Comparative Review of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: NEW SOUTH WALES

ENVIRONMENT

Population Size 6,241,000 (December 1996)
Labour Force 3,049,000 (May 1997)

Demographic and Economic Indicators

New South Wales is located in the mid south east corner of the Australian continent. It ranks first in population size of the six states and two territories forming the commonwealth of Australia (33.9% of total population) and fifth in total area (10.4%). Its largest city is the capital of Sydney.

The economy of NSW is based on agriculture, some resource based industry and manufacturing. NSW produces about one-third of Australia's total manufacturing output. Tourism is another important component of the economy.

The unemployment rate in New South Wales is 8.0% (May 1997). The average weekly earnings rate for full-time employees is $715.60 and $573.20 for all employees (February 1997).
GOVERNANCE & ADMINISTRATION

Nature of System
A state-based, compulsory workers' compensation program. The system is based on a "Managed Fund" model. The WorkCover NSW is a fully-funded workers compensation scheme with statutory funds managed by licensed private insurers. In NSW, licensed insurers issue policies, assess and collect premiums, adjudicate and manage claims and maintain and invest statutory funds on behalf of the WorkCover Authority.  

Principles and Mandate
The mission of the New South Wales workers' compensation system is to prevent work related injury and illness and their social and economic impacts by:
- improving health and safety in the workplace;
- providing rehabilitation for injured workers; and
- compensating injured workers and their dependents.

The objectives of the WorkCover Authority of NSW are:
- to improve health and safety in workplaces;
- to reduce the social and economic impact of work related injuries and illness;
- to ensure that workers' compensation benefits and premiums are equitable, affordable and responsible;
- to ensure that all injured workers promptly receive the benefits for which they are entitled;
- to promote the rehabilitation of workers who suffer work related injury or illness.

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1 In Australia there are ten different employer-financed schemes of occupational disability benefits -- six states and two territories plus two federal schemes, a federal system for seafarers and a federal scheme, Comcare, for federal government employees.

2 Only licensed insurers can issue policies of insurance in respect of workers' compensation. Licensed insurers are not underwriters and have no liability in respect of claims, but simply operate as Fund Managers. Premiums received by licensed insurers must be held in special statutory accounts and cannot be mixed with general assets. Assets of statutory funds or accounts can only be used to meet claims; pay expenses associated with claims; pay to the insurer a management fee; and make other payments authorized by the legislation or the Authority. Licensed insurers cannot refuse to issue or renew a policy of insurance except with the consent of the WorkCover Authority.
Access to Litigation

New South Wales is not an exclusive remedy jurisdiction; there is access to common law remedies for seriously injured workers.

A seriously injured worker (whose injury occurs after June 30, 1987\(^3\)), is eligible to claim damages at common law and lump sum compensation for the loss or loss of use of a body part, but must elect between the two by either commencing proceedings in court to recover damages or by accepting payment for those damages; or accepting the set lump-sum compensation payment for the permanent loss or loss of use of certain body parts\(^4\).

An injured worker can pursue a common law action for both economic and non-economic loss. However there are set thresholds for access to common law: to be eligible to claim common law damages, a worker must have received an injury which is classified as "serious" by reference to a disability threshold. Economic loss awards are only available where the loss or losses resulting from the injury are not less the 25% of the maximum amount for such loss (for an injury received prior to February 1, 1992 the loss or losses must not be less than 33% of the maximum amount for such losses). There is no access to common law for non-economic loss if the loss does not meet the threshold of 10% of maximum amount payable under Table of Disabilities. As well, there is a maximum ceiling on common law awards for non-economic loss ($226,650.00 as of October 1, 1997).

A worker may accept weekly compensation payments and payment for medical, hospital and rehabilitation services without affecting their rights to choose between lump-sum compensation for damages under the workers' compensation scheme or a lump-sum for damages.

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\(^3\) In 1987 rights to access common law were abolished and then reinstated in 1990 for seriously injured workers.

\(^4\) An election is irrevocable, expect that an election to claim a lump-sum for permanent loss or loss of use may be revoked by the court.
Scope of System

Who is Covered?

Coverage under the NSW scheme is comprehensive. All employees and persons considered "deemed workers" under the scheme are covered and may claim workers' compensation benefits.

