



## The history of compensation in Australia

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**With harmonisation hopefully imminent, it's a good time to look at and learn from Australia's history of workers' comp.**

### **Take Home Messages:**

The formation of workers' compensation policy in Australia was not a linear process. It followed a disjointed route which has been coined a 'punctuated equilibrium'.

In the early period, it was the demands by organised sections of the working class that led to the adoption of 'no-fault liability' and the introduction of workers' compensation laws.

In the later period there were increased compensation payments and a greater emphasis put on work-place health and safety. There was also a shift to public underwriting and the adoption of vocational rehabilitation and alternate dispute resolution mechanisms.

This was followed by a tightening of eligibility for compensation and a universal curtailing of workers' rights to initiate common law actions.

The main driver of policy change seems to be contestation between business interests and organised labour over the distribution of work-related injury costs.

The article suggests that the Australian policy experience lends itself to comparison with that of the USA and Canada as they too have a state-based federal workers' compensation system.

### **Why the research matters:**

Over 2000 people die each year from work-related causes and a further 477, 800 workers are injured. In 2004, the cost of work-related injury and death was estimated to have been at least \$34 billion a year. Workers' Compensation (WC) is, therefore, very important in providing financial security to workers and their families.

Over time WC arrangements have become increasingly complex. This paper aims to provide an overview of the development of public policy on work-related injury in Australia.

### **What the research involved:**

This article follows the historical growth of WC policy in Australia until the mid-1990s.



The policy development is divided into four stages:

Stage 1 – Prior to 1900

Stage 2 – 1900 to mid-1920s

Stage 3 – Late 1920s to 1970s

Stage 4 – 1900s to 1990s

**Summary of research findings:**

Stage 1

Initially costs of work-related injury were borne by workers and families. Access to compensation was confined to common law which demanded that negligence be proven. At this time, the law was designed to prevent compensation claims, and used a set of legal defences known as the ‘unholy trinity’:

- Employers were not legally accountable for injuries to workers caused by another member of the workforce;
- Workers implicitly assumed responsibility for the hazards of their employment; and
- Employers were not liable for compensation where the actions of workers themselves contributed, in any way, to their injuries.

As new methods of organisation and production were introduced, especially the use of more dangerous machines, there was a push for intervention in order to combat the loss of life and limb. There was increased demand for industrial reform and parliamentary representation which led to the emergence of the ALP during the 1890s.

Stage 2

This was a period of profound and rapid change. Workers covered by the legislation were only required to establish that their injuries were work related in order to qualify for compensation. There was no longer an obligation to establish employer negligence.

Initial statutes ‘provided cover to workers in *dangerous* employment, with compensation payable where an injury arose *out of and in the course of employment*’. While, if a worker was killed, his dependents were entitled to a lump sum, workers who were injured received only 50% of weekly income and no contribution to medical costs.

WC, at the beginning of the 20<sup>th</sup> Century, greatly overlooked female workers. It was only in the



1970s that terminology was changed to include female workers.

### Stage 3

In this period, the distribution of costs for work-related injury continued to favour employers. Reform came to a near standstill due, in part, to the prevalence of conservative governments at both a federal and state level.

One reform that did occur was adoption of a less stringent approach to eligibility for compensation. In the 1940s there was an extension to cover journey injuries on the way to and from work.

Weekly payments increased from 67% to 80% of normal earnings in NSW in 1971. In other states this increase took even longer. It was not till the late 1970s that it had increased to 100%.

### Stage 4

The initial focus in this period was on improving compensation for workers, but it soon shifted to a preoccupation with the level of premiums paid by employers. It was also noticed that administration costs of WC schemes in Australia had sky-rocketed. This spurred yet another reform.

By mid 1980s many states had adopted an 'open liability' model of weekly payments. These were made to injured workers and were determined by the duration of injury in conjunction with their ability to return to work. By mid 1990 the rollback of WC had plateaued. This was partly due to the demise of conservative state governments after 1995.

**Original research:**

#### **The Evolution of Workers' Compensation Policy in Australia**

Kevin Purse

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