



## Workers compensation: an update

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### 1. Introduction

The NSW Workers Compensation Scheme has experienced many reforms over the past three decades. These changes have largely been made in response to fluctuations in the financial position of the Scheme. The most recent major reforms were enacted in 2001 when the Scheme had a deficit of over \$2 billion. As outlined in a 2001 [Briefing Paper](#), these reforms met strong opposition from unions and the legal profession.<sup>1</sup>

There was a substantial turnaround in the Scheme's finances by 2006 and this led to some increases in entitlements. However, since 2008 the Scheme's solvency has deteriorated and the latest actuarial [report](#) estimated a deficit of over \$4 billion as at 31 December 2011.<sup>2</sup> According to the report, this decline was partly due to external influences impacting on investment returns and partly due to an increase in compensation claims.

On 26 March 2012, the Premier, Barry O'Farrell, announced, in an [address](#) to the Business Council of Australia, that the Government would be initiating "a process to repair this broken system".<sup>3</sup> The Premier concluded by stating:

We are aware that schemes in other states strike a better balance between

looking after injured people, promoting incentives for safe workplaces, and setting competitive premium rates, and we will be working closely with employers, peak groups, individuals and employee representatives in long overdue reforms to the WorkCover scheme.<sup>4</sup>

On 23 April 2012, the Minister for Finance and Services, Greg Pearce, [announced](#) the release of an [issues paper](#) outlining a number of options for reform.<sup>5</sup> To provide "an opportunity for consultation and review" the Government has referred the matter to a Joint Select Committee [inquiry](#). The Committee was set up on 2 May and is due to report by 13 June in respect of these terms of reference:

- The performance of the scheme in the key objectives of promoting better health and return-to-work outcomes;
- The financial sustainability of the scheme; and
- The functions and operations of the WorkCover Authority.

This e-brief provides a brief summary of the NSW Scheme and an overview of past reforms. Next, it examines trends in the financial position of the Scheme. The options for reform identified by the NSW Government are then outlined. Finally, the current NSW

Scheme is compared with the schemes in Victoria and Queensland.

## 2. The current NSW Scheme

Workers compensation in NSW is regulated by two complementary pieces of legislation:

- *Workers Compensation Act 1987* (NSW); and
- *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

**WorkCover:** The Scheme is administered by the WorkCover Authority of NSW.<sup>6</sup> WorkCover is established by the *Workplace Injury Management Act 1998* and has a range of functions including to:

- monitor and review key indicators or financial viability of the Scheme;<sup>7</sup>
- encourage research regarding strategies for the prevention and management of work injury and rehabilitation of injured workers and ensure the availability of education and training in respect of such strategies;<sup>8</sup> and
- investigate workplace accidents.<sup>9</sup>

**Funding and insurance:** The Scheme is funded through insurance premiums paid by employers. Employers must have workers compensation insurance if they pay more than \$7,500 in wages in a financial year.<sup>10</sup> Employers can obtain insurance via the WorkCover scheme or through self-insurance.<sup>11</sup>

Most private sector employers obtain insurance under the WorkCover scheme (some self-insure). Insurance policies are issued by private insurers which act as agents for a statutory entity known as the Nominal Insurer. These Scheme Agents are paid a fee for their services which also include

collecting premiums, managing claims and paying benefits to injured workers.

The amount that private sector employers pay in premiums is based on a number of factors including:

- Industry premium rates (set by WorkCover);
- The amount of wages paid to employees; and
- An adjustment for past claims made by employees.<sup>12</sup>

The premiums collected from private sector employers are deposited into the Workers Compensation Insurance Fund, which is managed by WorkCover on behalf of the Nominal Insurer.<sup>13</sup> According to WorkCover's Annual Report for 2010/11:

The WorkCover Authority acts for the Nominal Insurer. The Nominal Insurer is not and does not represent the State of New South Wales or any authority of the State. The insurance claim liabilities of the Nominal Insurer can only be satisfied from the Insurance Fund and are not liabilities of the State, WorkCover Authority or any other authority of the State.<sup>14</sup>

Most public sector agencies obtain insurance through the NSW Government's self-insurance scheme, which is managed by the [NSW Self-Insurance Corporation](#) (SICorp). SICorp also outsources to private insurers the issuing of insurance policies and management of claims. Premiums collected are deposited into the Treasury Managed Fund.

It is important to note that references to the financial position of the NSW Scheme (including Scheme deficits) are references to the WorkCover scheme (Workers Compensation Insurance Fund). They are not references to the NSW Government's

self-insurance scheme (Treasury Managed Fund), managed by SICorp.

**Benefits:** The Scheme is a no fault scheme, meaning that it is unnecessary for individuals injured at work to establish that their employer was somehow negligent before they will be entitled to compensation. Compensation is payable if a worker receives an injury arising out of or in the course of their employment, where the employment was a "substantial contributing factor to the injury."<sup>15</sup>

The term "injury" is defined to mean "personal injury" and it includes diseases contracted by workers in the course of their work, or where the worker's employment aggravates or exacerbates a disease that they suffer (where the employment was a substantial contributing factor to the contraction or aggravation of the disease). However, this does not extend to dust diseases, which are covered by a separate regime.<sup>16</sup>

The 1987 Act also provides that workers can be compensated for injuries received while they are travelling to and from work or for work purposes ("journey claims").<sup>17</sup> The Act specifies the types of journeys that will be covered.<sup>18</sup> Compensation will not be payable where the injury "is attributable to the serious and wilful misconduct of the worker."<sup>19</sup>

Appendix One contains detail regarding the benefits available under the NSW Scheme. Generally, the following benefits are available:

- **Medical expenses:** Workers are reimbursed for medical, hospital and rehabilitation expenses.<sup>20</sup>
- **Income support:** This is provided to workers who have suffered total or partial incapacity for work due to the

injury. Benefits are paid in the form of weekly payments. The benefits are payable at different rates and on different conditions depending upon whether the worker has suffered total or partial incapacity. The rates are reduced after the first 26 weeks of the worker's incapacity.<sup>21</sup>

- **Non-economic loss:** Lump sum payments are made for non-economic loss. These payments are calculated on the basis of the extent of the impairment suffered by the individual as a result of their injury.<sup>22</sup>
- **Death benefits:** In circumstances where injury results in death, lump sum compensation is paid to the worker's dependents. Weekly payments may also be made, depending on the number, age and status of the worker's dependents.<sup>23</sup>