A worker is any person who has entered into or works under a contract of service or apprenticeship, whether full or part-time. In general, a worker is anyone who works for wages, including workers who work away from the employers' premises. This includes person engaged by a New South Wales employer to work outside the state.

The scheme then extends the generally accepted definition of worker or employee to include others who would not normally be considered employees. These "deemed workers" are also eligible to receive workers' compensation under the scheme. (Schedule 1 attached is a list of "deemed workers").

Particular groups, such as volunteer bush fire fighters, surf lifesavers, and emergency and rescue service workers, who would not otherwise be covered, are also covered directly by WorkCover itself under special schemes.

The number of policy holders (proxy for number of employers) is 310,000 (1997). It is estimated that the scheme covers 82% of the workforce (an estimated 2,287,849 workers).

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5 Even if the employer requires the person to sign a statement agreeing that the person is not a worker, that person may still be a worker under the law and subject to coverage under the scheme.
What is Covered? Under the WorkCover NSW scheme, a worker is eligible for compensation if
• they suffer a personal injury which is work related;
• they suffer from a disease and work was either a contributing factor or work aggravated, accelerated, exacerbated or deteriorated the condition;
• they are injured in the course of a journey between the boundary of the worker's home and the place of employment or any other place the worker is required to attend for work related reasons, provided the worker was not at fault;
• they are injured while temporarily absent from work during an ordinary recess or authorized absence provided the worker did not expose him/herself to any abnormal risk of injury.

1996 legislative reforms introduced a provision tightening eligibility requirements by requiring that the worker's employment be "a substantial contributing factor" to his or her injury or disease.

A worker is not entitled to workers' compensation benefits if
• the worker has deliberately injured him/herself; or
• the injury is the result of serious and willful misconduct of the worker, unless death or permanent disablement occurs.

Occupational stress is compensable, but stress must be shown to have a "substantial contribution" to the claim. Claims based on reasonable management action by the employer involving discipline, counseling, demotion, promotion, transfer, dismissal, retrenchment of the worker, are also eliminated as a basis for compensation claims.

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6 If the risk of injury on a journey is increased for work related reasons (e.g. the worker was required to stay late or required to travel a long distance or by a different route or method of travel) the worker may still be covered even if they are wholly or partly at fault. Workers are covered on all journeys that they are required to undertake as part of their employment. Examples here are truck drivers and couriers. This cover applies even if the injury was caused by the worker's fault.
Self Insurance

Self insurance is permitted in New South Wales. If a business or company is large enough -- greater than 1,000 workers in the state of New South Wales -- it is eligible to self insure. 51 companies in New South Wales are licensed to self insure in 1996. Companies which self insure are required to meet various prudential requirements.

Organizational Framework

The WorkCover Authority of NSW is a self funded government agency which operates under the WorkCover Administration Act, 1989. It is responsible for the overall operation of the WorkCover scheme of occupational health and safety and rehabilitation and workers' compensation in the state of New South Wales. WorkCover NSW is responsible for the administration of the Workers' Compensation Act, 1987 and the Occupational Health and Safety Act, 1983 and related legislation.

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7 The WorkCover Authority NSW was established in 1990 following the merger of several departments under the administration of the former Department of Industrial Relations and Employment (DIRE). Prior to the merger, the organization responsible for workers' compensation was the State Compensation Board. In 1989, the State Compensation Board was merged with the Occupational Health, Safety and Rehabilitation Divisions of DIRE and the review functions of DIRE were transferred to create the Workers Compensation and Rehabilitation Authority. In January 1990, the Authority became a statutory body, the WorkCover Authority of New South Wales, responsible for occupational health, safety, rehabilitation and workers' compensation in NSW. NSW was the first state in Australia to integrate the functions of prevention, rehabilitation and compensation into a single body with a unified mission.

