

The PATH through Life study provides the potential to link data on bullying with the extensive and longitudinal data on physical and mental health, wellbeing, cognition, and health service use (linked through Medicare/PBS). As an example, preliminary analysis of the 20+s cohort wave four has examined the association between the experience of the bullying and likely depression. Around 9 per cent of respondents who reported having never experienced workplace bullying were identified with depression whereas 31 per cent of those who were currently bullied reported significant depression symptoms (Figure 1). All three types of bullying experiences (work-related, person-related and violent or intimidating bullying) were also associated with greater risk of depression. The greater the severity of bullying experienced, the greater the risk of depression.

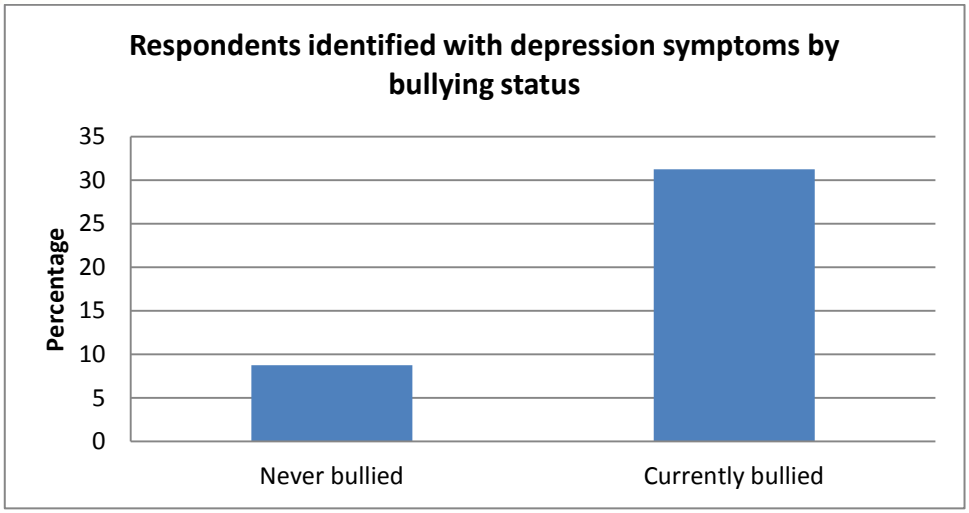

Figure 1. The relationship between bullying and depression: percentage of respondents with depression symptoms by bullying status

The rates of depression for those who responded *never* to all of the items in each scale and those who responded *sometimes* to all items were estimated. The results (Figure 2) confirm the much elevated risk of depression among those experiencing each of the different forms of workplace bullying. While this is still a preliminary analysis of the new data, it demonstrates how workplace bullying may be an important determinant of mental health and the significant personal consequences of bullying experiences. Ongoing analyses will examine factors such as time away from work and health service use.

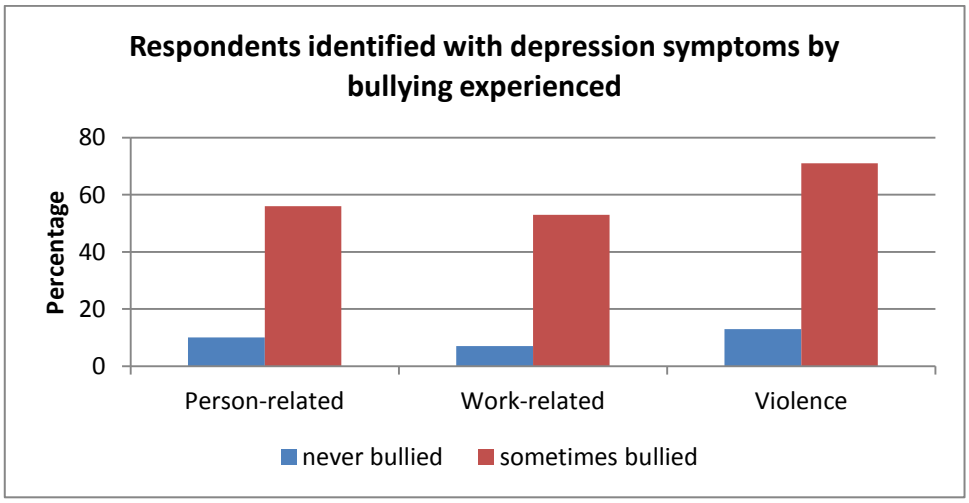

Figure 2. The relationship between bullying and depression: the percentage of respondents with depression symptoms who had never been bullied compared to those who had sometimes been bullied with respect to the type of bullying experienced

People at Work – University of Queensland and Workplace Health and Safety Queensland

The People at Work project is an organisation-based study with three main objectives:

1. to develop and pilot a non-commercial reliable and valid risk assessment tool for psychosocial injury that will be available to all Queensland organisations / employers
2. to develop a representative normative database of psychosocial risk factors and employee outcomes across industries and occupations in Queensland, and

3. to improve the capacity of Queensland employers to manage the risk of psychological injury in the workplace through the implementation of organisational level stress management interventions.

The People at Work project consists of two rounds of data collection. The first round was conducted between March 2008 and June 2010 and was funded by an Australian Research Council grant and Workplace Health and Safety Queensland. The second round of data collection is currently underway (2012-2015) and is funded by the Australian Research Council, the University of Queensland and the Australian National University. Industry funding is being provided by Workplace Health and Safety Queensland, WorkSafe Victoria and Safe Work Australia.