In certain circumstances, medical expenses and income support benefits can be paid as a lump sum (known as commutation). The circumstances where commutation is available include: that the worker's level of impairment due to their injury is at least 15%; they have already received payment for non-economic loss and "all opportunities for injury management and return to work for the injured worker have been fully exhausted."<sup>24</sup>

The 1987 Act also provides for access to common law damages in limited circumstances. Workers must be able to demonstrate that their injury is the result their employer's negligence or other tort,<sup>25</sup> must have suffered permanent impairment of at least 15%<sup>26</sup>; and must not make the claim within 6 months of their injury.<sup>27</sup> Workers can only receive damages for past and future loss of earnings (relatives of workers who are killed can

also recover for non-economic loss since their claims are actionable under the *Compensation to Relatives Act 1897*.<sup>28</sup> Upon settlement of their claim, the worker must repay any weekly benefits they have received and will not be entitled to further benefits.<sup>29</sup>

**Dispute resolution:** Chapter 7 of the 1998 Act sets out the procedure for claims made after the commencement of the 2001 amendments to the Act. Claims must be made in accordance with the WorkCover Guidelines.<sup>30</sup> The most recent version of these Guidelines is the [2012 Guidelines for Claiming Compensation Benefits](#).

The 1998 Act also establishes the Workers Compensation Commission, which has jurisdiction to hear disputes in workers compensation matters (except those relating to coal mine workers, which are dealt with by the District Court).<sup>31</sup>

This [diagram](#) shows how the dispute resolution process works. Once an application to resolve a dispute has been lodged with the Commission and the other party has been given time to respond, an [Arbitrator](#) will hold a teleconference with the parties. If the dispute is about a lump sum payment, the worker will be referred to an [Approved Medical Specialist](#) for an assessment of their impairment. If agreement cannot be reached, the matter will proceed to face to face conciliation and finally arbitration if agreement still cannot be reached (conciliation and arbitration in a matter is usually conducted on the same day by the same Arbitrator).<sup>32</sup> [Questions of law](#) may be referred to the President of the Commission for consideration.<sup>33</sup>

Appeals may be made from the decisions of Arbitrators to a Presidential Member of the

Commission.<sup>34</sup> This [Practice Note](#) sets out the appeal process. Appeals from decisions of Presidential members may be made to the NSW Court of Appeal, but on points of law only.

Part 6 of Chapter 7 of the 1998 Act sets out the procedure for Work Injury Damages (common law) claims. Claims must be mediated by the Commission before proceeding to Court (see this [Workers Compensation Commission Practice Guide](#)).<sup>35</sup>

### 3. Past reforms of the Scheme

This e-brief provides an overview of key reforms to the Scheme. The Research Service has previously published four [Briefing Papers](#), which each detail the history of the NSW Workers Compensation Scheme and the various reforms implemented by previous Governments.<sup>36</sup>

**Origins:** The first no fault workers compensation legislation in NSW was introduced in 1910.<sup>37</sup> A new scheme was established by the *Workers Compensation Act 1926* (NSW), and this scheme remained relatively unchanged for several decades.<sup>38</sup>

**1980s:** By the 1980s a number of concerns about the effectiveness of the Scheme had begun to emerge. These included:

- Unsustainable increases in premiums (from 2.65% of payroll in 1976/77 to an estimated 4.3% in 1985).<sup>39</sup>
- Premiums were less expensive in other jurisdictions, and this contributed to fears about the economic competitiveness of NSW.<sup>40</sup>
- Unsustainable increases in the total sum of workers compensation payments (over a five year period

payments increased from \$349 million to \$838 million).<sup>41</sup>

- The slow and overly complex adversarial/court-based claims system.<sup>42</sup>
- Lack of focus on the rehabilitation of injured workers.<sup>43</sup>

Several reforms were made to the Scheme in the first half of the decade. These included, but were not limited to, the establishment of the State Compensation Board (a forerunner of the WorkCover Authority), which was given a number of functions, including the provision of advice and education and the conciliation of entitlement disputes.<sup>44</sup> Premiums were capped and the amounts paid by employers were linked to their occupational health and safety record.<sup>45</sup>

However, the performance of the Scheme did not improve<sup>46</sup>, and, in 1986 the Unsworth Government released a discussion paper that outlined options for more comprehensive reform.<sup>47</sup> These included the proposed abolition of common law claims for injuries received at work and the replacement of the judges of the Compensation Court with non-judicial commissioners.

The discussion paper also suggested a shift away from the "Table of Maims" approach of awarding compensation (in which the Act set out a list of injuries and the corresponding lump sum to which a person who suffered such an injury was entitled) to one where compensation would be determined on the basis of an assessment of the extent of a person's impairment as a result of their injury.<sup>48</sup>

**1987 Act:** Following this consultation process, the Unsworth Government introduced the *Workers Compensation Act 1987*, which repealed the 1926

Act.<sup>49</sup> Key changes made to the Scheme included:

- The replacement of the judicial system of dispute resolution with an administrative system of conciliation and arbitration.<sup>50</sup>
- The requirement that each insurer set up a statutory fund, into which all premiums were to be paid. The funds were to be supervised by the State Compensation Board.<sup>51</sup>
- The introduction of measures to encourage the rehabilitation of injured workers.<sup>52</sup>
- The right of workers to pursue common law damages against negligent employers was removed.<sup>53</sup>

The prohibition on common law workers compensation actions was controversial, particularly amongst the legal profession and unions.<sup>54</sup>

For a summary of the arguments for and against the availability of common law remedies, see [Briefing Paper No 08/2001](#). For a more detailed examination of this issue, see [Briefing Paper No 14/2001](#).

**1989 amendments:** Following its election in 1988, the Greiner Government made a number of amendments to the Scheme put in place by the previous Government. These included the:<sup>55</sup>

- Replacement of the State Compensation Board with the WorkCover Authority.
- Return to a more court-based dispute resolution system.
- Reinstatement of a restricted form of access to the common law.

For a more detailed summary of these amendments, see [Briefing Paper No 39/1995](#).