8 Workers' compensation legislation in NSW has undergone a series of changes between 1984 and 1995. In 1984 the Workers' Compensation Act, 1926, was amended to create the State Compensation Board. In 1987, the 1926 legislation was repealed and the work cover scheme, which introduced statutory funds managed by licensed private insurers, was introduced, along with other amendments, including the abolition of common law remedy, with the new Workers' Compensation Act, 1987. In 1988/89 the NSW government undertook a wide-ranging review of the WorkCover scheme in response to concerns with regard to the adequacy of benefits for seriously injured workers and the financial and administrative performance of the new scheme which had been operating for just one year. Following the review, both legislative (common law access was restored for seriously injured workers) and organizational (all functions and operations were consolidated in one agency, the WorkCover Authority of NSW) changes were made. The scheme was further amended in 1995 and 1996 with changes, among others, to lump-sum benefit entitlements, tightened eligibility requirements and a requirement to review weekly compensation payments after two years. In November 1996, the Government of NSW announced plans to reform its workers' compensation legislation further in an effort to control the costs of the system. Proposed reforms include mandatory conciliation, a freeze on indexing of pensions and enhanced rehabilitation incentives.
Consistent with its overall responsibility for the scheme, WorkCover NSW helps insurers and self insurers to run efficient and effective compensation systems by providing guidelines and by checking compliance with standards set by WorkCover. WorkCover is also directly responsible for administering special schemes that cover workers who would not otherwise be covered.

The WorkCover Authority had 826 full time equivalent staff as of June 30, 1997, located in 34 locations across NSW (this compares with a staff of 829 in June 1996 and 898 in June 1995).

Four independent organizations constituted under NSW legislation are closely associated with the WorkCover Authority:

- the Workers Compensation (Dust Diseases) Board administers a special system of compensation for workers and their dependents where the worker suffers death or disability from dust diseases (asbestosis, silicosis and mesothelioma);

- the Sporting Injuries Committee administers compensation systems to cover members of registered sporting organizations, students engaged in organized school sport, and participants in programs of the NSW Department of Sports and Recreation;

- the Occupational Health, Safety and Rehabilitation Council of NSW, a tripartite independent advisory council constituted under the WorkCover Administration Act, 1989, is responsible for advising the Board of WorkCover and the Minister on occupational health, safety and rehabilitation matters referred to it by the board; and

- the Bureau of Medical Inspection, Broken Hill, managed and funded jointly by the Broken Hill Committee and WorkCover, is an independent body which provides medical assessment and advice mainly for workers employed in Broken Hill mines.
Governance Structure

The WorkCover Authority is overseen by a board of directors. By statute, the Board is comprised of the General Manager of WorkCover and six part-time members appointed on recommendation of the Minister. There are no specific requirements respecting board representation. The board is responsible for determining the policies of WorkCover and the General Manager is responsible for the control and management of the affairs of the Authority in accordance with the policies of the board.

The Minister responsible for the WorkCover NSW is the Attorney General and Minister for Industrial Relations.

Policy Development

The Policy, Legal and Conciliation Division provides specialist advice and services to the Minister, the board, the General Manager, the Executive and the Occupational Health, Safety and Rehabilitation Council and WorkCover staff in relation to the development, implementation and review of policy and legislation and enforcement of legislation. The Division is also responsible for litigation and legal aid, conciliation and corporate legal, executive and library services.

Under the Subordinate Legislation Act 1989, the WorkCover Authority is required to consult the public concerning the introduction of new regulations. Before a new regulation is passed, WorkCover must make the draft regulation and its associated Regulatory Impact Statement available for public comment. A period of 21 days is allowed for the submission of public comments. Members of the public also participate in public forums which may be held before a new regulation is introduced.

There is also significant opportunity for public participation in WorkCover programs (see "Arrangement for Public Participation", WorkCover NSW website).
Accountability

Both the Board of Directors and the General Manager of WorkCover are subject to Ministerial control and direction.

Performance Assessment

The WorkCover Authority has a regular planning process that involves the development of rolling five year plans that set out the strategic direction and criteria for measuring performance of the Authority and the scheme it administers. The Corporate Plan includes "Key Result Areas" and performance indicators for each of these key result areas\(^9\) which are reported to the WorkCover board on a quarterly basis.

Claims Adjudication Process

Assessment and adjudication of a claim is through licensed private insurers. The employer must supply a claim form upon request of the worker and assist the worker as appropriate in making a claim. Even if no time off work is taken, the claim must include a WorkCover medical certificate from a doctor specifying the nature of the injury or illness\(^10\), the estimated period that the worker will be unfit to work and, if partially incapacitated the restrictions on work ability.

