

Appendix 2.2: Marsh - ActewAGL Distribution ACT Workers Compensation

Regulatory proposal for the ACT electricity
distribution network 2024–29

Australian Capital Territory Workers Compensation

ActewAGL Distribution

20 December 2022

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Section 1

Australian Capital Territory Scheme Performance

Workers' Compensation scheme performance across Australia has deteriorated over the last 12 months, driven by headwinds created by claims duration rates increasing, high inflation and broader economic conditions. This had varying impacts on the individual Workers' Compensation schemes that operate across each state and territory in Australia.

All Government run schemes (Victoria, New South Wales, Queensland, and South Australia) have reported losses or performance deterioration across the last 12 months which is driving increases in the average industry rate. These schemes have set premium formulas where rates are determined by a premium gazette and are not negotiable. The scheme is run more like a community fund where there is a subsidy as policyholder premiums are aggregated across the scheme with some individual performance taken into account. In Privately Underwritten schemes such as the Australian Capital Territory, Northern Territory, Tasmania & Western Australia, employers benefit from competition and negotiable rates; however, there is minimal cross-subsidy and each employer pays based on claims performance. In addition to this, each insurer determines rates based on their own underwriting model, interpretation of the risk, portfolio performance and expenses required to manage the risk, i.e. provide the insurance and manage the claims.

The ACT has experienced challenges over a number of years, largely because it is heavily impacted by unfettered access to Common Law, with no thresholds on eligibility and uncapped damages. Whilst there has not been a material increase in the number and size of common law claims, the costs have been elevated since 2015/16 due to several drivers, including rising medical costs. Further, there is discretion allowed in the *Limitation Act 1985 (ACT)* to extend a 3-year limitation period where it is considered in the interests of justice, whereas this discretion is not extended to other types of personal injury claims (public liability, motor vehicle) in the ACT. The *Civil Law Wrongs Act 2002 (ACT)* does not allow a reduction for contributory negligence when there is found to be a breach of statutory duty (e.g. *Work Health and Safety Act 2011 (ACT)*). In contrast to this, other jurisdictions have legislated to allow a reduction for contributory negligence from common law damages. Common law costs are further fuelled as the ACT does not have any restrictions on personal injury claim advertising by plaintiff law firms.

The recent introduction of the *Motor Accident Injuries Act 2019 (ACT)* restricts access to entitlements to benefits for workers' compensation applicants, increasing workers' compensation claim costs for Journey claims. Restrictions placed on access to benefits under the *Motor Accident Injuries Act 2019 (ACT)* further reduces the ability for workers' compensation insurers to seek recovery of payments in circumstances where another driver was at fault in an accident.

In addition to the challenges from claims in the ACT, the ACT scheme premium pool is small at around \$255 million; for comparative purposes, the NSW premium pool is greater than \$3.3b. Smaller schemes place insurers under pressure because they don't have the ability to use the scale to manage claims and maintain performance when they have large losses because the scheme is too small. Inflation also impacts insurers in the ACT, where medical costs have risen far greater than in other Australian jurisdictions, and mental health claims are increasing. The duration of claims in the ACT is also becoming longer, which has put an additional strain upon insurers.

The 2022/23 Scheme Review, undertaken by Finity Consulting,¹ noted that the number of workers' compensation claim payments per year remained steady in the three years prior to 2018/19. Payments increased by \$12 million to \$149 million in 2019/20, attributable to wage costs. Payments increased by

¹ https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0018/2006307/ACT-Workers-Compensation-Review-of-Scheme-Performance-Finity-Consulting-2021-22.pdf

\$14 million to \$163 million in 2020/21, driven predominantly by lump sum and common law benefits. By comparison, the largest privately underwritten premium state in Australia, Western Australia, Scheme Review (FY23 Actuarial Report undertaken by PwC), noted the majority of claim payment types in the financial years between 2019-2021 to be Weekly (39.8% of costs) followed by Lump Sum payments (27.2% of costs), a lower risk landscape than that of the ACT. In Western Australia, the greatest increase to claim costs between the period of 31st December 2020 to 31st December 2021 was lump sum no election registered payments which increased by \$23.8 million (25.8% increase), followed by legal costs increasing by \$5 million (16.7% increase), weekly cost comparatively increased by 9.3% (\$18.3 million).²

Despite the Northern Territory having the highest average claim size in 2021 of \$54,000 per claim, the scheme reported the actual weekly benefit payments between 2020/21 and 2019/20 were reduced by 14.6% (from total payments of \$35.5 million to \$30.6 million)³, however similarly to that of Western Australia and the Australian Capital Territory, lump sum payments in the Northern Territory increase 18.6% (from \$37.5 million to \$31.6 million), indicating the cost of lump sum payments is trending upwards, heavily impacting scheme performance.