**1990s amendments:** In May 1990, actuarial advice provided to the WorkCover Board indicated that the fund had an estimated surplus of \$1.1 billion.<sup>56</sup> As a result of this improved financial position, in 1992 the Government increased both the weekly benefits for workers who were incapacitated for longer than 26 weeks as well as lump sum payments.<sup>57</sup>

However, by the mid-1990s, the costs of the Scheme began to escalate once again. Higher than expected numbers of claims and the poor investment performance of the workers compensation fund meant that in the year prior to 30 June 1995 nearly \$1 billion was wiped from the surplus.<sup>58</sup>

The Carr Government introduced a number of cost containment measures in 1995 and 1996. These included a reduction in the benefits payable for certain kinds of injuries and the adoption of a requirement that injured workers demonstrate that their employment was a "substantial contributing factor" to their injury.<sup>59</sup>

**1998 Act:** Following an inquiry into the Scheme undertaken in 1997 by Mr Richard Grellman at the request of the Government (see [Briefing Paper No 24/99](#) for information about the Grellman Report), the Government made further changes to the Scheme, including:

- the introduction of the *Workplace Injury Management and Workers Compensation Act 1998*, which repealed the *WorkCover Administration Act 1989*. The Act was intended to complement the *Workers Compensation Act 1987*.
- the establishment of the WorkCover Advisory Council, to facilitate consultation between stakeholders and provide advice to the Minister;
- the establishment of Industry Reference Groups;
- the establishment of the Workers Compensation Premium Ratings Bureau; and
- the adoption of strategies to encourage workers to return to work following their injury.<sup>60</sup>

The Grellman Report had also recommended the private underwriting of the Scheme.<sup>61</sup> The 1998 legislation contained provisions to facilitate private underwriting, but they were never commenced and were later repealed.<sup>62</sup> In a 2003 review of the Scheme prepared for the then Minister for Industrial Relations, the consultants McKinsey & Company recommended that private underwriting of the Scheme be ruled out "at least until the Scheme is fully funded."<sup>63</sup>

**2000 & 2001 amendments:** By 1999 the deficit was an estimated \$1.64 billion.<sup>64</sup> In June 2000 the Carr Government indicated that further reform was planned.<sup>65</sup> In November that year, a number of amendments were made to the Scheme, but for the most part they were administrative or procedural in nature.<sup>66</sup> The then Minister for Industrial Relations indicated that these amendments were the first of a series, and that more substantive changes were to come.<sup>67</sup>

By March 2001 the Scheme was an estimated \$2.18 billion in deficit.<sup>68</sup> Two Acts passed Parliament in 2001, the first in July and the second in December, which made a series of profound changes to the scheme:<sup>69</sup>

- the implementation of a new claims procedure;
- the establishment of the Workers Compensation Commission, which was given jurisdiction to deal with disputed claims (except for certain

types of claims e.g. those made by coal miners, which are dealt with by the District Court);

- the implementation of a new dispute resolution procedure, in which disputes are dealt with by arbitrators employed by the Workers Compensation Commission;
- the replacement of the former “Table of Maims” approach with one that involves an assessment of the percentage of a person’s impairment;
- the restriction of the availability of common law remedies to circumstances where the injury results in either the worker’s death or in a greater than 15% whole person impairment; and
- the adoption of new restrictions upon when commutations could occur.

As a consequence of these reforms, a further Act was passed in 2002 to abolish the Compensation Court, as a large part of its jurisdiction had been given to the newly created Workers Compensation Commission.<sup>70</sup>

The 2001 reforms were controversial. They were met with strident opposition from both the legal profession and the union movement.<sup>71</sup> Unions in NSW undertook industrial action, which culminated in a blockade of Parliament on 19 June 2001.<sup>72</sup> For further discussion of these reforms, see both [Briefing Paper No 08/2001](#) and [Briefing Paper No 14/2001](#).

In June 2001, the General Purpose Standing Committee No 1 was asked to oversee the implementation of the new legislation and report back to Parliament every three months on an interim basis, as well as provide a final report by September 2002.<sup>73</sup> The Committee’s reports to Parliament can be accessed [here](#).

**Post-2001:** There have been many other changes since 2001 but they have mostly been intended to improve the operation of the Scheme in specific ways rather than bring about comprehensive reform. For example, in 2003, changes were made to insurance arrangements, including the establishment of the Workers Compensation Nominal Insurer and the creation of a single Workers Compensation Insurance Fund.<sup>74</sup>

Some increases have also been made to benefits, for example, changes in 2006 increased the lump sum payments for permanent impairment paid under section 66 of the 1987 Act by 10% (on a non-indexed basis).<sup>75</sup>

Between 2002 and 2009 there was a decline of almost 40% in the average workers compensation premium rate in NSW (from 2.59% to 1.88%).<sup>76</sup>

#### 4. Financial position of the Scheme

**Past valuations:** The following Table shows the financial position of the Scheme (i.e. the WorkCover scheme) from June 1997 to June 2011.<sup>77</sup> There are two measures: net assets and the ratio of assets to liabilities (which is known as the funding ratio).

	Net assets (\$m)	Funding ratio (%)
1997	-789	87%
1998	-1,675	77%
1999	-1,636	78%
2000	-1,639	80%
2001	-2,756	70%
2002	-2,801	67%
2003	-2,982	66%
2004	-2,353	73%
2005	-1,396	80%
2006	+85	101%
2007	+812	107%
2008	+625	105%
2009	-1,482	89%
2010	-1,583	89%
2011	-2,363	85%

It can be seen from the Table that the Scheme deficit increased between 1997 and 2003 before improving and moving into a surplus between 2006 and 2008. Since 2008, however, the Scheme has been in deficit and this deficit has been growing.

**December 2011 valuation:** The most recent actuarial valuation of the Scheme was completed in March 2012. The [report](#) estimated a deficit of \$4.1 billion as at 31 December 2011.<sup>78</sup> The deterioration in the scheme since 2008 was explained as follows:

- Approximately 50% due to external influences impacting investing returns achieved and particularly the "risk free" discount rate used to discount the outstanding claims liability;
- The other 50% is due to deterioration in claims management experience since June 2008. The main payment types which have exhibited deteriorating claims experience are:
  - A significant increase in the number of Workplace Injury Damages claims
  - An increase in the number of "top up" payments for Permanent Impairment (Section 66) lump sums, which has also led to an increase in the utilisation of Pain and Suffering (Section 67) lump sums
  - An increase in Medical spend
  - An increase in the number of weekly benefit claims remaining on benefits.<sup>79</sup>

On the basis of a number of assumptions, the report estimated the Scheme's balance sheet position over the next 10 years. The projections showed that the Scheme would not return to surplus over this time period although the Scheme's deficit would reduce to less than \$2 billion.<sup>80</sup>

The report estimated that to return the Scheme to full funding in five years would require an increase in average premium rates of the order of 28 percent, while a return to full funding in 10 years would require a premium rate increase of around 8 percent.<sup>81</sup>

The key recommendation of the report was that WorkCover:

make a decision as to the importance of returning the scheme to full funding and over what timeframe. It is then recommended that WorkCover agree and implement a strategy consistent with solvency objectives. If there is a desire to return to full funding over the medium term such a strategy would ultimately come down to three fundamental choices, namely:

