

# d'finitive

[ workers compensation ]

Keeping you informed. JULY 2015

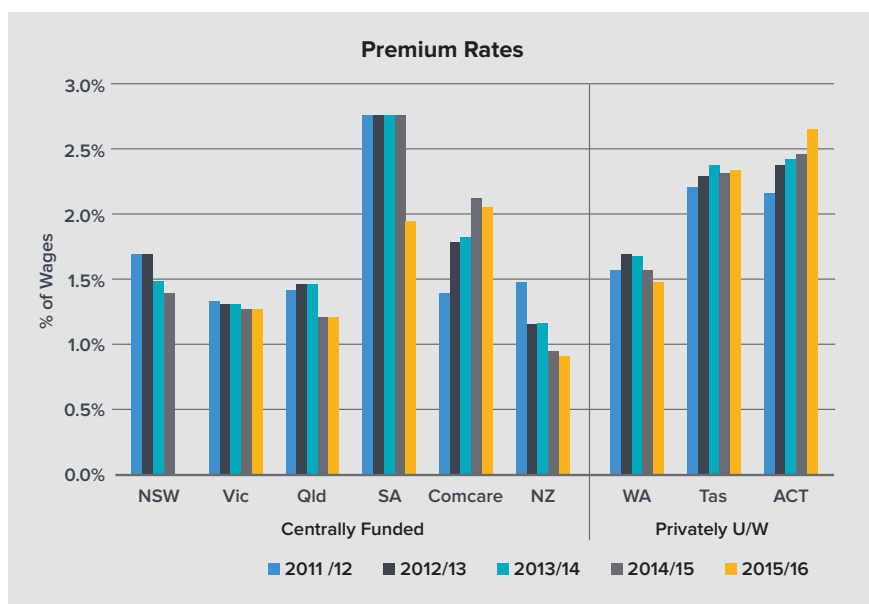
## Mid-year industry update

In this edition of Finity's Workers Compensation d'finitive we look at premium rate movements for 2015/16. We also discuss recent and proposed reforms across a number of Australian schemes and, with the current appetite for reform, we step back and consider the fundamentals of best practice workers compensation scheme design.



## Premium rates

Premium rates for 2015/16 are lower or stable, except in Tasmania and the ACT.



## In this edition

- >> Premium rates across Australia and New Zealand
- >> Scheme reforms, and the latest on the Comcare proposals
- >> Best practice scheme design
- >> A National Injury Insurance Scheme (NIIS) for workplace accidents

Note: for centrally funded schemes, this is the target average rate set by regulator; for privately underwritten schemes this is the suggested/recommended rate (rates achieved by individual insurers will vary).

[finity.com.au](http://finity.com.au)