The latest ACT 2022/23 Finity Scheme Report notes the average claim cost for the 2022/23 period is projected to be \$48,800 or 7.1% higher than the selected size in the 2021/22 scheme review, which is \$44,000. The Western Australian 2022/23 PwC Scheme Report reported the average adopted claim size to be comparatively lower at \$46,809 for the 2022/23 period, increasing from \$43,816 (at 30 June 2021). In Western Australia, during the 2021/22 financial year, \$1.07 billion was paid for claims, of this \$960 million payments were made to the benefit of workers (68.4% of payments were income payments and common law, lump sum settlements, 21.5% of payments were medical and the like, 10.1% of payments relate to legal).

² <https://www.workcover.wa.gov.au/wp-content/uploads/2022/04/Actuarial-Assessment-of-the-Recommended-Premuim-Rates-2022-23.pdf>

³ https://worksafe.nt.gov.au/_data/assets/pdf_file/0005/1117913/Attachment-A-2021-Actuarial-Report-NT-WorkSafe-June-2021.pdf

Section 2

Recommended Industry Rate Comparison

Across Australia, the majority of the regulators except for the Northern Territory, engage an Actuary to undertake a review of the scheme's performance, and set industry rates for the coming year. The recommended rates factor in scheme performance which is largely driven by claims costs vs premium collected and adjustments for economic conditions. The table below captures the overall average rate for each jurisdiction across the last 6 years.

Table 1 Average workers' compensation scheme premium rates across jurisdiction (%)

Jurisdiction	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
NSW	1.40	1.40	1.40	1.40	1.44	1.48
QLD	1.20	1.20	1.20	1.20	1.20	1.23
VIC	1.27	1.27	1.27	1.27	1.27	1.27
SA	1.80	1.70	1.65	1.65	1.70	1.80
WA	1.52	1.59	1.65	1.64	1.70	1.82
TAS	2.27	2.10	2.08	2.22	2.11	2.13
ACT	2.58	2.58	2.48	2.33	2.22	2.22

Note: Northern Territory is the only jurisdiction which does not publish recommended industry rates and has therefore been excluded, rates presented in the table are produced by the governing authority scheme reports

Table 1 shows a clear disparity between the privately underwritten jurisdictions (ACT, NT, TAS and WA) and the managed fund states, which have lower recommended average premium rates. Again, the scale of the managed fund schemes influences the lower rates however the variances in claims benefit structure is a contributing factor.

Of the privately underwritten jurisdictions, the ACT continues to be the highest costing in Australia, with the average premium rate recommended by WorkSafe ACT being 2.22% for the 2022/23 financial year, which is unchanged from 2021/22.

At a policy level, employers are classified by industry. The insurers and agents utilise recommended industry rates to review and rate employers in the respective jurisdictions. Directly influencing Evoenergy's ACT applied premium rate is the ACT recommended industry rate for the industry classification Electricity Distribution. The recommended industry rate for the electricity distribution industry is the greatest in the ACT, as shown in Table 2.