- Increase premiums, and/or
- Reduce benefits, and/or
- Improve claim management outcomes.<sup>82</sup>

The report expressed particular concern about increases in Work Injury Damages.<sup>83</sup> It noted that there was a risk of developing "a lump sum culture" in the Scheme. This, the report observed, could "potentially lead to a significant further deterioration in the scheme's financial position which would be extremely difficult to remediate". The report stated that it was "imperative that WorkCover now rapidly develop and implement an effective strategy to [manage] this emerging issue". It also recommended that WorkCover develop strategies to control the escalation in lump sum benefits and medical costs.<sup>84</sup>

## 5. NSW Government Issues Paper

On 23 April 2012, the Minister for Finance and Services, Greg Pearce, released an [Issues Paper](#) outlining a



number of options for reforming the Scheme.<sup>85</sup> The paper stated that:

The NSW Workers Compensation Scheme is a broken system that does not produce good outcomes for injured workers, and without significant improvements it is not financially sustainable.<sup>86</sup>

The paper then listed six key problems with the Scheme including:

- Premiums paid by employers in NSW are estimated to be 20-60% higher than in competitor States;
- The system is difficult to navigate with a lot of red tape;
- Payments for seriously injured workers are inadequate;
- Recovery and the health benefits of returning to work are not effectively promoted;
- Less seriously injured workers do not have financial incentives to recover and get back to work;
- WorkCover has limited power to discourage payments and treatments that do not contribute to recovery and return to work.<sup>87</sup>

The paper commented that:

Because the NSW Scheme does not do these things well, it costs far more to get a claimant back to work in NSW than it does in Queensland or Victoria and costs are increasing at an unsustainable rate.<sup>88</sup>

According to the paper, increasing premiums was "not an acceptable solution".<sup>89</sup> After noting that premiums would need to increase by 28 percent to achieve full funding, it stated:

An increase of this size would impact current and future jobs in NSW, flowing through to reduced state revenues such as payroll tax and would further exacerbate the State's lack of competitiveness as compared to our most comparable competitor States (Victoria and Queensland).<sup>90</sup>

The paper outlined "a suite of [reform] options for comment". These options were developed after examining differences between the NSW Scheme and schemes in other Australian jurisdictions. As outlined below, there are 16 options in the paper relating to a number of areas of the Scheme.

There are two options relating to Scheme coverage, namely:

- Excluding claims arising from strokes or heart attack unless work was a significant contributing factor. The paper notes a suggestion that this would eliminate workers compensation costs arising in circumstances over which employers have limited control.
- Removing coverage for journey claims. Again, the paper notes a suggestion that excluding journey claims would eliminate workers compensation costs arising in circumstances over which employers have limited control.

There are also two options relating to medical benefits:

- Imposing a time limit on claims for medical benefits. The paper notes that many workers have access to medical treatment many years after their injury; and that NSW has higher expenditure in this area than all other States.

- Strengthening the regulatory framework for health providers to ensure that Scheme resources are directed to evidence-based treatment with proven outcomes rather than on treatments that maintain dependency.

Another option in the paper is providing severely injured workers (i.e. workers who have a permanent impairment greater than 30%) with better income support (i.e. weekly payments), return to work assistance where feasible, and more generous lump sum compensation.

A number of other options in the paper relate to weekly payments:

- Creating a single measure for pre-injury earnings. The paper notes that this would remove the existing disparity between benefits paid to award and non-award workers and to simplify the administration of benefits. The paper also notes that NSW is the only State that does not take regular overtime and other allowances into account when calculating a totally incapacitated worker's weekly payment.
- Establishing a step down in weekly payments for workers with total incapacity prior to the current step down of 26 weeks (e.g. at 6 or 13 weeks). The paper notes that an earlier step down would harmonise the NSW Scheme with Victoria, South Australia and Western Australia.
- Reforming benefits for workers who have a partial incapacity in order to encourage recovery and return to full employment. The paper notes that Victoria and South Australia use financial

disincentives to prevent long term dependency. The paper refers to increasing benefits for workers as they increase their hours of work.

- Establishing work capacity testing at specific points to assist injured workers on long-term weekly benefits in transitioning back into paid employment. The paper notes that, in the lead up to a test, workers would need to be supported by appropriate rehabilitation to make them as work ready as possible
- Capping weekly payments to a certain timeframe for workers with a lower level of permanent impairment. The paper states that this would give workers a fixed timeframe during which they know they need to work toward a certain level of work readiness.

Another option listed in the paper is relaxing the commutation thresholds for specific classes of claim on a time limited basis (commutation involves the payment of weekly benefits and medical benefits as a lump sum).

The options relating to lump sum payments include:

- Allowing only one claim to be made for whole person impairment (i.e. not permitting top up payments for deterioration following from an injury). The paper states that this might ensure that workers' injuries are stabilised; and it might also reduce reliance on exaggerated injuries to meet thresholds for making common law claims.
- Removing pain and suffering as a separate category for lump sum payments. The paper states that

this category of benefits is an anomaly arising from changes in the late 1980s, and that it creates significant disputation and legal costs. The paper also notes that removing pain and suffering as a separate category would result in a more objective measure of a worker's physical impairment.

There are two options relating to common law damages claims:

- Applying *Civil Liability Act 2002* provisions on the law of negligence to claims by workers for common law damages. The paper notes a suggestion that there is no reason to exclude these common law claims from the principles of negligence which apply to other damages claims.
- Preventing the relatives or dependants of deceased or injured workers from making common law claims for nervous shock following the serious injury or death of a worker. The paper states that, arguably, an employer's liability for nervous shock suffered by families is not within the objects of the Act.

The paper also identifies the option of having one assessment of whole person impairment for statutory lump sum, commutations, and work injury damages. The paper notes a suggestion that there is no reasonable rationale for obtaining multiple reports and it can be distressing for injured workers. It also notes that having one assessment may reduce medical, legal and red-tape costs in the Scheme.