Sydney +61 2 8252 3300  
Melbourne +61 3 8080 0900

Auckland +64 9 306 7700



|         | 2015/16 Premium | Commentary  |
|---------|-----------------|---|
| NSW     | Not available   | <ul style="list-style-type: none"> <li>&gt;&gt; Premium rates have reduced since 2012 legislative reforms</li> <li>&gt;&gt; Changes to premium system from 2015/16: a simpler experience rating model for employers with tariff premiums above \$30,000, based on three prior years of claims payments</li> <li>&gt;&gt; Employer safety incentives and RTW incentive discounts for return to work within 4 and 13 weeks respectively</li> <li>&gt;&gt; Further discounts for medium-large employers: <ul style="list-style-type: none"> <li>&gt; For sustainable RTW at 52 weeks</li> <li>&gt; For employers with no significant premium-impacting claims over four consecutive years</li> </ul> </li> </ul> |
| VIC     | 1.27% unchanged | >> Some minor changes to premium system   |
| QLD     | 1.20% unchanged | <ul style="list-style-type: none"> <li>&gt;&gt; Lowest average premium rate in Australia</li> <li>&gt;&gt; Changes to experience-based premium model for employers with wages above \$1.5 million: premium rates more responsive to recent experience (now using four years of claim costs – previously five), but less volatile with a 30% cap on premium rate increases</li> </ul>  |
| SA      | 1.95%<br>↓ 29%  | <ul style="list-style-type: none"> <li>&gt;&gt; Significant reduction following scheme improvements and reforms which commenced 1 July 2015</li> <li>&gt;&gt; Simplified premium formula for experience rating: <ul style="list-style-type: none"> <li>&gt; Uses only one year of income support payments for injuries occurring in the three previous years</li> <li>&gt; Upfront discount maintained for employers with no income support costs paid during the year</li> </ul> </li> <li>&gt;&gt; Industry classification now aligned to ANZSIC 2006</li> </ul>  |
| Comcare | 2.04%<br>↓ 4%   | >> First rate reduction since 2010/11, reflecting a reduction in the additional margin required to improve scheme funding   |
| NZ      | 0.90%<br>↓ 5%   | >> Reduction reflects surplus funding position of Work Account  |
| WA      | 1.48%<br>↓ 5%   | >> Reduction reflects continued drop in claim numbers, and strong wage and employment growth  |
| TAS     | 2.3%<br>↑ 1%    | <ul style="list-style-type: none"> <li>&gt;&gt; Small increase reflects reduction in discount rates, partly offset by reducing claim frequency</li> <li>&gt;&gt; Achieved rates remain 13% lower than suggested rates</li> <li>&gt;&gt; Asbestos Fund levy reduced from 4.0% to 3.5%</li> </ul>   |
| ACT     | 2.65%<br>↑ 8%   | >> Suggested rates increase reflects increase in average claim sizes and reduction in discount rates  |

# The times, they are a-changing...

The trade-off between scheme affordability and generosity of worker entitlements continues to play out across a number of jurisdictions in 2015, with a number of states implementing reforms and reviews.

A consistent theme is emerging across the Australian workers compensation landscape, with reforms generally providing for:

**Tighter coverage** (disease, mental injury, journey and secondary claims)

**Lifetime benefits for the most seriously injured** (WPI over 30% in SA and NSW)

**Time limits on benefits for non-seriously injured workers** (2 years income maintenance in SA and 5 years in NSW, with medical payments continuing for a further 12 months)

**Restrictions on common law** (thresholds for access, restricted heads of damage)

**Presumptive cover for firefighters**

**Benefits for older workers** (past pension age)

The resulting impact in a number of states has been improvement in scheme solvency (as demonstrated in NSW and SA) and premium rate reductions for employers.

Here we discuss the latest reforms across Australia.

## South Australia

Reforms to the South Australia scheme commenced 1 July 2015. The key features of the reforms were summarised in an earlier edition of our [Workers' Compensation d'finitive](#).

Finity Consulting's [report as at 31 December 2014](#) showed that the reforms reduced scheme liabilities by around \$1.1 billion (30%). Continued favourable claims experience, following management initiatives which commenced in 2013, produced a further \$200 million saving.

The reforms mean the scheme is now fully funded, with savings being passed on to employers with a 30% reduction in premium rates in 2015/16.





## NSW

The 2012 reforms in NSW also resulted in a significant improvement in funding position and premium rate reductions for employers.

The reforms were so successful in fact, that a government review was triggered earlier than originally planned and resulted in the winding back of some of the changes.

The Parkes Project, a subsequent inquiry into the ambiguities and inconsistencies within the Workers Compensation Acts as a consequence of the 2012 reforms, was due to report to the Minister in June on 12 key issues, including:

Settlement and finalisation of claims

Calculation of weekly payments

Medical expenses

Permanent impairment claims

Seriously injured workers

WCC jurisdiction/dispute resolution systems

Costs and legal representation

RTW obligations of employer and worker

Independent Medical Examiners

## Queensland

In 2013, Queensland tightened coverage of mental injury, introduced a new degree of permanent impairment measure for determining lump sum compensation and required a 5% threshold for common law access.

The new Labor government (elected in early 2015) has promised to remove the common law threshold, and has asked a stakeholder reference group to advise on “arrangements to reinstate common law”.