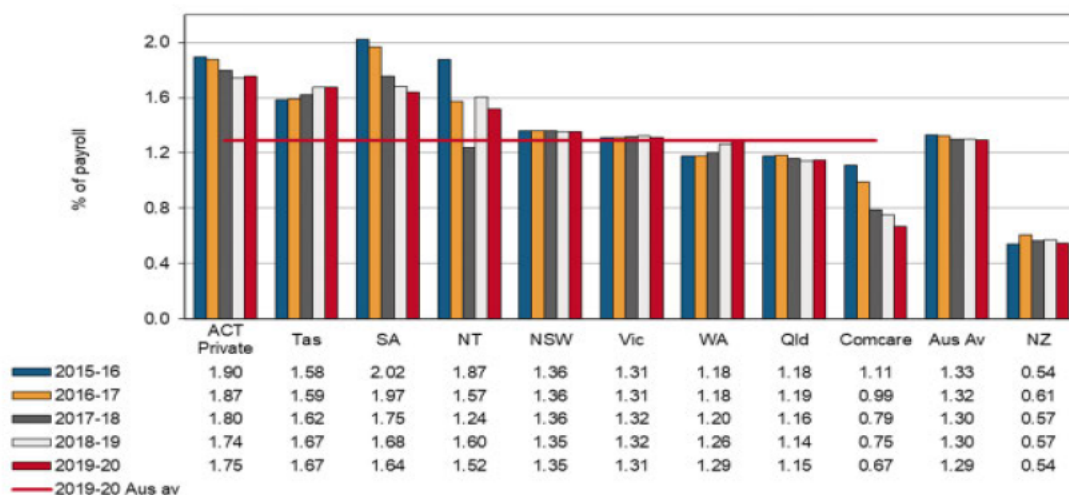
Table 2 Electricity distribution workers’ compensation scheme rates (%)

State	2018/19	2019/20	2020/21	2021/22	2022/23
NSW	1.32	1.26	1.26	1.26	1.26
QLD	0.74	0.76	0.71	0.67	0.67
VIC	0.263	0.29	0.36	0.41	0.45
SA	0.54	0.53	0.52	0.52	0.55
WA	0.62	0.77	0.65	0.62	0.67
TAS	0.52	0.52	0.55	0.62	0.50
ACT	3.41	3.82	3.71	3.58	3.67

When reviewing the recommended industry rates for 2021/22 in the ACT, Evoenergy is rated under an industry classification which, at a minimum, attracts a rate 2.7 times greater than any other state (at a minimum, and in comparison, to NSW). The recommended industry rate influences the insurers applied premium rate and premium payable in the ACT.

As shown in Figure 1, since 2018/19, the standardised average premium rates as provided by SafeWork Australia show the ACT as continuously recording the highest average premium rates, including insured and self-insured sectors by jurisdiction. The exception was 2015/16 and 2016/17, when SA recorded a rate of 2.02 and 1.97, respectively.

Figure 1 Standardised average premium rates (including insured and self-insured sectors) by jurisdiction⁴⁵

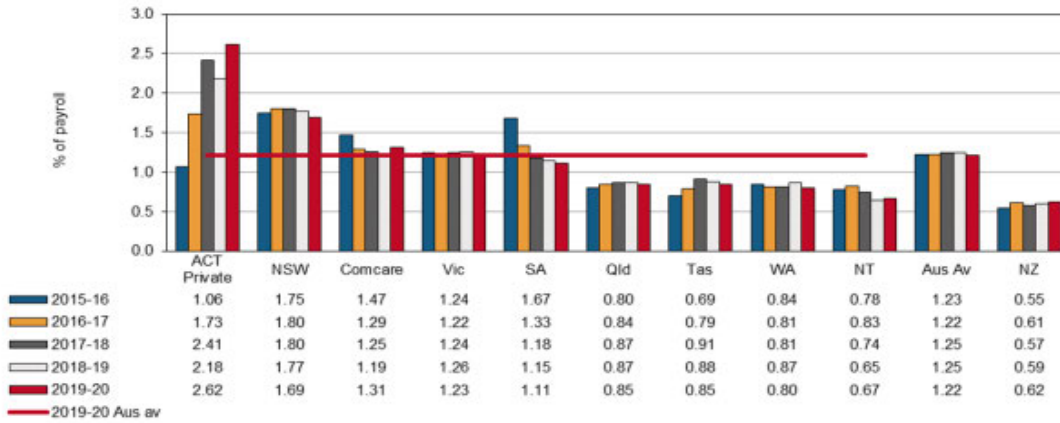


⁴ Safe Work Australia, 23rd Edition Comparative Performance Monitoring Report 23 / Workers’ Compensation Premiums

⁵ <https://www.safeworkaustralia.gov.au/sites/default/files/2021-11/CPM%2023%20-%20Premiums.pdf>

Of the electricity, gas, water and waste services classification, SafeWork Australia noted that the Australian average premium rate was 1.22%⁶ of payroll in the 2019/20 financial year, which remains largely unchanged over the prior five-year period. The ACT is a clear outlier in the stable rates and incurred a 20% increase to the average premium rate for the 2019/20 financial year with the rate being 2.62% of payroll, as shown in Figure 2.