## 6. Comparisons with other States

**Overview:** Each State and Territory has its own workers compensation

scheme, and there are also two Commonwealth schemes. A 2008 report observed that:

The State, Territory, and national schemes vary markedly in design, coverage, benefit entitlements, compliance and premiums. Each scheme has developed since the introduction of workers' compensation legislation in the early 1900s, in the context of its own political, social and economic environment, and it is not surprising that the schemes are significantly different in nature, application and content.<sup>91</sup>

Comparing the various schemes is a difficult task. This is evident from a comparison [report](#) produced by Safe Work Australia, which runs to 360 pages.<sup>92</sup> This e-brief provides a very brief comparison: focusing on the NSW, Victorian and Queensland schemes. These two other States have instituted reforms in recent years. Changes were made to the Victorian scheme after a comprehensive [review](#) by Peter Hanks QC in 2008.<sup>93</sup> In Queensland, reforms were enacted following a 2009 [review](#) into financial pressures on the scheme (which had a \$1.3 billion decline over two years).<sup>94</sup>

**Funding:** The NSW Scheme uses a hybrid funding model. The Scheme is funded through a central fund, which is managed by a statutory entity, but several functions (issuing policies and undertaking claims management) are carried out by private insurers. Victoria also uses a hybrid funding model. In Queensland, a government agency (WorkCover Queensland) underwrites the scheme and carries out all of the insurance functions. The Western Australian and Tasmanian schemes are underwritten by private insurers.<sup>95</sup>

**Coverage:** The coverage of the scheme depends on key legislative

definitions, including "worker", "work", and "injury".<sup>96</sup> The NSW, Victorian and Queensland schemes have broadly similar coverage. One key difference between the NSW and Victorian schemes is that, in NSW (and Queensland), workers who are injured on a journey between home and work are generally covered whereas in Victoria they are not covered.

Another notable difference relates to the extent to which the worker's employment contributed to the injury. In NSW, workers are only entitled to compensation if the employment was a substantial contributing factor to the injury. In Victoria and Queensland, there is a lower threshold ("significant contributing factor"), and in Victoria this threshold only applies to certain types of injuries (e.g. diseases).

**Compensation:** A brief summary of the statutory (no-fault) compensation and common law (fault-based) damages entitlements in NSW, Victoria and Queensland is presented in Appendix 1. It is difficult enough to compare the separate entitlements under each of the schemes let alone to provide an overall assessment of how the schemes rate in terms of the benefits available to workers. Some comparisons of the separate entitlements are noted briefly below:

- Statutory – medical and hospital: NSW has monetary caps on payments for medical and hospital treatment (although WorkCover can approve extra amounts) whereas Victoria and Queensland do not have caps. NSW does not impose a time limit on entitlement to these benefits whereas Victoria and Queensland do (with exceptions).

- Statutory – economic loss: Three observations can be made:
  - NSW provides 100% wage replacement for the first 26 weeks of total incapacity (up to a cap of \$1,838 pw). Queensland also provides 100% wage replacement for the first 26 weeks but there is no cap. Victoria provides 95% wage replacement for the first 13 weeks, and 80% for the following 13 weeks (a cap of \$1,930 pw applies).
  - After the first 26 weeks, NSW provides workers with total incapacity with 90% of average weekly earnings up to a cap of \$432.50. Victoria provides 80% of weekly earnings up to a cap of \$1,930. In Queensland, workers are entitled to 75% of normal weekly earnings without a cap except for a cumulative cap of \$273,055.
  - In NSW, workers with total incapacity can receive weekly payments until retirement age. The same applies to workers with a partial incapacity although payments stop after 104 weeks in certain circumstances. In Victoria, workers can also receive payments until retirement age but payments stop after 130 weeks in certain circumstances. In Queensland, weekly benefits cease after five years.
- Statutory – non-economic loss: Victoria has much higher eligibility thresholds for lump sum payments for non-economic loss (5-10% impairment for physical

injuries) than NSW or Queensland (1% impairment for physical injuries). On the other hand, the maximum lump sum payable for injuries in NSW (\$281,000) is much less than the maximum payable in Victoria or Queensland (over \$500,000).

- **Common law damages:** NSW limits common law damages to economic loss whereas Victoria and Queensland allow workers to claim damages for economic and non-economic loss. In NSW, the threshold for claiming common law damages (15%) is lower than Victoria (30%) but higher than Queensland (none). In NSW, there is no cap on damages whereas caps are imposed in Victoria and Queensland.

**Premiums:** A Safe Work Australia [report](#) presents *standardised* average premium rates for the schemes in all Australian jurisdictions.<sup>97</sup> To facilitate comparisons, the report adjusts the average premium rates published by each jurisdiction to take account of scheme variations (e.g. employer excess).<sup>98</sup> The standardised average premium rates in 2009/10 for the five mainland States are shown below.

	Average premiums (% of payroll)
Queensland	1.12
Western Australia	1.22
Victoria	1.39
New South Wales	1.82
South Australia	2.76

**Number of claims and return to work rates:** The following table presents statistics on compensation claims, dispute rates, and return to work rates in NSW, Victoria and

Queensland (figures are for 2009/10).<sup>99</sup> It can be seen that NSW has a much higher claims incidence rate than Victoria but a slightly lower rate than Queensland. On the other hand, Victoria has a significantly higher claims dispute rate than either NSW or Queensland. The return to work rates do not vary greatly across the States but NSW has the lowest rate.

	NSW	VIC	QLD
Workers covered	3.09m	2.54m	1.89m
Serious Claims	43,950	23,990	29,380
Claim incidence rate	14.2%	9.5%	15.5%
Claim frequency rate	8.5%	5.8%	9.4%
Claim dispute rate	3.9%	9.7%	3.0%
Durable return to work rate	74%	75%	78%

**Notes to Table:**

- Serious claims include all claims for which one or more weeks of compensation has been recorded;
- Claim incidence rate is the rate of serious claims per 1,000 employees;
- Claim frequency rate is the rate of serious claims per million hours worked;
- Claim dispute rate is the proportion of active claims that were disputed;
- Durable return to work rate is the proportion of injured workers who have returned to work and were still working at the time of survey conducted 7-9 months after they made a claim.

**Scheme costs:** The following Table shows the scheme expenditure in the same three jurisdictions for 2009/10.<sup>100</sup> It can be seen that direct payments to claimants (statutory payments and common law settlements) and services to claimants (e.g. medical treatment and rehabilitation services) comprise a much larger proportion of total scheme

costs in Queensland (88%) than in NSW (79%) and Victoria (72%).

	NSW (\$m)	VIC (\$m)	QLD (\$m)
Direct claimant to	1,195	930	897
Services claimant to	637	379	205
Insurance operations	433	392	103
Other costs	68	122	48
<b>Total costs</b>	<b>2,333</b>	<b>1,822</b>	<b>1,252</b>

**Scheme solvency:** An indicator of a scheme's solvency is the ratio of assets to net outstanding liabilities (the funding ratio). Funding ratios above 100% indicate that the scheme has more than sufficient assets to meet its predicted future liabilities. Safe Work Australia publishes a standardised funding ratio.<sup>101</sup> In 2009/10, NSW had a standardised funding ratio of 100%, which was much lower than in Victoria (121%) and Queensland (130%).