### Cover for Qld Firefighters

A Bill introduced to Parliament in June proposes automatic workers compensation coverage for all firefighters (including part-timers and volunteers) who contract one of 12 specified cancers. While a number of similar bills have already been introduced in other jurisdictions, as discussed in our [December 2014 d'finitive](#), the Queensland proposal is unique in not requiring exposure to a minimum number of fire incidents.



## Northern Territory

The first of two bills amending the NT legislation was passed in May 2015, with the following changes to commence 1 July:

|   |
|---|
| Tighter coverage for strokes and heart attacks  |
| Increased benefits for older workers  |
| Benefits to retirement age for serious injuries (WPI of 15% or more)  |
| Income maintenance limited to 5 years for less serious injuries (capped at 2.5x AWE), with medicals to continue for one year thereafter |
| 75% step-down after 26 weeks of incapacity (not injury)   |
| Higher death and funeral benefits   |
| Presumptive cover for firefighters (backdated to July 2011)   |

A second bill introduced in June proposes:

|  |
|--|
| Tighter coverage for mental injuries and journey claims        |
| Provision of paid legal advice for workers in mediated matters |
| Workers allowed to settle claims                               |
| Access to counselling for workers and their families           |
| Stronger RTW requirements on workers                           |

## Tasmania

The Workers Rehabilitation and Compensation Act 1998, as amended in 2009, included the requirement for a review of the impact of the amendments within three years. The changes commenced 1 July 2010, and we understand a report on the impact of the changes is to be tabled in Parliament shortly. The legislated scope of the review includes consideration of death benefits, the common law threshold, weekly benefit replacement ratios and time limits, and presumptive coverage for firefighters.

## Victoria

The Victorian government has appointed James MacKenzie (former CEO of TAC and former Chairman of both TAC and WorkSafe) to review both entities, with a focus on identifying “opportunities to optimise effectiveness, efficiency and the value of these organisations”.





# Comcare

## Potential changes to benefits proposed

The *SRC Amendment Bill (Improving the Comcare Scheme) 2015*, introduced into the House of Representatives on March 25, aims to modernise the scheme and make it financially sustainable.

This follows Comcare's latest compendium of statistics which shows claim payments increased by 25% between 2010/11 and 2013/14. Premium rates increased by more than 40% over the same period.

The Bill includes a myriad of changes to eligibility and benefits as shown below. Actuarial costing estimated the changes would reduce costs by around 12% to 21% per annum.

Exclusion of non-work related injuries and tighter eligibility requirements for some conditions, including exclusion of psychological injuries arising out of "reasonable management action".

Changes to income replacement, including earlier step downs and consideration of an employee's deemed ability to earn.

Provisional payment of up to \$5,000 in medical expenses prior to a claim being determined.

More rigorous requirements in determining medical compensation.

Uncapped household and attendant care for catastrophically injured employees to align with NIS requirements. Other employees will receive up to three years of capped household and attendant care.

Increase in the maximum lump sum to \$350,000, and changes to the way the lump sum is calculated – including a new formula, combination of multiple injuries, discounting for pre-existing conditions and excluding access for secondary psych.

Provision of ongoing financial incentives to injured employees who choose to work in some capacity.

Changes designed to control and reduce costs associated with disputes in the Administrative Appeals Tribunal (AAT), including the ability for Comcare to prescribe a Schedule of Legal Costs.

## Comparison of benefits to other states

A broad comparison of Comcare benefits to other state schemes is shown below. The Comcare scheme is currently a pension style compensation scheme (with weak return to work provisions, relative to other jurisdictions).

