

Common law proceedings in Western Australia

April 2007
WorkCover WA

Executive Summary

Entitlements to access common law proceedings by workers who have serious and permanent injury caused through work is determined by the *Workers' Compensation and Injury Management Act 1981* (the Act). The Act imposes limitations for injured workers to access the District Court with a tort claim based upon assessments of either disability or impairment.

WorkCover WA administers two schemes controlling access; these are the 2004 scheme set down in Division 2 – Subdivision 3 of the Act; and the 1993 scheme set down in Division 2 – Subdivision 2 of the Act. Both schemes use three main controls to limit access to common law damages for workers with serious and permanent injury. These are:

- permanent injury thresholds (whole person impairment or permanent degree of disability);
- limitations on statutory entitlements if common law action is taken; and
- the requirement for an irrevocable election to pursue common law action.

2004 data

Data from the 2004 scheme is immature at the time of this report. This report will be regularly updated to include additional data as it becomes available.

Key findings

The main body of data in this report relates to the 1993 scheme. Information provided from the 1993 scheme indicate the following findings:

- average common law payments in nominal terms, have trended upwards since 2000;
- time duration between injury and a common law payment awarded or settled, has declined over the last six years;
- workers with 30% or more permanent disability are now more likely than six years ago to receive common law payment, than those with 16% to 30% permanent disability;
- common law proceedings across industries generally reflect injury data by industry overall;
- common law proceedings relating to age reflect the pattern of the general workforce;
- common law proceedings result from injuries involving the trunk, upper and lower limbs which also reflect other injury data;
- 74 per cent of common law proceedings result from injuries involving the trunk, upper and lower limbs.
- average common law payments are presented in the following table.

insurer finalisation year	number finalised	average payment for 30% or over	average payment for 16% - 30%	highest payment for 30% or over	highest payment for 16% - 30%
2000-01	333	\$109,437	\$63,379	\$820,000	\$166,500
2001-02	267	\$139,221	\$80,706	\$920,000	\$214,279
2002-03	242	\$202,879	\$91,992	\$1,639,918	\$220,000
2003-04	201	\$286,564	\$89,985	\$5,900,000	\$225,359
2004-05	255	\$212,989	\$101,983	\$973,342	\$324,000
2005-06	280	\$239,206	\$87,966	\$3,511,845	\$201,453

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Purpose

1. The purpose of the report is to provide:
 - summary information about workers’ compensation legislation relating to common law; and
 - an overview of trends in workers’ compensation common law claims in Western Australia.
2. This report is part of the ‘Scheme Health and Oversight’ initiative in the 2006/2007 WorkCover WA Business Plan, which encompasses the strategic issues set by the Board.

Data and limitations

3. The information provided originates from the following data sources:
 - WorkCover WA workers’ compensation claims database;
 - WorkCover WA Dispute Resolution Directorate; and
 - District Court data provided monthly to WorkCover WA.
4. The specific data set used for the report on the 1993 scheme:
 - was derived on 20 February 2007; and
 - is limited to applicants that elected to proceed to common law after meeting the requirements of the *Workers’ Compensation and Injury Management Act 1981*.
5. The data in this report provides a summary overview of the effects of common law on the scheme. While WorkCover WA has taken every care preparing the report, the data has not been verified by independent review. Specific limitations about the data are noted together with the corresponding chart or table if applicable.

Glossary

application	<p>According to the Act, injured workers must apply to the Dispute Resolution Directorate to progress through the three main access controls to proceed to common law. The following types of applications are mechanisms to access common law:</p> <ul style="list-style-type: none"> • registration of an agreement about a permanent injury threshold; • registration of a medical assessment to determine the permanent injury threshold; • request for termination day extension; and • registration of election to proceed to common law. <p>The Dispute Resolution Directorate may reject worker applications under certain circumstances.</p> <p>The data set uses the first application of any common law type, made by the injured worker to instigate a common law claim.</p>
application year	The year the first application of any type was made to begin to access common law.

Introduction

Short history of workers' compensation common law in WA

6. Prior to the introduction of the no fault workers' compensation legislation, any worker who suffered serious injury potentially faced adversity and poverty. During these times, the only redress open to injured workers was to seek damages from their employer through the common law courts. However the court process did not provide surety for workers because the courts allowed defence doctrines to protect employers. Early legislation introduced in Western Australia in 1894, removed some of the difficulties and hardships faced by an injured worker when pursuing a common law action.