Figure 2 Standardised workers’ compensation premium rates for the Electricity, gas, water and waste services by jurisdiction⁷



SafeWork Australia reported that in 2019/20, the electricity, gas, water and waste services industry sector frequency rate was 3.8 claims per million hours worked nationally. In stark comparison, the ACT had 13.5 claims per million hours worked for the same period, the highest recorded rate of all jurisdictions, as shown in Figure 3. Between the periods of 2014/15 and 2019/20, the ACT recorded the highest frequency rate of all jurisdictions.⁸

Electricity, gas, water and waste services are in the top ten industries regarding fatality reports having reported three fatalities in the 2021 period, a rate of 2.1 per 100,000 workers.⁹ When considering serious injuries in 2021, Electricity, gas, water and waste services are in the top fifteen with 1,313 serious claims a frequency of 8.8 per thousand employees, trending downwards since the peak in 2018. By comparison, Agriculture, forestry and fishing is number 1 in both categories, with 33 fatalities and a frequency rate of 10.4 per 100,000 workers, 4,159 serious claims and a frequency of 20.2 per thousand employees. Australian Capital Territory has reported the lowest fatality rate per 100,000 of workers at 0.4. Nationally the trends in worker fatalities have decreased by 35% in the last ten years, attributed to increases safety requirements, controls and measures.

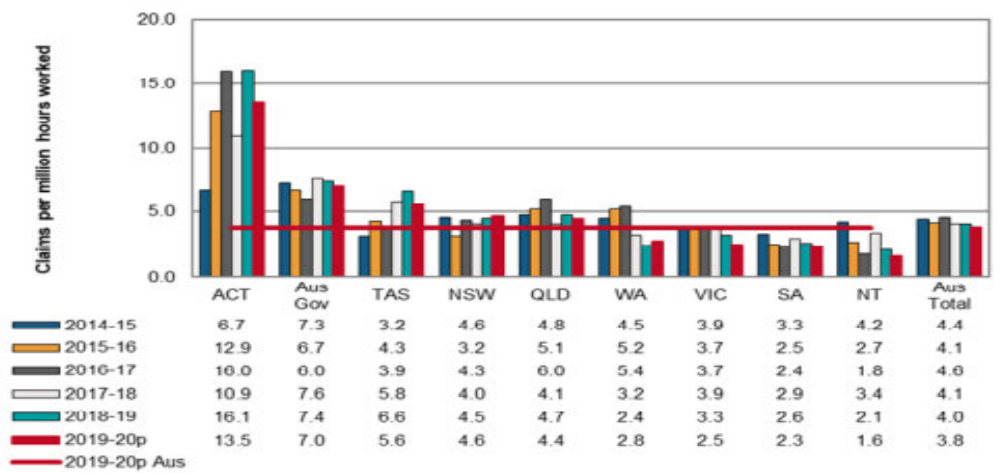
⁶ 23rd Edition Comparative Performance Monitoring Report 23 / Workers’ Compensation Premiums

⁷ 23rd Edition Comparative Performance Monitoring Report 23 / Workers’ Compensation Premiums

⁸ <https://www.safeworkaustralia.gov.au/sites/default/files/2021-11/CPM%2023%20-%20Work%20Health%20and%20Safety%20Performance.pdf>

⁹ https://www.safeworkaustralia.gov.au/sites/default/files/2022-11/key_whs_stats_2022_22nov2022.pdf

Figure 3 Frequency rates of serious claims for Electricity, gas, water and waste services by jurisdiction



Claim frequency rates impact the recommended industry rates produced by governing authorities and insurers alike.

In direct comparison to frequency rates, SafeWork Australia, for the same 2019/20 period, published the standardised average premium rates (including insured and self-insured sectors by jurisdiction), noting that the ACT continues to record the highest average premium rate in the nation.¹⁰

Marsh acknowledges that there are numerous impacts on the comparability of premium rates across the jurisdictions, which include but are not limited to the listing below and outlined in SafeWork Australia’s report.¹¹ This should be considered when comparing the ACT scheme rates with other jurisdictions.