| Benefit Type  | Current comparison to State schemes   | If bill passed   |
|---|---|--|
| Weekly benefits                                     | Weekly benefits under Comcare are <b>more generous</b> . ↑  | New step-downs will bring Comcare more into line with other jurisdictions.   |
| Lump sums (LS) for impairment and non-economic loss | LS under Comcare are <b>similar to, or lower than</b> ↓, the States.                                | Separate conditions from one injury can be combined. Maximum LS to increase from around \$240k to \$350k.                            |
| Common law  | Limited access to common law under Comcare – <b>similar to</b> other schemes (except Qld and ACT).  | No change.   |
| Journey claims                                      | Journey claims not compensated – <b>similar to</b> States (except Qld, NT, ACT).                    | No change.   |
| Stress claims                                       | Stress claims compensated in Comcare, <b>as in all States</b> , although restricted in most States. | Exclusions for ‘reasonable management actions’ and some minor psychological conditions. No LS payments for secondary psych injuries. |

## Changes to income replacement benefits:

>> The Bill introduces earlier and steeper ‘step-down’ provisions. The proposed income replacement levels, as a proportion of normal earnings, are:

| Weeks | Current | Proposed |
|-------|---------|----------|
| 1-13  | 100%    | 100%     |
| 14-26 | 100%    | 90%      |
| 27-45 | 100%    | 80%      |
| 45-52 | 75%     | 80%      |
| 52+   | 75%     | 70%      |

- >> Employees on the final two step-down levels with partial return to work can have their income replacement ‘topped up’ to 90%.
- >> Income replacement at any stage will be reduced in line with employees deemed ability to earn.
- >> Payments continue to pension age, rather than ceasing at age 65.

## Opinions on the proposed changes vary widely

The Australian Council of Trade Unions say that the Bill “would make Comcare the most punitive, and the most disadvantageous to injured workers, of any workers compensation scheme in the country, and by a long way”. The Construction, Forestry, Mining and Energy Union’s say the proposal “will reduce protection to that of a Third World Country”.

Conversely, employers say that the changes are long overdue and the Bill should be accepted in its entirety. A Senate Education and Employment

Legislation Committee said that without the Bill, the Comcare scheme would likely become “financially unsustainable”. Willis Workplace Risk National Practice Leader, Gary McMullen, says that the proposed changes haven’t gone far enough with benefits continuing to retirement.

The Bill is currently before the Senate, with opinion split down party lines after dissenting reports were received from the Labor Party and the Greens.

## Exit Bill

In February, the Federal Government introduced the *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015* which, if passed, will allow Comcare to collect “exit fees” from employers that leave the scheme.

The catalyst for the Bill was the ACT Government’s announcement of their exit from Comcare.

The purpose of the exit fee (or contribution) is to cover claim liabilities incurred under Comcare which are not funded by premiums collected from the employer before their exit.

## SRC Amendment Bill 2014

The *SRC Legislation Amendment Bill 2014* introduced into Parliament in March 2014 proposed allowing national employers to apply for a self-insurance licence and to operate in a single national WHS framework. The Bill was passed by the House of Representatives in November 2014 but is yet to pass through the Senate.

The McKell Institute’s March 2015 report into the Bill stated that that the “vast majority of businesses will be disadvantaged under the Bill” and that the viability of other jurisdictions would be threatened. The report also says that with almost 2,000 employers eligible to apply to the scheme under the ‘national employer’ test, those employers left in the state schemes may face rate increases as the premium pools in these jurisdictions shrink.

## ACT Public Sector

ACT public sector workers compensation is currently provided by Comcare. However, with Comcare premiums nearly doubling over the past nine years, the public sector has announced its exit from the scheme, with a new scheme to be underwritten by private insurers. Features of proposed scheme include:

|  |
|--|
| Tighter cover for diseases and mental injuries   |
| Lifetime benefits for those with WPI of 20% or more  |
| Income maintenance ceases at 2 years, medicals 1 year thereafter   |
| Common law access for serious injuries only (limited to economic loss only, and capped for less severe claims) |

The new scheme will have no retrospective impact, and the departure may involve the ACT public sector paying Comcare a fee to exit the scheme to cover the tail of existing claims.

## Federal Politicians

A new scheme has also been proposed for federal politicians, with similar compensation as currently offered to the Commonwealth public servants under Comcare. Currently, federal politicians are not covered for work related injuries. The coverage is expected to commence 1 January 2016.