A claim for workers compensation must be forwarded to the employer as soon as possible and the employer must in turn forward the claim to the insurer within 7 days. The insurer will then process claim within 21 days after the date the claim was given to the employer. They have a further 21 days to make any investigations considered necessary. If benefits do not begin within this 42 day period, the disputed claim will be referred for conciliation (see below).

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\(^9\) The 1997-2000 Corporate Plan details the key result areas and outlines the specific corporate performance indicators for how success with these key result areas will be measured.

\(^10\) Medical certificates for psychological injury claims must detail the nature of the workers' condition, the term 'stress' or 'psychological injury' is not sufficient, and specify whether and to what extent the worker's employment was the cause of the injury or illness.
Dispute Resolution

Mediation / Conciliation

WorkCover has a conciliation and review function that is designed as the first step in resolving disputes promptly and efficiently. Any party to a dispute, the employee, the employer, the insurer can refer an issue to Conciliation. This is a voluntary process -- workers may choose to refer their matter directly to the Compensation Court -- but there are time limits on the hearing of certain issues at the Court level (i.e. there is a three-month non-litigation period for lump sum claims for disability). A worker or insurer who fails to cooperate or participate in the conciliation of a dispute by a Conciliation Officer may be ordered to pay costs of the conciliation process.

Appeals Process

The Compensation Court has jurisdiction to hear workers' compensation disputes. Cases are allocated to either a Judge or Commissioner according to the complexity of the matter. Application may be made for a review of a Commissioner's decision by a Judge of the Compensation Court.

Medical disputes or issues may be referred to a "Medical Panel". "Medical Panels" are a team of doctors, normally medical practitioners in general practice, appointed by the Compensation Court, to assess an injured workers' fitness for employment. Applications to a medical panel may be made by a worker, or an insurer (on an employer's behalf) or a solicitor representing either party. Decisions of a Medical Panel are prima facie evidence and no further evidence on the medical issue at dispute is to be admissible in the proceedings of the Compensation Court reviewing the matter without the Court's leave.

There is right of appeal from the Compensation Court to NSW Court of Appeal (a constituted division of the Supreme Court of NSW).

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11 In January 1997 a new independent conference-based conciliation service was introduced on a trial basis to deal with workers compensation disputes. Under the trial, compulsory screening or conciliation of disputes is required before a worker may lodge a complaint with the Compensation Court.
Where a worker wins a case referred to the Compensation Court their costs will normally be covered; if they lose they may have to pay costs. Workers involved in frivolous, vexatious or fraudulent disputes may be ordered to pay costs. Solicitors are prohibited from taking costs owed out of workers' compensation awards.

WorkCover also administers a legal aid scheme. In certain cases, where a worker or employer can not afford to take legal proceedings to the Compensation Court, the scheme will grant aid. As well, WorkCover provides financial assistance for the cost of interpreters through the Interpreter Payment Assistance Scheme\textsuperscript{12}.

\textsuperscript{12} A worker can apply for assistance with an interpreter for such things as medical examinations in disputed claims, legal conferences and hearings before the Compensation Court, and consultation with the medical panel. Where an employer or insurer has asked the worker to be medically examined and an interpreter is required the insurer is responsible for arranging an interpreter and paying for such services.
### ASSESSMENTS / FINANCING

**Assessment or Premium Setting Process**

The basic rates for insurance premiums are set by regulation (order of the Governor) made on the recommendation of the WorkCover NSW. The premium scheme is designed to operate on a fully funded "user pays" basis. Premiums are calculated as a percentage of wages paid with the percentage dependent on the employers' industry (there are over 100 industry classifications with assigned premium rates).

Each employer with an annual premium in excess of $3,000 is also subject to an experience adjustment in the calculation of their premium. Basic rates are adjusted on the basis of experience of individual employees "so that there is a strong incentive for safety".

### Assessment/Premium Rates

The workers' compensation scheme is funded by contributions from employers. The average premium rate was 2.8% as of July 1, 1997 (up from 2.5% in 1995/96 and 1.8% in the preceding four years) with a low of 0.45% (lowest published rate; lowest experience rated 0.20%) to a high of 13.22% (highest published rate; highest experience rated 24.00). There is also a special Dust Diseases Levy to cover the cost of funding the Dust Diseases Scheme.
Second Injury Funds / Disaster Funds

The JobCover Placement Program begun in July 1992, provides protection for employers who employ partially incapacitated workers against potential costs should the worker's pre-existing condition worsen.