- Benefit structures
- Journey claim coverage
- Claims management
- Funding arrangements of work health and safety services
- Claims excess and deductibles (including variance year to year within a single jurisdiction)
- Definition of rateable remuneration for the purposes of premium setting
- Self-insurance
- Industry combinations
- Premium calculation methodology
- Actuarial assumptions

¹⁰ Comparative Performance Monitoring Report 23rd Edition, Worker’s Compensation Premiums

¹¹ 23rd Edition Comparative Performance Monitoring Report 23 / Workers’ Compensation Premiums

Section 3

Premium Calculation Methodology

In the government-controlled schemes (NSW, SA, VIC and QLD), the claims and policy functions are managed internally or outsourced to insurers, also known as agents in some states. The premiums are determined by a set calculation and are, therefore, non-negotiable.

The privately underwritten schemes (ACT, NT, TAS and WA) are rated in accordance with the licensed insurer's own rating methodology. The licensed insurer utilises their own premium models to determine the premium rate applied to the policy based on the employer's industry, incurred claim costs, scheme performance and targeted profit margin.

New South Wales

The premium is calculated using the employer's remuneration, claims performance adjustment, dust disease contribution, mine safety fund adjustment, catastrophic claim contribution, premium adjustment contribution and deductions for safety incentives, performance and apprentices. Premiums in NSW are capped at 30% rate changes for experience-rated employers. The premium rate is calculated by dividing the employer's premium payable by wages and compared to the premium rate for the expiring period of insurance. The cap will only be applied if the increase or decrease results from a change in the employer's claims experience or due to amendments in the methodology of the premium calculation.

Queensland

The premium is calculated using the employer's remuneration, claims experience and industry rate. The premium payable is discounted based on workplace injuries; the lower the cost of claims, the better rated the policy is in addition to an incentive via discounted premiums for employed apprentices. In QLD, the claims experience, which is utilised to calculate an experience-based rating for larger employers, includes the cost of statutory claims, common law damages claims and the estimated cost of managing the claims to completion. Claim costs excluded in the premium calculation are journey, recess away from work and individual claim costs greater than \$185,000 incurred.

South Australia

The premium is calculated using the employer's remuneration, industry premium rate and the income support costs paid to workers with lost time claims. The premium formula includes wages, industry rate, discount factor (based on premium size), supplementary underwriting rate (to allow adjustment of premium), and work health and safety registration fee (collected on behalf of SafeWorkSA).

Victoria

The premiums are calculated using remuneration, industry classification rate, capping and buy-out for claims excess, equal to 10% of the premium. Premium changes are capped by 30% in VIC. Therefore, if the wages, industry average or claim costs lift significantly, employers are afforded pricing stability via a maximum 30% capped increase. As with SA, claims costs influence VIC premiums. The claims history is given a rating, which affects the premium if wages are greater than \$200,000 per year; the stronger the rating, the greater the premium reduction applied based on claims performance. For employers with wages less than \$200,000, the premium will be based on the industry rate and the employer's claims history.

Privately Underwritten (ACT, NT, TAS and WA)

The premiums are calculated utilising the employer's own performance (five years or available incurred claim costs, which include all accepted, declined, medicals only and lost time claims) against past premiums collected by the insurer on risk for the period. The insurers utilise past claims information to ascertain the loss ratio and project future claim costs. In privately underwritten jurisdictions, the insurer needs to ensure adequate premium is collected to offset future and past losses, maintaining an optimum profit margin.

In addition to varying recommended premium rates, the remuneration utilised to calculate the premium differs in each jurisdiction.¹²

¹² Refer to Appendix for Remuneration Matrix

Section 4

Premium Modelling

Despite the privately underwritten jurisdictions being negotiable and offering the greatest flexibility in pricing models and rates presented, they are significantly more expensive to insure than managed fund jurisdictions.

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Section 5

Summary of Findings

When considering the data outlined in the SafeWork Australia report and jurisdiction performance, it is clear that from all Australian jurisdictions, the ACT workers' compensation scheme is the highest costing to employers in relation to claims frequency, costs and premium rates.

