



**safe work australia**

## **Key Workers' Compensation Information, Australia**



**2010**





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Note this information is accurate as of February 2010

## Background

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

## What is workers' compensation?

- It is a compulsory levy imposed by government on employers to fund their potential liabilities associated with injured workers.
- It provides income replacement and coverage of medical cost to eligible workers.
- It currently covers about 90 per cent of the workforce (~ 9.7 million workers).
- The schemes do not cover the self employed, sole traders and independent contractors (about 1.2 million people) who need to take out personal injury insurance through private sector insurance.

## What is an injured worker entitled to?

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

## Who is eligible?

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

## What does it cost?

- In 2007–08, there were 131 110 serious workers' compensation claims involving one or more week of time lost from work, a permanent incapacity or fatality. This equates to 13.5 claims for serious injury for every 1000 employees.
- In 2007–08, the total amount paid by workers' compensation schemes was A\$6.3 billion. This consisted of:
  - \$3.38 billion of direct payments (incapacity, permanent impairment and common law) (53.7%)
  - \$1.42 billion in medical and other services, including rehabilitation (22.5%)
  - \$1.18 billion of insurance operations costs (18.8%), and
  - \$316 million of other administrative costs (5.0%)
- Premiums are usually expressed as a percentage of the employer's payroll. The average Australian premium in 2007–08 was 1.67% of payroll but for an individual employer, premiums can be as high as 12% for certain high risk trades (e.g. logging) or lower than 0.2% for low risk work (e.g. clerical work).
- Self-insurance allows employers to manage their own workers' compensation liabilities, provided that they can prove they are capable of doing so, by having effective management systems and are financially viable.

Note: figures quoted are based on data from the 11th edition of the *Comparative Performance Monitoring report*.

## Agencies responsible for workers' compensation functions

In the Commonwealth and some states and territories different authorities are responsible for different aspects of the worker's compensation process.

Table 1 Responsible Agencies

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



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

## Legislation

Each jurisdiction has its own legislation covering workers' compensation.

Table 2 Workers' Compensation Legislation in Australia

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

## Statistics

The table below lists important statistical data for the jurisdictions.

Table 3 – Australian Workers' Compensation Statistics 2007–08

Jurisdiction	Employees Covered	Serious Injuries	Incidence Rate *	Frequency rate**	Durable RTW Rate	Dispute Rate	Compensated Fatalities	Standardised Average Premium Rate
NSW	3 022 660	42 730	14.1	8.3	76%	6.6%	42	1.88%
VIC	2 407 460	24 630	10.2	6.2	75%	15.1%	44	1.44%
QLD	1 782 360	32 480	18.2	10.9	75%	3.1%	79	1.09%
WA	1 011 710	13 020	12.9	7.4	n/a	3.7%	21	1.27%
SA	703 980	9630	13.7	8.3	64%	13.6%	8	2.84%
TAS	207 280	3330	16.1	10.1	79%	7.2%	7	1.49%
NT	106 810	1420	13.3	7.4	68%	6.3%	10	1.81%
ACT	117 750	1370	12.0	7.6	n/a	n/a	0	2.23%
Comcare	381 820	2420	5.9	3.3	84%	12.3%	21	1.15%
Seacare	4020	90	22.4	4.3	82%	16.2%	0	4.71%
Australia	9 745 850	131 110	13.5	8.0	75%	7.2%	232	1.59%

\*Incidence rate of serious injuries (claims per 1000 employees, projected 2007–08)

\*\*Frequency rate of serious injuries (claims per million hours worked, 2007–08)

## Work-related Injury

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

Table 4 Injury and contribution of employment

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

SA	'... a disability is compensable if it arises from employment.'	'... not compensable unless it is established on the balance of probabilities that it arises from employment.' Substantial cause (for psychiatric disabilities only)
TAS	'An injury, or a disease, arising out of, or in the course of employment'	The 'major or most significant factor' (for diseases only)
NT	'... a physical or mental injury ... out of or in the course of employment ...'	To a material degree (for diseases and gradual process)
ACT	'a physical or mental injury...includes aggravation, acceleration or recurrence of a pre-existing injury...arising out of, or in the course of, the worker's employment'	A substantial contributing factor
Cwealth	'... 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) ...'	<b>Comcare:</b> To a significant degree (for diseases) <b>Seacare:</b> To a material degree (for disease)