As noted earlier, the recent valuation of the NSW Scheme found that, as at 31 December 2011, the Scheme had a deficit of over \$4 billion and a funding ratio of 78% (down from 104% in June 2008). WorkSafe Victoria [reported](#) recently that the Victorian scheme had a funding ratio of 97% as at 31 December 2011.<sup>102</sup> A recent [report](#) on the Queensland scheme showed a surplus of \$343 million and a funding ratio of 112% as at 30 June 2011.

## 7. Conclusion

Despite reforms over a number of decades, the Workers Compensation Scheme continues to pose a major challenge for the NSW Government. The latest actuarial report identified three options to reduce the Scheme's growing deficit: increasing premiums,

reducing benefits, and/or improving claim management outcomes.

The issues paper released by the Government contains a number of options for reform. While one of the options is to increase benefits payable to severely injured workers, several other options would restrict the coverage of the Scheme and reduce other workers' entitlements. A number of these options are proposed as a means of reducing workers' long-term dependency on weekly benefits.

Several of the options have been developed having regard to certain differences between the NSW Scheme and the schemes in other Australian jurisdictions. These differences were outlined in the issues paper and comparisons are also made in this e-brief. One point to note is that while it may be appropriate to adopt certain features of schemes in other States, it could also be said that those schemes need to be looked at in their entirety.

It is expected that the various options and issues will be strongly debated during the Joint Select Committee inquiry. The Committee is calling for submissions by 17 May and public hearings are scheduled for 21 and 25 May. The Committee is due to report to Parliament by 13 June.

## Appendix 1 – Comparison of workers compensation entitlements<sup>103</sup>

### (1) Statutory (no-fault) compensation

	New South Wales	Victoria	Queensland
<b>Medical /hospital</b>			
Eligibility	Costs of reasonably necessary treatment	Reasonable costs	Reasonable costs
Monetary limits	\$50,000 for medical \$50,000 for hospital \$10,000 for ambulance additional amounts can be approved by WorkCover or by the Workers Compensation Commission	No monetary limit	No monetary limit
Time limits	No time limit	Entitlement ceases 52 weeks after entitlement to weekly payments ceases (see below) unless worker has returned to work and could not remain at work if a medical service was not still provided	Entitlement ceases when entitlement to weekly payments ceases (after 5 years), if injury is not likely to improve with further medical treatment or hospitalisation
<b>Economic loss - weekly payments)</b>			
Total incapacity	First 26 weeks: if under award or industrial agreement, 100% of award or agreement rate (but no more than \$1,838.70 pw). If not, 80% of average weekly earnings (but no more than \$1,838.70 pw)  After 26 weeks: 90% of average weekly earnings but no more \$432.50 pw (note also that there is a minimum weekly payment of \$344.00 pw for workers over age of 21)	First 13 weeks: 95% of average weekly earnings (but no more than twice the State average weekly earnings – \$1,930 pw)  After 13 weeks: 80% of average weekly earnings (but no more than twice the State average weekly earnings –\$1,930 pw)	First 26 weeks: if under award or industrial agreement, greater of 100% of award or agreement rate or 85% of normal weekly earnings. If not, greater of 85% of normal weekly earnings or 80% of Queensland ordinary time earnings (QOTE) (80% = \$1010.60)  27 to 104 weeks: greater of 75% of normal weekly earnings or 70% of QOTE (70% = \$884.25)  After 104 weeks: if worker has an injury that could result in an impairment of more than 15%, the same as for 27-104 weeks. If not, the single pension rate
Total incapacity – where there are dependents	After first 26 weeks, a worker who has a total incapacity is entitled to extra payments:\$114.00 for dependant spouse; and \$81.50 for one child (higher if more children)	No additional payments	No additional payments

	New South Wales	Victoria	Queensland
Partial incapacity	<p>If worker returns to work on suitable duties: difference between worker's pre-injury earnings and amount worker is earning on suitable duties (cannot exceed amount that would be payable if worker had a total incapacity for work)</p> <p>If worker not suitably employed – special payments for up to 52 weeks: benefits are the same as for total incapacity except that after first 26 weeks, worker entitled to receive greater of 80% of current weekly wage rate or \$1,838.70 pw</p> <p>If worker not suitably employed - after 52 weeks: difference between worker's pre-injury earnings and amount that worker would be able to earn in some suitable employment after the injury (cannot exceed amount that would be payable if worker had a total incapacity)</p>	<p>For first 13 weeks – 95% of average weekly earnings (but no more than twice the State average weekly earnings – \$1,930 pw), less current weekly earnings</p> <p>After 13 weeks – 80% of average weekly earnings (but no more than twice the State average weekly earnings – \$1,930 pw), less 80% of current weekly earnings</p>	<p>Payments calculated according to the following formula: <math>(MC \times LE) / NWE</math></p> <p>MC = maximum weekly payments payable if worker was totally incapacitated</p> <p>LE = loss of earnings (i.e. the difference between pre-injury normal weekly earnings and worker's earnings during partial incapacity; or, if not in employment, what worker could reasonably earn)</p> <p>NWE = worker's normal weekly earnings</p>
Time limits on weekly payments	<p>Total incapacity – retirement age plus 52 weeks</p> <p>Partial incapacity– 104 weeks if worker has not sought suitable employment or if worker has failed to obtain employment due to labour market conditions</p>	<p>Total incapacity - 130 weeks unless worker is likely to have no current work capacity indefinitely (in which case, payments can continue until retirement age)</p> <p>Partial incapacity – 130 weeks unless (a) worker has returned to work at his/her maximum capacity; and (b) is working at least 15 hours pw and earning at least \$166 pw; and (c) worker is likely to remain incapable of working beyond this level</p>	5 years
Total cap on weekly payments	No cap	No cap	\$273,055