7. The first statutory compensation scheme was introduced in Western Australia in 1902 but was limited to workers in dangerous industries and did not require employers to insure for workers' compensation. During the 1950's and 1960's, the no fault workers' compensation legislation developed and the benefits to workers were expanded to allow claims across all forms of employment covering weekly payments, medical expenses and lump sums for permanent disability. During this period the courts also extended and liberalised the common law rights of injured workers and the defences of employers were modified or limited by statute. Overall the result was that workers increasingly turned to common law actions in preference to the statutory compensation.

8. By the early 1990's, the Western Australian Tripartite Labour Consultative Council identified common law claim costs had reached unsustainable levels and it was established that limiting access to common law damages for workers with severe injuries could result in savings. Western Australia's legislative response was to restrict common law access in 1993.

Explanation of common law and statutory process in WA

9. The Western Australian workers' compensation system allows for essentially two types of benefits for compensable impairment. Firstly, compensation may be claimed under the statutory system legislated for in the *Workers' Compensation and Injury Management Act 1981* (the Act). Secondly, compensation for damages may be claimed through the courts subject to the limitations of the Act and consistent with common law.

10. Under the Act, employers are required to obtain and keep current a policy of insurance to pay compensation and other benefits to workers in the event of workplace injury. The workers' compensation scheme operates under a 'no fault' system where liability is generally accepted for injury from work.

11. Under the current statutory scheme an injured worker can claim a maximum of \$152,070 in workers' compensation including compensation for lost wages, a maximum of \$45,621 in medical and hospital expenses and a maximum of \$10,645 in vocational rehabilitation expenses. Injured workers who have specific types of permanent impairment may also be eligible to receive a lump sum payment as listed in Schedule 2 of the Act.

12. Injured workers may, subject to conditions and by agreement with their employer, redeem their weekly payments in a lump sum. Such a lump sum payment closes the claim and disentitles the injured worker to further statutory payment or common law access.

Access to common law in Western Australia

13. Currently, WorkCover WA administers two schemes controlling access to common law proceedings, these are:

- the 2004 scheme set down in Division 2 – subdivision 3 of the Act; and
- the 1993 scheme set down in Division 2 – subdivision 2 of the Act.

14. The two schemes have different and specific access limitations for workers depending on whether the date of the cause of action of their injury/disease is before or after 14 November 2005. Generally both schemes use three main controls to limit access to common law damages for workers with serious and permanent injury. These are:

- permanent injury thresholds (whole person impairment or permanent degree of disability);
- limitations on statutory entitlements if common law action is taken; and
- the requirements for election to pursue common law action.

15. These controls are outlined below and the specific differences are discussed further under each scheme heading.

Permanent injury thresholds

16. Injured workers must be able to establish a permanent disability or impairment that meets the percentage threshold limits the Act establishes under each scheme.

The percentage of permanent disability or impairment can be:

- agreed between the injured worker and the employer; or
- determined by the relevant medical provider.

17. The 2004 scheme and the 1993 scheme have different requirements for assessment by medical professionals.

Statutory entitlements may be reduced

18. The permanent injury threshold determines:

- what, if any, statutory benefits and allowances apply to the worker if the worker elects to pursue common law action; and
- whether statutory limitations apply to the common law proceedings.

Requirements and choice to elect for common law

19. Workers with a permanent injury meeting the particular provisions in either scheme of the Act must formally elect to proceed to common law.

Court proceedings

20. Should an injured worker proceed to common law, section 92(f) enables workers and employers to make an agreement prior to judgement by the District Court. The large majority of workers' compensation common law proceedings are settled by consent prior to judgement.

2004 scheme access (Division 2 - Subdivision 3)

Permanent injury threshold - Permanent whole person impairment

21. Workers injured on or after 14 November 2005 are required to establish their permanent whole person impairment (PWPI) threshold at not less than 15 per cent or, 25 per cent or more to pursue damages at common law.

22. The level of the worker's PWPI is either agreed between the injured worker and the employer or, assessed by an approved medical specialist (AMS). The AMS applies the '*Guides for the evaluation of permanent impairment*' to determine a worker's PWPI. These guides are used to establish a worker's PWPI in a consistent manner.

Statutory entitlements may be reduced

23. If a worker is assessed as having 25 per cent or more PWPI, they are eligible to continue to receive full workers' compensation statutory benefits while common law damages are determined.

24. Those workers that have between 15 per cent and 25 per cent PWPI may pursue damages at common law however, they will be subject to limitations of statutory benefits through step down weekly payments. Damages that can be awarded to these workers are currently capped at \$319,349 (Amount A in the Act).