Based on the data supplied in this report, Marsh is of the opinion that if ActewAGL Distribution were to be located in a managed fund jurisdiction such as Victoria, the premium payable for workers' compensation based on industry and risk would be less than that of the current ACT premium (ascertaining the exact variance in premiums between jurisdictions due to the impacting factors as noted in Section 2).

[REDACTED]

Section 6 - Appendix

Remuneration Matrix

Please note it is intended as a guide only.

Description	WA	ACT	TAS	VIC	NSW	NT	QLD	SA
Annual leave (including loadings) and public holidays	Y	Y	Y	Y	Y	Y	Y	Y
Accommodation allowance (Award allowances)	Y	Y	Y	Y ₁	Y	Y	Y	Y ₁
Board and lodging (where subject to FBT)	Y	Y	Y	Y	Y	Y	Y	Y
Bonuses	Y	Y	Y	Y	Y	Y	Y	Y
Car allowances and/or expenses (pre-tax benefit only)	Y	Y	N	Y ₂	Y	Y	Y	Y ₂
Car parking (where subject to FBT)	Y	Y	Y	Y	Y	Y	Y	Y
Clothing allowances/expenses	Y	Y	N	Y	Y	Y	Y	Y
Commission(s)	Y	Y	Y	Y	Y	Y	Y	Y
Company car (private use)	Y	Y	Y	N	Y	Y ₄	Y	Y ₄
Company house (rental value)	N	Y	Y	Y ₄	Y	Y ₄	Y ₃	Y ₄
Construction allowances	Y	Y	Y	Y	Y	N	Y	Y
Director's fees (non-working)	N	N	N ₁₁	Y	N	N	N	N
Directors - payments to working directors (including fees)	Y _{7,9}	Y	Y ₁₂	Y	Y	Y ₇	N	Y
Dirt money	Y	Y	Y	Y	Y	Y	Y	Y
Dividends	N ₁₀	N ₅	N	N	N	N	N	N
Early retirement benefits	N	N	N	N	N	N	N	N
Entertainment allowance (subject to FBT)	Y	Y	Y	Y	Y	Y	Y	Y
Fringe benefits (at taxable or grossed up value)	Y (Gross)	Y (Gross)	Y (Taxable)	Y (Gross)	Y (Gross)	Y (Gross)	Y (Gross)	Y (Taxable)
Fringe benefits exemptions	N ₈	N ₈	N ₈	N ₈	Y	N ₈	N ₈	N ₈
Honorariums	N	N	N	N	N	N	N	N
Housing loans (part of salary package)	Y	Y	Y	Y	Y	Y	Y	Y
JobKeeper Allowance (working)*	Y	Y	Y	Y	Y	Y	Y	Y
JobKeeper Allowance (not working)	N	N	N	N	N	N	N	N
Laundry allowance	Y	Y	Y	Y	Y	Y	Y	Y
Living away from home allowance (where subject to FBT)	Y	Y	Y	Y	Y	Y	Y	Y
Long service leave (lump sum payment)	Y	Y	Y	Y	Y	Y	Y	Y
Lump sum payments in lieu of holiday, sick leave etc	Y	Y	Y	Y	Y	Y	Y	Y
Meal allowance	Y	Y	Y	Y	Y	Y	Y	Y
Over award payments	Y	Y	Y	Y	Y	Y	Y	Y
Overtime payments	Y	Y	Y	Y	Y	Y	Y	Y
Parental / Paternity / Adoption Leave (when funded by the Employer)	Y	N	Y	Y	Y	N	Y	Y
Payments in lieu of notice	N	N	N	N	N	Y	N	N
Payroll tax	N	N	N	N	N	N	N	N
Penalty rates	Y	Y	Y	Y	Y	Y	Y	Y