## E-Brief Workers compensation: an update

	New South Wales	Victoria	Queensland
<b>Non-economic loss (lump sum)</b>			
Permanent impairment – eligibility threshold	1% except for binaural hearing loss (6%) and primary psychological injury (15%)	10% except for musculoskeletal injuries (5%), hearing loss (20%), and primary psychiatric impairment (30%)	1% except for hearing loss (5%)
Permanent impairment – maximum lump sum	\$220,000 plus 5% in case of impairment of spine	\$527,610	\$273,055 if worker has less than 30% impairment; \$546,110 if worker has 30% or more impairment
Other non-economic loss compensation	\$50,000 for pain and suffering (only payable if worker has at least 10% impairment)	N/A	\$309,315 for gratuitous care (only payable if worker has at least 15% impairment and is dependent on day-to-day care for core activities of daily living)
Other compensation still payable?	Yes	Yes	Other payments cease
<b>Death benefits</b>			
Lump sum	\$481,950	\$527,610	\$511,460
Weekly payments	\$122.50 for each child under 16, or under 21 if child is a student (payable to surviving parent of child)	Partners: 95% of worker's average earnings (first 13 weeks) and 50% of earnings (14 weeks to 3 years) up to maximum twice the State average weekly earnings – \$1,930 pw  Children: 5% of worker's average earnings for each child under 16, or under 25 if child is a full time student or apprentice (payments only begin after first 14 weeks)	Partners: If totally dependent spouse who has a child or children under 6, spouse is entitled to 8% of QOTE (i.e. \$101.10)  Children: 10% of QOTE (i.e. \$126.35) for each child under 16, or under 21 if child is a student

**(2) Common law (fault-based) damages**

	New South Wales	Victoria	Queensland
Access to damages?	Yes	Yes	Yes
Types of damages	Economic loss only (except for common law claims by relatives of a worker who died at work)	Economic and non-economic loss	Economic and non-economic loss
Threshold	15% whole person impairment	Non-economic loss: 30% whole person impairment; or determination that worker has a 'serious injury' pursuant to a narrative test  Economic loss: 30% whole person impairment; or determination that worker has a 'serious injury' pursuant to a narrative test <u>and</u> worker also has a permanent loss of 40% earning capacity	None
Is election to pursue damages irrevocable?	No - can continue to receive statutory benefits if damages claim is unsuccessful	No - can continue to receive statutory benefits if damages claim is unsuccessful	If worker has an impairment of less than 20%, the worker must elect to accept a lump sum payment or seek common law damages. This election is irrevocable
Cap on damages	None	Economic loss: \$1,264,920 (damages must not be awarded if less than \$56,180)  Non-economic loss: \$527,610 (damages must not be awarded if less than \$51,990)	Economic loss: 3 x QOTE (i.e. \$3789.60) per week  Non-economic loss: \$302,850

<sup>1</sup> R Callinan, *The Future of the NSW Workers Compensation Scheme*, Briefing Paper No. 08/2001.

<sup>2</sup> Price Waterhouse Coopers, *WorkCover NSW: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011*, 12 March 2012

<sup>3</sup> Hon B O'Farrell, 'The NSW Economy, Infrastructure and Productivity: The next 156 weeks of an O'Farrell Government', Address to the Business Council of Australia, 26 March 2012.

<sup>4</sup> Ibid.

<sup>5</sup> Hon G Pearce, 'WorkCover Improvements Begin', *Media Release*, 23 April 2012; NSW Government, *NSW Workers Compensation Scheme Issues Paper*, April 2012

<sup>6</sup> For further information about WorkCover and what it does, see the Authority's [2010/11 Annual Report](#) and also its [website](#).

<sup>7</sup> 1998 Act, section 22(1)(d1).

<sup>8</sup> 1998 Act sections 23(1)(a) and 23(1)(b).

<sup>9</sup> 1998 Act, section 23(1)(j).

<sup>10</sup> 1987 Act, sections 155 and 155AA.

<sup>11</sup> WorkCover NSW, *NSW Workers Compensation Scheme Issues Paper*, April 2012, p10.

<sup>12</sup> WorkCover, n11, p10.

<sup>13</sup> 1987 Act, section 154E(1)(a).

<sup>14</sup> WorkCover, *Annual Report 2010-11*, p149

<sup>15</sup> 1987 Act, sections 9 and 9A.

<sup>16</sup> *Workers' Compensation (Dust Diseases) Act 1942*

<sup>17</sup> 1987 Act, section 10.

<sup>18</sup> 1987 Act, section 10(3).

<sup>19</sup> 1987 Act, section 10(1A).

<sup>20</sup> 1987 Act Part 3 Division 3.

<sup>21</sup> 1987 Act, Part 3.

<sup>22</sup> 1987 Act Part 3 Division 4.

<sup>23</sup> 1987 Act, section 25.

<sup>24</sup> 1987 Act, sections 87EA(a), (b) and (c).

<sup>25</sup> 1987 Act, section 151E.

<sup>26</sup> 1987 Act, section 151H.

<sup>27</sup> 1987 Act, section 151C.

<sup>28</sup> 197 Act, section 151G.

<sup>29</sup> 1987 Act, section 151A.

<sup>30</sup> 1998 Act, section 260.

<sup>31</sup> 1998 Act, section 366.

<sup>32</sup> Law Book Co, *Workers Compensation Law Manual NSW*, vol 1 (at Service 53) at.4.1230.

<sup>33</sup> 1998 Act, section 351.

<sup>34</sup> 1998 Act, section 352.

<sup>35</sup> 1998 Act, sections 318A and 318F.

<sup>36</sup> M Swain, "Workers Compensation and Motor Accidents Compensation in NSW" [Briefing Paper No 39/95](#); R Lozuic, "The New South Wales Workers Compensation System: problems and proposed reforms" [Briefing Paper No 24/99](#); R Callinan, "The Future of the

New South Wales Workers' Compensation Scheme" [Briefing Paper No 8/2001](#); and R Callinan, "Workers' Compensation Common Law Matters: The Sheahan Inquiry" [Briefing Paper No 14/2001](#).

<sup>37</sup> *Workmen's Compensation Act 1910* (NSW).

<sup>38</sup> M Swain, n36, p8.

<sup>39</sup> NSW Government, "The New NSW Workers' Compensation Scheme: Reforms to Occupational Safety, Rehabilitation and Compensation" (April 1987), p11.

<sup>40</sup> Ibid.

<sup>41</sup> NSW Government, "NSW Workers' Compensation Scheme: Options for Reform", September 1986, p1 of "Overview."

<sup>42</sup> Hon Patrick Hills MP, *LA Hansard*, [14 May 1987](#), p 12205.

<sup>43</sup> Discussion Paper, n41, pp2-3 of "Overview."

<sup>44</sup> Law Book Co, *Workers Compensation Law Manual NSW*, vol 1 (at Service 53) at 1.055

<sup>45</sup> Hon Patrick Hills MP, *LA Hansard*, [14 May 1987](#), p 12206.