## Journey claims

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

Table 5 Coverage of journey claims

Jurisdiction	Journey to & from work	Journey undertaken for work purposes
NSW	Yes (some restrictions)	Yes
VIC	No (covered under separate statutory no-fault transport accident scheme)	Yes (some restrictions)
QLD	Yes (some restrictions)	Yes
WA	No	Yes
SA	Generally no. Only in very limited circumstances - most not covered	Yes
TAS	No (some exceptions)	Yes
NT	Yes (some exceptions)	Yes
ACT	Yes	Yes
Cwealth	<b>Comcare:</b> No <b>Seacare:</b> Yes	<b>Comcare:</b> Yes <b>Seacare:</b> Yes

## Main benefits

### Important notes:

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

### Incapacity benefits

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

Table 6 Incapacity payments as at 30 June 2009

Parameter	100% wage replacement (wks)	Final step-down (After week . . .)	Minimum amount	Variation	Employer Excess	Financial Limit	Time limit	Age limit
<b>NSW</b>	26	26	\$309.50	Increases for dependent spouse and/or children	One week's weekly payment	\$1654.40 per week	-	Retirement age + 12 months
<b>VIC</b>	13 (95% replacement)	13	75%	Less capacity to earn	First 10 days, first \$564 medical costs	\$1250 per week	2.5 years	65 unless lower industry retirement age. If injured within 130 weeks of retirement, max. 130 weeks
<b>QLD</b>	26	104	Greater of 75% NWE or 70% QOTE#	-	Up to first \$740 weekly payment	\$244 710	5 years	-
<b>WA</b>	13	13	85%	Subject to award rates	no	Limit on weekly payments of 2.0 x ABS AWE (\$1904.40). Statutory max \$168 499	-	65 unless worker is over 64 at time of injury, then max 1 year



<b>SA</b>	13	26	80%	Less capacity or deemed capacity to earn	First 14 days of incapacity payment	\$2335.60 per week	2.5 years	65 unless lower industry retirement age. If injured within 2 years of retirement then max 2 years.
<b>TAS</b>	13	78	80%	Less capacity to earn	First weekly payment, first \$200 of other benefits	-	9 years	65 unless worker is over 64 at time of injury, then max 1 year
<b>NT</b>	26	26	75% (or 150% of AWE in the NT, whichever is lesser)	More for dependants, less capacity to earn	First day	-	2 years	65 unless worker is over 64.5 at time of injury, then max 6 months
<b>ACT</b>	26	26	65% of pre-injury earnings or statutory floor (\$543.78) whichever is more	More for dependants, less capacity to earn	No	-	-	65 unless worker is over 63 years at time of injury, then max 2 years
<b>Cwealth</b>	45	45	Lesser of 75% or statutory amount (\$393.79)	More for dependants, less capacity to earn	No	150% of AWOTEFA*	-	65 unless worker is over 63 years at time of injury, in which case max 2 years

# If the work-related impairment is over 15% \* Average Weekly Ordinary Time Earnings of Full-time Adults.

## The medical treatment benefits

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

Table 7 Maximum amounts for medical treatment as at 30 June 2009

Jurisdiction	\$ limit	Other
NSW	No limit	Medical expenditure above \$50 000 requires regulator approval
VIC	No limit	Ceases 52 weeks after weekly payment entitlement ceases, or after 52 weeks if compensation is payable only for medical and like services
QLD	No limit	-
WA	\$50 550	Additional \$50 000 where the worker's social and financial circumstances justify it. An additional \$250 000 beyond the \$50 000 may be ordered by an arbitrator under certain circumstances
SA	No limit	-
TAS	No limit	Entitlements cease 10 years after the date the claim was lodged
NT	No limit	-
ACT	No limit	Total amount must not be more than the maximum amount (agreed between employer and worker) or \$617.63 for each treatment
Cwealth	No limit	-

