

CLIENT BRIEFING

WORKERS COMPENSATION UPDATE

The past 18 months have seen significant developments in workers compensation markets across the country, with premium reform, regulatory restructure, scheme agent changes and product redesign at the centre of the shifting landscape.

Despite heavy activity, the changes have had minimal effect on rates across the schemes with premiums in the majority of jurisdictions remaining stable.

Notably, the current WA rate is the lowest ever recorded in the state.

AVERAGE PREMIUM RATES

	15/16	16/17	VARIANCE
ACT	2.65%	2.70%	≥
NSW	1.40%	1.40%	=
QLD	1.20%	1.20%	=
SA	1.95%	1.95%	=
TAS	2.30%	2.33%	=
VIC	1.27%	1.272%	=
WA	1.48%	1.478%	≤
COMCARE	1.85%	1.72%	≤

- Rates in NSW have remained the same as 14/15 in accordance with written correspondence from icare
- Comcare, VIC, ACT, WA & TAS rates are based on statistics published on the respective regulatory authority websites
- NT data was not available for comparison

National – Comcare

The Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 is awaiting passage through the Senate.

Should the bill pass, changes are estimated to reduce costs by approximately 12%-21% per annum.

Proposed changes include:

- Allowing national employers to apply for a self-insurance licence and operate in a national model in work health and safety
- Earlier step downs of weekly compensation
- Consideration of an employee's deemed earning capacity in determining compensation
- Stronger controls of the exclusion of non-work related injuries and eligibility criteria
- Review of medical expenses paid prior to claims acceptance and tighter controls of acceptance of medical and like expenses
- Review of household and attendant care expenses with capped and uncapped provisions
- Introducing financial incentives attached to injured workers' to return to work in some form of capacity
- Closer control and reduction of costs attached to the Administrative Appeals Tribunal (AAT) including a potential Schedule of Legal Costs
- Amendments to lump sum calculations including a new formula and consideration of pre-existing conditions and secondary psychiatric illnesses

It should be noted that Comcare's overall scheme performance has already shown steady signs of improvement in 2015/16, with lower premiums, improved return to work rates and a more favourable funding ratio.

Comcare's new Compliance and Enforcement Policy became effective on 1 July 2016. The policy addresses the regulatory functions and powers under the *Work Health and Safety Act 2011* and the *Safety, Rehabilitation and Compensation Act 1988*.

Australian Capital Territory

Recent legislative changes to the *Workers Compensation Act 1951* in the ACT obligate employers to ensure they notify their insurer in writing within 30 days if wages increase by more than \$500,000. The maximum penalty is 50 units when an employer fails to notify the insurer in time. The penalty unit for a corporation is \$750, meaning the maximum applicable penalty for an employer is $\$750 \times 50 = \mathbf{\$37,500}$

The *Workers' Compensation Amendment Act* was assented in February 2016. The amendment now ensures that workers who suffer from an imminently fatal asbestos-related disease receive equitable and timely access to statutory compensation.

New South Wales

In the past 12 months, NSW Workers Compensation has seen conventional premium reform, the establishment of Insurance and Care NSW (iCare), the redesign of the Loss Prevention & Recovery, and the recent announcement that iCare is moving to directly undertake the policy administration and billing requirements under the NSW Workers Compensation.

The rebranding of Retro Paid Loss (RPL) to Loss Prevention & Recovery (LPR) included the following changes:

- Simplified application process
- Removal of KPI requirements
- Security alternatives

There are likely to be further changes implemented for 2017.

The State Insurance Regulatory Authority (SIRA) recently issued a revised copy of the Guidelines for Claiming Workers Compensation. The changes intend to create a clear, jargon-free document, which will be accessible to more people. Effective from August 2016, the new guidelines also consolidate four existing publications (Guidelines for claiming compensation benefits; Work capacity guidelines; Guidelines for work capacity decision, internal reviews by insurers and

merit reviews by the Authority; Guidelines for the provision of domestic assistance).

Queensland

The Queensland Parliament passed amendments to the *Workers' Compensation and Rehabilitation Act 2003* (QLD) on 31 August 2016 where it was anticipated that these amendments would abolish the effect of *Byrne v People Resourcing (Qld) Pty Ltd v Anor*.