The Uninsured Liability and Indemnity Scheme provides compensation to workers who are unable to locate or identify their employer or where their employer does not have a workers' compensation insurance policy and is unable or unwilling to meet the worker's claims. Under this scheme, uninsured workers' receive compensation and the cost of their compensation is recovered from the employer\textsuperscript{13}.

The government provides a grant from general revenue to WorkCover to cover the costs associated with compensation of particular groups of "voluntary" workers who would not otherwise be covered. The Bush Fire Fighters Compensation Scheme and Emergency and Rescue Workers Scheme are two of these special programs\textsuperscript{14}.

**COMPENSATION BENEFITS**

Claim Rate

The number of reported claims in 1995/96 was 62,840 down from 62,840 in 1994/95, but up from 58,589 in 1993/94 and 50,850 in 1992/93.

Medical Aid

- **Nature of Aid**
  
  Medical aid coverage is comprehensive. It includes coverage for nursing, dentistry, physiotherapy, chiropractic, speech therapy, osteopathy, massage, supply of artificial limbs, medicines, surgical supplies, and the cost to the worker of any traveling expenses related to the worker's treatment. Home care and therapeutic treatment may also be covered if directed by a doctor\textsuperscript{15}.

\textsuperscript{13} Negligent employers are also liable to prosecution for non-insurance.

\textsuperscript{14} WorkCover itself handles compensation claims from voluntary workers and uninsured workers.

\textsuperscript{15} As well, a worker who has an accident can claim for damage or destruction to artificial aids (eyeglasses, prosthesis) and clothing even if no personal injury or incapacity results from the accident. These claims are subject to maximum levels of compensation, but these limits can be modified by order of the Compensation Court.
Injured workers may be required to attend medical examinations arranged by the insurer or at the direction of the WorkCover NSW, the Compensation Court or a Conciliation Officer. Failure to comply with this request may result in the suspension of the worker’s right to compensation. A worker who is required to attend a medical examination is entitled to recover associated expenses from the employer (cost of travel, food and maintenance and lost wages, if any)\(^\text{16}\).

\(^{16}\) Workers who apply for a medical panel examination may not be able to recover these costs if the Compensation Court finds the application was unreasonable and unnecessary.
Choice of Provider

An injured worker has the right to choose their own doctor and their own "accredited rehabilitation provider" (see below under Rehabilitation).

Medical Cost Containment Initiatives

There is an overall limit on medical aid of $50,000 or a greater amount as is prescribed or directed by the WorkCover Authority or the Compensation Court. The Authority covers the cost of services that are "reasonably necessary" to the extent that the cost is consistent with the cost charged to the general public for the service.

Rehabilitation

Physical/Occupational/Vocational

Effective rehabilitation is a central goal of the WorkCover NSW system. A guiding principle of the system is that effective rehabilitation benefits everyone, the worker by keeping people in meaningful work and the employer by maintaining experienced and trained workers and minimizing the cost impact on insurance premiums and society in general by having a healthy and productive workforce.

Rehabilitation is work-place based. There are two levels of workplace based rehabilitation: employers are classified as either a Category 1 or Category 2 employer depending on their workers' compensation premiums. Category 2 employers are those with a premium tariff of $50,000 or less (most employers in NSW fall into this category). Category 1 employers have a premium tariff of over $50,000, or are self insured. Both types of employer must establish workplace rehabilitation programs in accordance with the act and regulations. Category 1 employers must also employ a certified Rehabilitation Coordinator.

17 In November 1996, the government announced a two-year freeze on the amount available for hospital and medical care.

18 The Workers Compensation Act, 1987, introduced comprehensive provisions designed to assist early return to work for injured workers. The government is currently considering changes to the rehabilitation provisions in the Act to require all employers to prepare for return to work for injured workers incapacitated for 12 weeks or more.

19 The rehabilitation coordinator is responsible for ensuring that the overall rehabilitation program works effectively and for the implementation of rehabilitation plans for individual workers.
All employers must also prepare a return to work plan for any employee who is totally unable to work for 12 weeks or more and who has accepted a workers' compensation claim. This plan must be developed by the employers' rehabilitation coordinator or an accredited rehabilitation provider (accredited by WorkCover to provide workplace based rehabilitation services), in consultation with the treating doctor.
Social

The cost of modification to an injured worker's home or automobile may be covered if the modification is directed by a doctor.