# Best Practice

# Workers Compensation

Finity was recently commissioned by the Insurance Council of Australia (ICA) to provide a ‘thought leadership’ report on a best practice workers compensation scheme. [You can find the report here.](#) The report was circulated widely by the ICA and generated quite a lot of discussion. We believe the report provides food for thought for all those interested in workers compensation in Australia.

Naturally, the ICA strongly promotes competitive underwriting. However at present around 80% of Australian employees are covered by a monopoly public sector scheme. Our brief was to design a scheme that would represent ‘best practice’ in a competitive environment, not to debate the merits of public versus private underwriting.

Importantly, most of the observations and suggestions in the report are relevant whether a scheme is publicly or privately underwritten. The table below indicates areas where best practice would be the same under public and private underwriting (left hand column), and areas where best practice would be different (right side).

## BEST PRACTICE in both public and private schemes

- >> Clarity of objectives
- >> Drivers of sustainability
- >> Guiding principles for scheme
- >> Relationship with NIS for catastrophic injuries
- >> Relationships with scheme participants
- >> Interaction with WHS
- >> Self insurance licensing and oversight
- >> Definition of worker and compensable injury
- >> Coverage of journeys and breaks
- >> Subsequent injuries and aggravations
- >> Mental harm claims and the special issues involved
- >> Benefits paid
- >> Work capacity assessments
- >> Employer negligence and common law
- >> Interaction with other income sources
- >> Managing claims and return to work
- >> Determining claims

## BEST PRACTICE – differences in public and private schemes

- >> Premium setting
- >> Prudential regulation of insurers by APRA
- >> Role of regulator relative to insurer(s) in:
  - > Employer compliance
  - > Authorisation of insurers
  - > Provider management
  - > Uninsured employer claims and other legacy issues
  - > Collection and use of data

## Sources

- >> **Comcare:** Comcare Budget Statements 2015/16; “Businesses seek review of workers’ compo as ACT govt pulls back”, Canberra Times 3 Mar 15; “New workers’ comp cover for federal politicians” Canberra Time 5 Jun 15
- >> **Comcare:** Compendium of WHS and Workers’ Compensation Statistics, Mar 2015; Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 Explanatory Memorandum; “Designing a Best Practice National Workers’ Compensation Scheme” The McKell Institute, Mar 15
- >> **NSW:** <http://wiro.nsw.gov.au/about/inquiries/parkes-project>; 2015/16 IPO: [http://www.workcover.nsw.gov.au/\\_data/assets/pdf\\_file/0017/26810/Insurance-Premiums-Order-20152016-1759.pdf](http://www.workcover.nsw.gov.au/_data/assets/pdf_file/0017/26810/Insurance-Premiums-Order-20152016-1759.pdf)
- >> **NT:** NT WorkSafe Bulletin, 27 Mar 15
- >> **NZ:** <http://www.acc.co.nz/about-acc/levies/current-years-levy-rates/>
- >> **Qld:** News release, 2 Jun 2015, Workplace Health and Safety Queensland eSafe newsletter, Apr 2015; Qld government parliamentary proceedings, 7 May 15
- >> **SA:** Media release, 13 Mar 15
- >> **Vic:** Vic Government press release, 30 Jan 15
- >> **Other:** ICA “A Best Practice Workers Compensation Scheme” May 15 by Finity Consulting; “National Injury Insurance Scheme – Workplace Accidents Consultation Regulation Impact Statement, Mar 15

# NIIS for workplace accidents

There have been recent moves to establish a National Injury Insurance Scheme (NIIS) for workplace accidents, to ensure that those catastrophically injured at work will be entitled to lifetime care and support. A Regulatory Impact Statement (RIS) released for consultation in March 2015 sets minimum benchmarks for workers compensation coverage (largely consistent with the minimum benchmarks for motor vehicle accidents).