Profit sharing schemes (bonus in lieu of wages)	Y	Y	Y	Y	Y	Y	Y	Y
Profit sharing schemes (not subject to income tax or FBT)	N	N	N	N	N	N	N	N
Redundancy payments (ex-gratia payments)	N	N	N	N	N	N	N	N
Redundancy payments (accrued leave etc)	N	Y	N	N	Y	N	N	N
Reimbursement of work related expenses paid by the worker	N	N	N	N	N	N	N	N
Retrenchments / Severance payments	N	N	N	N	N	N	N	N
Royalties	N	N	N	N	N	N	N	N
Salary	Y	Y	Y	Y	Y	Y	Y	Y
Salary packaging	Y	Y	Y	Y	Y	Y	Y	Y
Shift allowance	Y	Y	Y	Y	Y	Y	Y	Y
Sick leave	Y	Y	Y	Y	Y	Y	Y	Y
Site allowance	Y	Y	Y	Y	Y	Y	Y	Y
Staff discounts	N	N	N	N	N	N	N	N
Superannuation contributions (superannuation guarantee/employer contribution)	N	N	N	Y	Y	N	Y	Y
Superannuation contributions (employee contributions)	Y	Y	Y	Y	Y	Y	Y	Y
Telephone allowance or expenses (subject to FBT)	Y	Y	Y	Y	Y	Y	Y	Y
Termination payments (accrued benefits)	N	Y	Y	N	Y	N	N	N
Termination payments (compensation for termination)	N	N	N	N	N	N	N	N
Third party remuneration (e.g. school fees)	Y	Y	Y	Y	Y	Y	Y	Y
Tool allowance	Y	Y	Y	Y	Y	Y	Y	Y
Travel allowance (subject to FBT)	Y	Y	N	Y	Y	Y	Y	Y
Travel allowance (discounted or free)	Y	Y	Y	Y	Y	N	Y	Y
Workers compensation payments	N	N ^e	N	N	N ^e	N	N ^e	N

Footnotes

1. Accommodation allowance which is more than \$238.10 (2011/12), \$248.25 (2012/13), \$250.85(2013/14), \$253.25(2014/15) or \$255.45(2015/16) in Victoria and in South Australia.
2. Motor vehicle allowance in relation to the use of the worker's own motor vehicle in the course of their employment, which is over 75 cents(2010/11, 2011/12 & 2012/13) or 77 cents(2013/14, 2014/15 & 2015/16) per kilometre in Victoria and South Australia.
3. Not assessable if provided as temporary accommodation associated with relocation.
4. Only if subject to FBT.
5. Assessable if paid in lieu of wages.
6. Payments over and above benefits are counted as wages.
7. If working directors are included on the policy from term inception or when employment commenced.
8. There are types of organisations such as charities, churches and public benevolent institutions where worker benefits are not subject to fringe

JobKeeper Allowance (working)*

benefits tax up to a certain threshold. Once the workers' benefits exceed the ATO fringe benefit threshold, employers must declare those fringe benefits as wages at the grossed-up value. Please visit <https://www.ato.gov.au/> for information on the various thresholds

9. Wages, salary and other remuneration as a director of the company, by whatever means, that is in substance for personal manual labour or services.
10. In the case of working directors, potentially assessable if paid in substance for a working director's personal labour or services. Please contact us to discuss further if this applies to your working directors.
11. A non-working Director is defined as a director who has not entered into a contract of service with the Company of which they are a director.
12. Working Director - director's fees : A working director is, as defined by the Workers Rehabilitation and Compensation Regulations, a person who is a director of a company and performs work for that company under a contract of service.

FBT = Fringe benefit tax.

When JobKeeper payments are above the workers normal wages, the additional payment should not be declared.

NSW JobCover Placement Program - wages paid to an injured worker under this scheme are excluded from remuneration.

Please note: Generally, if an allowance represents a reimbursement of a work-related expense – it is not assessable. Otherwise, it is assessable. For additional information and explanations please refer to the relevant State or Territory individual definitions which can be accessed via their websites listed below:

State	Website	Telephone number
ACT	www.accesscanberra.act.gov.au	02 6207 3000
WA	www.workcover.wa.gov.au	08 9388 5555
NSW	www.icare.nsw.gov.au	13 10 50
TAS	www.worksafe.tas.gov.au	03 6166 4600 (Outside TAS) 1300 366 322 (Inside TAS)
VIC	www.worksafe.vic.gov.au	03 9641 1444 or 1800 136 089
NT	www.worksafe.nt.gov.au	1800 250 713
SA	www.rtwsa.com	13 18 55
QLD	www.workcoverqld.com.au	1300 362 128



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