Rehabilitation Incentives

NSW funds a range of programs to help seriously injured workers who need extra assistance to return to work. These include work trials (short periods of work experience with a host employer to develop or upgrade the skills of an injured worker) and formal retraining for injured workers who cannot return to their former job and do not have other marketable skills to find suitable employment. WorkCover also provides financial assistance for workplace aids, equipment or modifications.

The legislation contains provisions respecting the reemployment of workers: an employer cannot dismiss an injured worker within six months of when they became unfit to work and an injured worker has the right to apply for reinstatement to a suitable employment within two years of their dismissal. When an injured worker is ready to return to work, the employer must find suitable work. This includes modified or light work or reduced work week as directed by a doctor or rehabilitation provider. Where the employer does not have suitable employment for an injured worker with partial incapacity who is ready to return to work, the worker may be required to be employed elsewhere or take part in a rehabilitation program. In this case, the injured worker is eligible to receive special compensation rates -- first 26 weeks, award or enterprise rate; 27 to 52 weeks, 80% of award rate or statutory indexed rate whichever is greater and the next 52 weeks the statutory indexed rate to a maximum of 104 weeks in total.

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20 Suitable employment means employment for which the particular worker is suited. It may include a gradual return to work or modified duties. It does not include employment that is merely of a token nature, not involving useful work in terms of the employer's business or trade or is demeaning in nature in terms of personal background and employment prospects.
As well, WorkCover funds the JobCover Placement Program which provides a 12 month premium exemption to employers who employ partially incapacitated workers. The program also provides a training/employment allowance of up to $300 per week for 12 weeks and protection against potential costs should the worker's pre-existing condition worsen.
Trends in Treatment of Subjective Complaints

None identified.

Disability Benefits

Short-Term Benefits - Temporary Disability

Weekly "loss of earnings or wage loss" compensation:

Rate: For the first 26 weeks, the injured worker receives the award or enterprise rate of pay\(^{21}\) up to a maximum of $1,110.90 or where there is no award or enterprise rate, 80% of the worker's average weekly earnings (WAVE). After 26 weeks, the weekly payment is based on a statutory rate of 90% of WAVE to a maximum of $261.30 plus adjustments for dependent spouse ($68.90) and children (1 child, $49.20; 2 children, $110.10; 3 children, $182.40; 4 children, $265.50 and each additional child, $74.00) (October 1997 rates). The total weekly payment cannot exceed the worker's current wage rate. These same rates and limits apply to partially incapacitated workers with compensation payable as "make-up" pay between the probable earnings but for the injury and the WAVE. Injured workers with partial incapacity who are employed with another employer other than their own employer or are taking part in a rehabilitation program for the purpose of retraining are entitled to a special compensation formula and rate - see section on rehabilitation incentives.

Indexed: The various weekly payments for the worker and dependents are adjusted biannually to keep pace with inflation (in April and October).

Duration: Two years.

Taxable: Yes.

Employer's Excess / Waiting Periods: The employer pays the first $500 of weekly payments.

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\(^{21}\) The current award or enterprise rate of pay is the current rate applicable to the worker's job under the relevant industrial awards or enterprise agreement, without counting overtime, shift work or penalty rates.
## Long-Term Benefits - Permanent Partial and Total Disability

**Economic "Loss of earnings or wage loss" awards or pensions:**
- **Rate:** As above - 90% of WAWE to a set maximum, as at October 1997 of $261.30 plus adjustments for dependent spouse ($68.90) and children (1 child, $49.20; 2 children, $110.10; 3 children, $182.40; 4 children, $265.50 and each additional child, $74.00). In certain circumstances, WorkCover may approve commutation of all or part of a weekly compensation award.
- **Indexed:** Pensions are adjusted biannually to keep pace with inflation (in April and October).
- **Duration:** After two years of payments, the claim is reviewed and discontinued if the worker fails to meet criteria of serious ongoing incapacity for work and reasonable attempts to return to work, with the worker notified in advance and able to appeal the discontinuation. Permanently seriously disabled workers receive benefits until one year after the age at which they would be eligible to receive old age pension benefits.
- **Taxable:** Yes.
- **Offset Against Other Social Security Benefits:** No.