Some schemes currently fall short of these minimum benchmarks due to:

- >> Allowing lump sum payments for care and support, as opposed to lifetime periodic benefits
- >> Care and support payments not being payable for the claimant’s lifetime
- >> Care and support payments having a monetary cap, as opposed to being sufficient to provide a reasonable level of care
- >> Some types of care and support payments not being legislatively guaranteed.

## Options for implementation

The RIS discusses the following three options for implementing the minimum benchmarks:

|                           |   |
|---------------------------|---|
| <b>Base Case</b>          | <p>Jurisdictions make no changes to their schemes, with top-up payments available from the National Disability Insurance Scheme (NDIS) to meet NIIS minimum standards.</p> <p>Jurisdictions that commit to implementing minimum NIIS benchmarks would be responsible for the cost of workers compensation participants in the NDIS.</p> |
| <b>Minimum Benchmarks</b> | <p>Each jurisdiction would modify its current scheme to ensure it meets NIIS minimum benchmarks (as for motor accidents).</p> <p>The RIS proposes that this could be achieved in practice by using the jurisdictions’ motor accidents NIIS schemes.</p> <p>Costs would be borne by employers.</p>                                       |
| <b>Harmonisation</b>      | <p>Jurisdictions agree on a fully harmonised model of lifetime care and support to be provided in the event of a catastrophic workplace accident.</p> <p>We think this last option is unlikely.</p>   |

If you would like to be added to the mailing list for future editions of our Workers Compensation News, please contact: Melinda Hall on (02) 8252 3356 or [Melinda.hall@finity.com.au](mailto:Melinda.hall@finity.com.au)

## Finity's Workers Compensation Team

Finity is one of Australia and New Zealand's leading actuarial and management consulting firms. Our dedicated Workers Compensation team has extensive knowledge of accident compensation issues, and is passionate about understanding both the financial dynamics and the social and community objectives of schemes. We combine our experience, industry insight and research with rigorous technical analysis to help you strengthen your business.

Finity also specialises in general and health insurance, working closely with large and niche insurers as well as government agencies to deliver world-class actuarial, pricing and strategic advice. We provide Appointed Actuary services to around 35 APRA and RBNZ-regulated general insurers.

### Contacts

Please contact one of our workers compensation experts if you have any questions or comments on this newsletter.

|                         |  |                  |
|-------------------------|--|------------------|
| <b>Geoff Atkins</b>     | <a href="mailto:geoff.atkins@finity.com.au">geoff.atkins@finity.com.au</a>         | + 61 2 8252 3337 |
| <b>Karen Cutter</b>     | <a href="mailto:karen.cutter@finity.com.au">karen.cutter@finity.com.au</a>         | + 61 2 8252 3386 |
| <b>David McNab</b>      | <a href="mailto:david.mcnab@finity.com.au">david.mcnab@finity.com.au</a>           | + 61 3 8080 0903 |
| <b>Andrew McInerney</b> | <a href="mailto:andrew.mcinerney@finity.com.au">andrew.mcinerney@finity.com.au</a> | + 61 2 8252 3372 |

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### Contact the Authors

**Andrew McInerney**  
Tel + 61 2 8252 3372  
[andrew.mcinerney@finity.com.au](mailto:andrew.mcinerney@finity.com.au)  
Sydney Office

**Mimi Shepherd**  
Tel +61 2 8252 3415  
[mimi.shepherd@finity.com.au](mailto:mimi.shepherd@finity.com.au)  
Sydney Office

 Australian & New Zealand Insurance Industry Award  
'Service Provider of the Year' 2006, 2007, 2008, 2009, 2011, 2014 (NZ).

Australian Insurance Industry Awards – Inaugural Inductee into the Hall of Fame 2012



### Australia

#### Sydney

Tel +61 2 8252 3300  
Level 7, 155 George Street  
The Rocks, NSW 2000

#### Melbourne

Tel +61 3 8080 0900  
Level 3, 30 Collins Street  
Melbourne, VIC 3000

### New Zealand

#### Auckland

Tel +64 9 306 7700  
Level 5, 79 Queen Street  
Auckland 1010