In the first round of data collection, 39 organisations in Queensland participated in the study. This involved the completion of 6513 questionnaires – 79 per cent of the respondents were from the public sector and 21 per cent were from the private sector. The high number of public sector responses and the fact that the study was undertaken exclusively in Queensland means that the results of this study cannot be generalised to the Australian working population. However, the current data collection for this study is expanding into other states and territories and over a broader range of industries.

Bullying was addressed in the first People at Work study by asking participants if they had been subjected to workplace harassment/bullying in the last month, whether they had witnessed workplace harassment/bullying and to identify the source of the behaviour(s). Workplace harassment / bullying was defined to study participants as: "*a person is subjected to 'workplace harassment/bullying' if they are subjected to repeated behaviours that is unwelcome and unsolicited; that the person considers to be offensive, intimidating, humiliating or threatening; and a reasonable person would consider to be offensive, intimidating, humiliating or threatening. 'Workplace harassment/bullying' does not include reasonable management action taken in a reasonable way.*"

Participants were also asked whether they had been subjected to a range of nine repeated behaviours in the past month to such an extent that they had been offended, intimidated, humiliated or threatened by them. These included verbal abuse, sabotage of work, humiliation and exclusion or isolation from workplace activities. Some key findings of the study[2] include:

- 3.1 per cent of participants reported they experienced harassment/bullying often or almost daily
- 4.4 per cent of participants reported they witnessed harassment/bullying often or almost daily
- Transport & storage, Personal & other services, and Construction had significantly higher levels of harassment/bullying
- the main sources of the harassment/bullying were reported as co-worker (38 per cent), customer/client (29 per cent), and supervisors (22 per cent)
- there were differences in the source of bullying across public and private sectors: in the public sector clients were reported as a greater source of bullying (33 per cent) than in the private sector (14 per cent)
- the private sector reported greater levels of bullying from co-workers and supervisors than the public sector, and

[2] Information about this study has come from two sources. The first is an article currently under review at the Journal of Health, Safety and Environment: KA Way, NL Jimmieson & P Bordia. (in review). Self-labelling versus Behavioural experience of workplace bullying: differences in industry and sector-level prevalence and sources. Journal of Health, Safety and Environment. The second source is a confidential but comprehensive report titled *People at Work Project: Development and Validation of a Psychosocial Risk Assessment Tool*, prepared for Workplace Health and Safety Queensland, Department of Justice and Attorney-General in 2010. The report's authors are Nerina L. Jimmieson, Prashant Bordia, Elizabeth V. Hobman and Michelle Tucker, Centre for Organisational Psychology, School of Psychology, The University of Queensland

- the highest level of reporting co-workers as the source of bullying was found in Electricity, gas and water supply industry (63 per cent). The industries with the highest levels of reporting supervisors were the Manufacturing and Construction industries. The Education industry reported the highest level of clients i.e. students or parents/guardians (49 per cent as the source of bullying).

Australian Government Productivity Commission (2010) Performance benchmarking of Australian business regulation: occupational health and safety[3]

In 2010, the Productivity Commission undertook a study to benchmark indicators of regulatory burden associated with work health and safety regulatory regimes across the jurisdictions. Psychosocial hazards including workplace bullying were a specific focus in the report. A key outcome of this report was the estimate that the total cost of workplace bullying in Australia (in 2000) was somewhere between $6 billion and $36 billion annually. However this estimate needs to be treated cautiously because the Productivity Commission used estimates of the prevalence of bullying from other countries. The lower estimate, 3.5 per cent came from Sweden while the high rate was derived using the mid-point of estimates from studies in the UK and the USA.

There are limitations in adopting overseas data on the prevalence of bullying. For example the USA incidence rate is influenced by racial discrimination issues that are not comparable to the Australian situation. This study was undertaken when there were no Australian studies that estimated the incidence of workplace bullying. This is no longer the case and conceivably the costs of workplace bullying in Australia could be better estimated now owing to the availability of AWB data.

Other notable findings of the 2010 Productivity Commission report include that in 2007-08 24.3 per cent of the total Commonwealth mental stress claims were due to workplace related harassment or bullying. Of the jurisdictions Victoria recorded the highest percentage of mental stress claims that were due to work-related harassment of bullying (37 per cent).

The State of the Service survey – Australian Public Service Commission

For the last decade, the Australian Public Service Commission has run an annual survey of Australian public servants – the State of the Service survey. The survey includes a set of questions on bullying and harassment. Some of the questions are consistent between years but others are not. The 2010-11 survey included questions relating to the Australian Public Service code of conduct as well as questions directly relating to bullying and harassment. In general survey participants were asked to estimate the frequency with which they were subjected to bullying or the frequency they witnessed harassment or bullying. Participants who were bullied or witnessed bullying or harassment were asked if they reported the bullying or harassment (to a supervisor etc) and if not why not. Participants who did report bullying or harassment were asked how satisfied they were with the actions taken as a result of their report and if they were dissatisfied why.

The 2010-11 State of the Service survey found a reasonably high prevalence of bullying and harassment among respondents. 33 per cent of workers reported that they were subject to bullying rarely to always in their current job. However, only 18 per cent of respondents reported they had been subjected to harassment/bullying in the last 12 months. In 2007, 2008, 2009 and 2010 17 per cent of respondents reported they had been subjected to harassment / bullying in the last 12 months. This figure had increased from 15 per cent in 2006.

Full results of the State of the Service survey are available at www.apsc.gov.au/__data/assets/pdf_file/0018/5913/employeesurvey.pdf.

[3] http://pc.gov.au/projects/study/regulationbenchmarking/ohs/report