### Award for permanent physical impairment:
- **Periodic (pension or annuity):** None.
- **Lump-sum:** Workers with permanent physical impairment are eligible for lump-sum payments for loss of use of function, up to a maximum of $100,000 (or $121,000 for multiple injuries) and for pain and suffering up to a maximum of $50,000. [Note there is the option of a common law action for seriously injured workers.] There is no award for pain and suffering if the payment for the injury under the Table of Disabilities was less than 10% of the maximum amount.
- **Covers Disfigurement:** Yes, provided the injury is not an injury otherwise compensable under the Table of Disabilities.

### Impairment Schedule:
- **Table of Disabilities.**

### Supplemental Awards:
- **None identified.**

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22 This provision was introduced in the 1996 amendments. Prior to that, long term benefits continued until one year after the person reached the age where they were eligible to receive the old age pension.

23 The 1996 amendments reduced lump-sum awards by 25%. Before the amendments, the maximum lump-sum for physical impairment was 132,300.00 and $160,950.00 for multiple impairments and maximum for pain and suffering was $66,200.00.
**Hearing Loss**

For hearing loss awards, awards are granted where the diminution of hearing is 6% and greater.

**Death Benefits**

**Funeral Expense Benefits**

*Funeral Costs:* If there are no dependents, reasonable funeral costs, up to set amount, are payable. The employer must pay the reasonable expenses associated with transporting the body of the deceased to the place of burial or cremation, or the usual place of residence, whichever is the lesser cost.

*Emergency Lump-sum:* None.

**Survivor Benefits**

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<tr>
<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tbody>
<tr>
<td>Wholly dependent spouse or other person</td>
<td>Lump-sum of up to $235,350.00 (October 1997)</td>
<td>None.</td>
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<tr>
<td>Dependent children</td>
<td>None.</td>
<td>$74.00 per week (October 1997) until 16 or 21, if a student.</td>
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<tr>
<td>Partial dependents</td>
<td>Lump-sum payment in proportion to degree of dependency.</td>
<td>None.</td>
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HEALTH & SAFETY & PREVENTION

Organization Structure

Agencies Responsible

WorkCover has overall authority for occupational health and safety and prevention in NSW. It is responsible for the administration of the *Occupational Health and Safety Act, 1983*. The WorkCover Authority has the power to pass regulations and codes of practice relating to the management of health and safety and "to support and reinforce the basic framework" set down by the health and safety legislation. These regulations and codes of practice are reviewed and developed in consultation with interest parties and are referred to the Occupational Health, Safety and Rehabilitation Council of NSW\textsuperscript{24} for review and comment before being forwarded to the Minister of Industrial Relations for approval.

The Act places the onus on employers to ensure that safety procedures are in place and observed at their workplace and that adequate information, training and supervision is provided to ensure the health and safety at work of employees. Employees are also required under the Act to cooperate with their employers in maintaining health and safety at work. WorkCover plays a key role in helping employers and employees meet their obligations under the legislation by providing information, advice and training on a diverse range of occupational health and safety issues, as well as the interpretation and application of the law. WorkCover has an inspection arm that inspects workplaces to ensure that employers have in place appropriate health safety standards.

\textsuperscript{24} The Occupational Health, Safety and Rehabilitation Council is a tripartite body constituted under the *WorkCover Administration Act, 1989*. It is composed of nine member, and seven deputy members, appointed by the Minister for Industrial Relations, including representatives of employers, employee organizations and a nominee of the Minister of Health. The role of the Council is to advise the board of directors of WorkCover on specific occupational health, safety and rehabilitation matters referred to it by the board.
WorkCover also has a commercial branch, Techsource, that provides occupational health and safety services at competitive rates. These services include on-site consultation, product testing, research and development, specialist training and risk assessment services.
Source of Funding
Funding for occupational health and safety activities and programs of WorkCover is provided through a levy on workers' compensation premiums. WorkCover also raises revenue through the commercialization project (Techsource); through occupational health and safety certification and accreditation fees; and OHS administrative penalties and prosecution recoveries.

Accident Reporting
Unknown.