In this case, a labour hire worker was injured while working for a principal contractor, indemnified by the worker's employer under a contract. The employer and the contractor agreed they were equally negligent for the worker's injury and the claim was settled - by way of a consent judgment - on this basis. The contractor then sought to recover its share of liability from the employer, pursuant to the contractual indemnity and, in turn, the employer sought indemnity for this share under its workers' compensation insurance with WorkCover Qld. The Court ultimately determined that the employer was legally liable under the contractual indemnity to pay the full amount of the judgment. WorkCover Qld was therefore obliged to indemnify the employer for the contractual claim.

All proposed amendments as contained within the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016* were passed, with the exception of the proposed amendment to the definition of 'damages' designed to revert the decision in the above case. As such the meaning of 'damages' in the Act remains as it was, with no changes; and *Byrne* - which held that an employer's liability under a contract was a legal liability of the employer to pay 'damages' that WorkCover Queensland as the employer's statutory insurer must meet - has not been expressly overruled, and arguably remains good law.

However, a new section to the Act '*236B Liability of Contributors*' has passed, which severely limits the effectiveness of any contractual agreement. The new section provides that, where an employer agrees to indemnify another party for legal liability to pay damages for a worker's injury, the agreement does not prevent WorkCover from recovering costs by claiming against that party.

Northern Territory

Amendments to legislation in Northern Territory have been made in two stages: 1 July 2015 and 1 October 2015.

Overall, the review made 58 recommendations with all being accepted with minor variations.

The purpose of the amendments has been to maintain long term sustainability of the scheme and reducing the cost for business without eroding financial support for injured workers.

The name of the legislation has changed to 'Return to Work Act' and Regulations to better reflect the primary objective of the legislation - helping injured workers return to work.

Key changes include:

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

The period of compensation for workers aged 67 years or older has increased from 26 weeks to 104 weeks, providing older workers with a more reasonable level of financial protection should they get injured at work.

Revision of the weekly compensation drop down rates. During the first 26 weeks that a worker is unable to work, their compensation payments are paid at their normal weekly earnings. After 26 weeks, compensation payments are paid at 75% of their normal weekly earnings. There is now a cap on the calculation of a worker's normal weekly earnings after 26 weeks to 250% of the average weekly earnings. This provision will only affect very high income earners, and in such cases will provide incentive, for both the worker and the employer to focus on return to work.

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

South Australia

Following the introduction of the Return to Work scheme last year, the case management model for managing work injuries changed to an injured worker focused service model. The new model aims to improve recovery and return to work outcomes through:

- On-site presence and mobility in attendance at employer premises
- Face-to-face support for injured workers
- Greater engagement with general practitioners through face-to-face engagement
- Improved communication between all parties
- Reduction in unnecessary delays

The implementation of this model, coupled with premium reform, has seen the industry maintain in 2016, the premium rate reduction of 20% achieved in 2015.

Return to Work SA (RTWSA) is continuing the current focus on fraud within the scheme, with a particular emphasis on labour hire companies and host employers. With the help of consultant forensic accountants, RTWSA is undertaking wage audits to determine whether labour hire companies are declaring the correct remuneration for their work injury insurance cover.

The Retro Paid Loss model has been removed as an offering within the South Australian market, with affected employers currently supported by Marsh in engaging with RTWSA on managing the transition.

Tasmania

Submissions following a consultation process between WorkSafe TAS and participants of the broader scheme closed 15 October 2015. WorkSafe has released a paper detailing the areas for review and potential amendments including:

- Changes in accreditation provisions for medical and rehabilitation providers
- Proposals to introduce specific requirements for accredited Return to Work Plans, Injury Management Programs, and Injury Management Plans
- Licensing provisions for both insurers and self-insurers
- Amendment or abolishment of the claims excess
- Removal of the requirement for businesses with 50 or more workers to have a trained Return to Work Coordinator

No further update has been provided by WorkSafe TAS to date.

Victoria

The recent license tender process for Scheme Agents resulted in major changes, including the exit of QBE from Victorian market from 30 June, and EML's appointment effective 1 July.

Worksafe Victoria has recruited 17 additional occupation health and safety, and return to work inspectors with a view to further encourage prioritisation of safety and return to work practices within Victorian workplaces.

Western Australia

WorkCover WA published its annual report in September 2015 with key points including:

- The second phase of the legislative review has commenced with a focus on finalising changes following consultation and implementation of the new Act
- The average recommended premium rate has reduced by 30 per cent since 2006/07

The state of WA continues to be a soft market. In many cases, insurers have been forced to reduce rates in order to retain their book of business, which has resulted in very little movement of policies between insurers.

This has been further compounded by the downturn in the mining sector within the state, placing further pressure on insurers' bottom lines.

NEXT STEPS

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