<sup>46</sup> Ibid, 1.060.

<sup>47</sup> Discussion Paper, n41.

<sup>48</sup> Ibid, pp 4-7.

<sup>49</sup> 1987 Act, Sch 5.

<sup>50</sup> *Workers Compensation Law Manual*, n32 at 1.060.

<sup>51</sup> Ibid.

<sup>52</sup> Hon Patrick Hills MP, *LA Hansard*, [14 May 1987](#), p 12206.

<sup>53</sup> *Workers Compensation Law Manual*, n32 at 1.060.

<sup>54</sup> Ibid.

<sup>55</sup> This summary of amendments is from *Workers Compensation Law Manual NSW*, n32 at 1.080.

<sup>56</sup> R Grellman, *Inquiry into Workers' Compensation System in NSW: Final Report*, (KPMG Sydney 1997), p 19.

<sup>57</sup> K Purse, "Winding Back Workers' Compensation Entitlements in Australia" (2011) 24 *Australian Journal of Labour Law* pp 238-259, 243

<sup>58</sup> Grellman, *Final Report*, n56, p21.

<sup>59</sup> Ibid, 22.

<sup>60</sup> R Lozuic, n36, pp21-24.

<sup>61</sup> Grellman, *Final Report*, n56 summary of recommendations, 5.

<sup>62</sup> *Workers Compensation Law Manual*, n32, 1.110.

<sup>63</sup> McKinsey & Company, "Partnerships for Recovery: Caring for injured workers and restoring financial stability to workers compensation in NSW" (September 2003) p11, also see pp36-40.

<sup>64</sup> R Lozuic, n36, p1.

<sup>65</sup> Hon John Della Bosca MLC, *LC Hansard*, [8 June 2000](#), p6879.

<sup>66</sup> *Workers Compensation Legislation Amendment Act 2000* (NSW)

- <sup>67</sup> Hon John Della Bosca MLC, *LC Hansard*, [15 November 2000](#), p 9894.
- <sup>68</sup> The Hon John Della Bosca MLC, Minister for Industrial Relations, "Streamlining Workers Compensation: Simpler, Fairer, Faster" (Media Release, Tuesday 27 March 2001), p1.
- <sup>69</sup> This summary of amendments is taken from the *Workers Compensation Law Manual NSW*, n32, at 1.130.
- <sup>70</sup> *Compensation Court Repeal Act 2002*, Hon Bob Debus MP, *LA Hansard*, [28 May 2002](#), p2113.
- <sup>71</sup> For example, see R McColl, "Removing rights is not the answer" *Daily Telegraph*, 3 April 2001.
- <sup>72</sup> L McIlveen, "House is shut down by union blockade" *The Australian*, 20 June 2001, p3.
- <sup>73</sup> *LC Hansard*, [28 June 2001](#), pp15704-15706.
- <sup>74</sup> *Workers Compensation Amendment (Insurance Reform) Act 2003* and also see *Workers Compensation Act 1987*, Part 7, Division 1A.
- <sup>75</sup> *Ibid*, also see *Workers Compensation Amendment (Permanent Impairment Benefits) Act 2006* (NSW).
- <sup>76</sup> K Purse, n57, p244.
- <sup>77</sup> The figures in this Table were taken from WorkCover NSW annual reports from 1997/98 to 2010/2011.
- <sup>78</sup> Price Waterhouse Coopers, *WorkCover NSW: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011*, 12 March 2012
- <sup>79</sup> Price Waterhouse Coopers, *WorkCover NSW – Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011*, 12 March 2012, p2
- <sup>80</sup> Price Waterhouse Coopers, n79, p3
- <sup>81</sup> Price Waterhouse Coopers, n79, p3
- <sup>82</sup> Price Waterhouse Coopers, n79, p28
- <sup>83</sup> Price Waterhouse Coopers, n79, p28
- <sup>84</sup> See also Audit Office of NSW, [New South Wales Auditor-General's Report to Parliament: Financial Audit](#), Volume 5 2011.
- <sup>85</sup> WorkCover NSW, *NSW Workers Compensation Scheme Issues Paper*, April 2012
- <sup>86</sup> WorkCover NSW, n85, p4
- <sup>87</sup> WorkCover NSW, n85, p4-5
- <sup>88</sup> WorkCover NSW, n85, p5
- <sup>89</sup> WorkCover NSW, n85, p6
- <sup>90</sup> WorkCover NSW, n85, p6
- <sup>91</sup> P Hanks, *Accident Compensation Act Review: Final Report*, August 2008, p15
- <sup>92</sup> Safe Work Australia, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand*, March 2011
- <sup>93</sup> P Hanks, n91
- <sup>94</sup> Deloitte, *WorkCover Queensland: Assessment and Improvement Opportunities*, Final Report, November 2009. Based on this review, the

WorkCover Board made recommendations to the Government. The Government released a [discussion paper](#) outlining the various options and it subsequently introduced legislation to bring common law damages claims into line with the *Civil Liability Act 2003* (including caps on damages); and to increase the employer excess. In 2010, the Government also commissioned a [review](#) of institutional and working arrangements in the scheme.

<sup>95</sup> See Safe Work Australia, n92, p70

<sup>96</sup> For a summary of coverage across all Australian jurisdictions, see Safe Work Australia n92, Chapter 5

<sup>97</sup> Safe Work Australia, *Comparative Performance Monitoring Report: comparison of work health and safety and workers' compensation schemes in Australia and New Zealand*, 13<sup>th</sup> edition, October 2011, p23-24

<sup>98</sup> See Safe Work Australia, n97, p24

<sup>99</sup> These figures were taken from Safe Work Australia, n97. Note that the claims data shown in the report for 2009/10 is preliminary (as they are taken from an earlier stage of processing than in previous years).

<sup>100</sup> Safe Work Australia, n97, p33

<sup>101</sup> Safe Work Australia, n97, p29-30

<sup>102</sup> WorkSafe Victoria, 'Half-year results confirm WorkSafe scheme in strong position', *Media Release*, 8 March 2012

<sup>103</sup> This summary is based on Safe Work Australia, n92, p38-46, and p173-198. The figures in the Safe Work publication have been updated to those applicable as at April 2012. The updated figures for NSW are based on NSW WorkCover, [Workers Compensation Benefits Guide](#), April 2012. The updated figures for Victoria are based on WorkSafe Victoria, [Current Work Capacity](#), [Online] and Tables published in the WorkSafe online claims manual. The updated figures for Queensland are based on Q-Comp, [Workers Compensation Benefits including QOTE](#), [Online]

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