## Permanent impairment entitlements

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

Table 8 Permanent impairment thresholds and entitlements as at 30 June 2009

Jurisdiction	% of impairment	Lump Sum	Additional
NSW	Physical injury 1%	\$231 000	Maximum amount of \$50 000 for pain and suffering
	Hearing loss 6% binaural		
	Primary psychological injury 15%		
VIC	10% except for psychiatric impairments and additional 10% for further hearing loss except for total losses compensated under different table	\$396 690	\$484 830 (less any statutory impairment benefit paid)
	5% for some musculoskeletal injuries with a date of injury on or after 2 December 2003		
	30% for psychiatric impairment not secondary to physical injury		
QLD	1%	\$244 710	\$244 710
	Hearing loss 5%		

Table 8 Permanent impairment thresholds and entitlements as at 30 June 2009 continued

Jurisdiction	% of impairment	Lump Sum	Additional
WA	1%	\$168 499	-
	Hearing loss initial 10% and subsequent loss 5%		
SA	None except hearing loss 5%	\$420 558	\$91 800
	5% WPI	\$223 824	-
TAS	>0% fingers and toes		
	10% psychiatric impairment		
NT	5% Hearing loss		
	5%	\$231 254.40	-
ACT	1%	\$123 525	-
	6% hearing	single loss	
		\$185 288 multiple loss	
Cwealth	10% WPI; 5% hearing; >0% fingers, toes, taste, smell	\$150 396	\$56 399

## Death benefits

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

Table 9 Death benefits as at 30 June 2009

Death benefits	Lump sum	Weekly payments / child	Funeral	Other
<b>NSW</b>	\$433 650	\$110.20	\$9000	
<b>VIC</b>	\$265 590	95% (first 13 weeks) of pre-injury earnings for dependent spouse and/or children to max \$1250 per week. 50% of earnings for 14 weeks to 3 years	\$9300	Counselling for family \$5160 max
<b>QLD</b>	\$458 370	10% of ordinary time earnings payable weekly to each dependent family member until 16 or a student (where spouse is totally dependent)	Reasonable	\$12 245 paid to totally dependent spouse - reduced by the total amount of weekly payment of compensation
<b>WA</b>	\$230 992	25% of deceased's notional weekly earnings if child is "orphan", or 12.5% if "dependent, non-orphaned" or a child's allowance of \$44.20 per week	\$8149	

Table 9 Death benefits as at 30 June 2009 continued

Death benefits	Lump sum	Weekly payments / child	Funeral	Other
<b>SA</b>	\$420 558	Orphaned child - 25% of deceased's notional weekly earnings Not orphaned – 12.5% of deceased's notional weekly earnings	\$7470	Weekly payments of up to 50% of notional weekly earnings for a totally dependent spouse or domestic partner, less depending on degree of dependency
<b>TAS</b>	\$223 824.33	A dependent child is entitled to 10% of the basic salary, commencing on the expiration of 13 weeks after the date of death (\$60.66 pw)	Reasonable cost of burial or cremation	Spouse is entitled to weekly payments calculated at the same rate as the deceased would have received if he/she became totally incapacitated <ul style="list-style-type: none"> <li>• first 13 weeks: 100% of weekly payments</li> <li>• 14-78 weeks: 85% of weekly payments</li> <li>• 78 weeks-2 years: 80% of weekly payments</li> </ul>
<b>NT</b>	\$289 068	\$111.18	\$5781	-
<b>ACT</b>	\$185 288	\$61.76	\$4941	-
<b>Cwealth</b>	\$412 000	\$113.30	\$9575	-

## Common law

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

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

Table 10 Access to Common Law as at 30 June 2009

Jurisdiction	Access	Type of damages	Threshold	Damages
NSW	Yes	Past and future economic loss	15%	No cap
VIC	Yes (post 20 Oct 1999)	Pain & suffering Economic loss	30% Permanent 40% Loss of earnings	Min \$49 460, max \$484 830 Min \$49 460, max \$1 113 590
QLD	Yes		20%	No cap
WA	Yes		Min 15%	\$353 850 (<25% WPI), no cap (>25% WPI)
SA	No			n/a
TAS	Yes	Economic and Non-economic loss	Min 30%	No cap
NT	No			n/a
ACT	Yes (outside WC)	Economic and non-economic loss	No	No cap
Cwealth	Yes	Non-economic loss	PI claim successful	\$110 000

## Sources

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

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





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