OHS Representatives & Committees
The OHS legislation requires the establishment of an OHS committee if
• there are 20 or persons employed at a worksite and the majority of those employed request the establishment of a committee; or
• the WorkCover authority directs the establishment of a committee at a particular place of work.
There are no requirements for safety representatives.

Offenses and Penalties
Types of Offenses and Maximum Fines:
Major offenses under the OHS legislation are subject to a maximum fine of up to $500,000 for corporations and $50,000 for individuals and/or up to two years imprisonment. Second or subsequent offenses may incur an additional penalty of $250,000 for corporations and $25,000 for individuals.

Convictions:
1995/96 - 297 successful prosecutions under OHS related legislation (268 under the OHS Act; 22 under the Factories, Shops and Industries Act; and 7 under the Construction Safety Act).
1994/95 - 311 successful prosecutions under OHS related legislation (246, 33 and 26 respectively).

Administrative Penalties
As an alternative to prosecution, WorkCover inspectors have the power to issue "Infringement (Penalty) Notices" for less serious offenses which are "on-the-spot" fines of up to $50 for workers and $500 for employers. Infringement notices are imposed for non-compliance with an inspector's Prohibition Notice (to rectify a dangerous situation) or an Improvement Notice (to bring practices in line with standards). The
infringements and monies owing are collected and processed by the NSW police and then forwarded to WorkCover.

In 1995/96, 2,100 Infringement (Penalty) notices were levied on employers and 316 on workers for a total of 2,416; up from 878 for employers and 246 for workers, for a total of 1,124, in 1994/95.

OHS Legislative Review

There is no legislated requirement for a regular, systematic review of OHS legislation. WorkCover is currently drafting a consolidated OHS regulation which will allow for the update and repeal of over 40 separate OHS regulations. The new regulation will introduce a systems-based risk management approach to OHS in NSW.

Health and Safety and Loss Prevention Initiatives

An Inquiry into Workplace Safety was launched in February 1997 by the NSW Legislative Council Standing Committee on Law and Justice. The Inquiry will examine risk management approaches to reducing death and injury in the workplace; the social and economic costs of death and injury in the workplace; and the development of an appropriate legislative framework for OHS regulatory reform and codes of practice. A final report of the Inquiry is expected by the end of 1998.

In 1992, WorkCover NSW introduced the WorkCover Injury Prevention, Education and Research Grants Scheme to promote "promote positive change and improve practice in occupational health and safety, rehabilitation and workers compensation" by providing grants and funding research studies, programs and initiatives that have practical relevance for the industry.

In November 1994, WorkCover introduced the "BackWatch" program. The goal of the BackWatch program is to achieve a 10% reduction in back injuries in the workplace by 1999. Working with industry, WorkCover plans to achieve this goal through targeting education and awareness and prevention programs at high risk occupations such as health and construction.
FRAUD PREVENTION

WorkCover has a fraud investigations unit with one full-time staff person responsible for receiving referrals and providing advice to insurers and the public. Investigations are conducted for prosecutions under relevant legislation. The unit has prosecuted a number of claims and activities involving fraud in the workers' compensation area (16 in 1996, 10 in 1995) and currently has several cases pending before the courts.

The government has recently announced that the maximum penalty for fraud will increase to $11,000 and/or two years imprisonment.
Schedule

WorkCover NSW - Deemed Workers

- a person who enters into a contract to perform work valued in excess of $10 which is not part of or connected with any regular trade or business of the person, and performs the work without employing others or subcontracting the task.

- a person who contracts to do certain kinds of rural work including clearing land and felling timber, constructing or demolishing fences or yards, cutting or transporting sugarcane.

- salespersons paid wholly or partly by commission unless the commission is incidental to a trade or business regularly carried on by the salesperson or by a firm of which they are a member.

- certain tributers, a person whose remuneration is provided wholly or partly by mine employees and mines rescue personnel.

- jockeys and harness racing drivers.

- certain operators of hire vehicles or hire vessels.

- casual workers are not employees if they are engaged for one period not exceeding vice days and not in the "employer's" trade or business. Otherwise they are workers.

- persons attending a prearranged place where customarily they may be picked for employment.

- boxers, wrestlers and referees in any contest in a registered club or where an admission fee is charged.

- entertainers performing in a registered club or where an admission fee is charged.