Requirements and choice to elect for common law

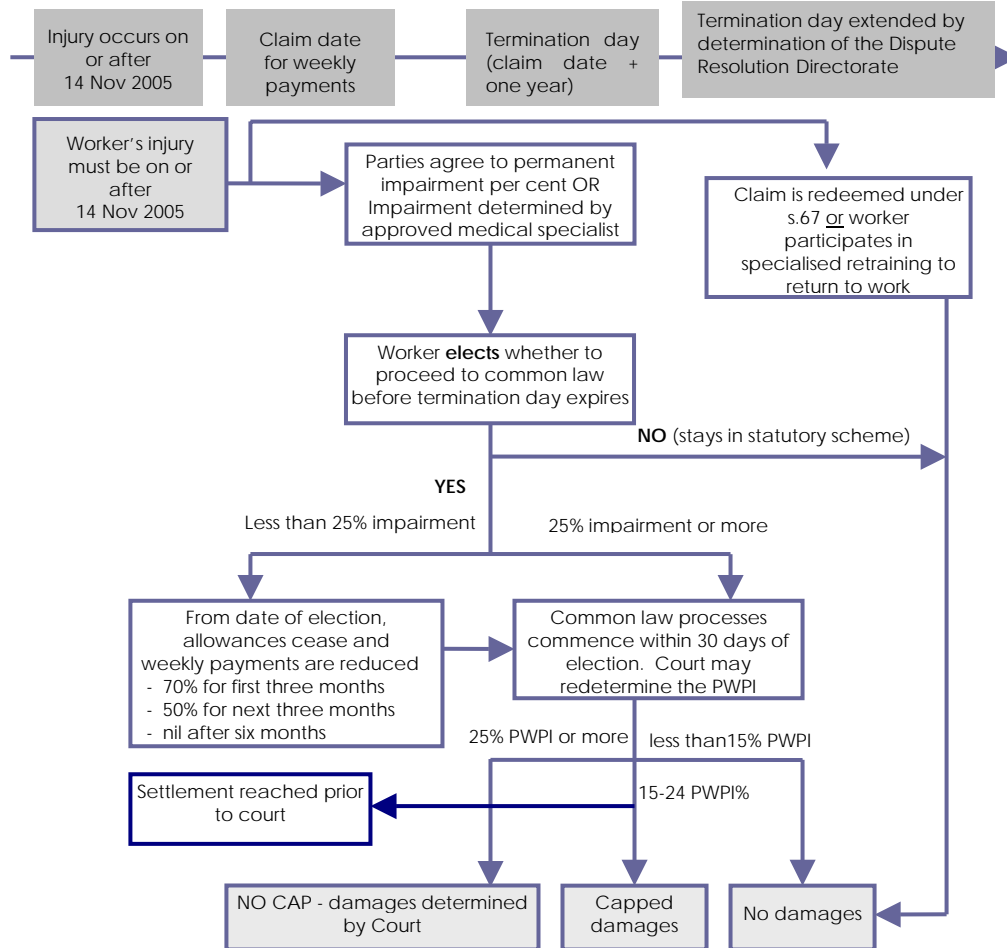
25. Once the PWPI is established and registered with the Dispute Resolution Directorate, workers may choose to either remain in the statutory scheme or elect to pursue common law through the courts. Registration and election must be before the termination day.

26. The termination day is determined from the first day a claim for weekly payments is made on the employer plus one year. Further extensions, under section 93M(4) of the Act, may be granted through application to the Dispute Resolution Directorate if:

- the workers condition has not stabilised;
- the worker has not been made aware of the specifics outlined in section 93O by their employer; or
- documents are not available within the specified time.

27. Flowchart one depicts the essential elements of common law access under the 2004 scheme.

Flowchart one: 2004 scheme - post November 2005 – common law access



1993 scheme access (Division 2 – Subdivision 2)

Permanent injury threshold - degree of disability

28. Workers injured prior to 14 November 2005 are required to establish their degree of permanent disability of not less than 16 per cent or, 30 per cent or more to pursue damages through common law.

29. Degree of disability is established either by agreement between the injured worker and the employer, or based on evidence by a medical practitioner. Under the 1993 scheme, if disputes arise about whether a worker has sustained a particular percentage of degree of disability, the matter may be referred to the Dispute Resolution Directorate for determination through arbitration.

Statutory entitlements may be reduced

30. If a worker is assessed as having a degree of disability of 30 per cent or more, he or she is entitled to receive full workers' compensation statutory benefits while common law damages are determined.

31. Those workers with between 16 per cent and 30 per cent degree of disability may pursue damages at common law however, once an election is made no further statutory component is payable. Damages for these workers are currently capped at \$319,349 (Amount A in the Act).

Requirements and choice to elect for common law

32. Once the degree of disability is established and registered with the Dispute Resolution Directorate, an injured worker meeting the 16 per cent threshold may elect to proceed to the courts before termination day. There is no requirement to make an election by workers who have a permanent degree of disability of 30 per cent or more.

33. The termination day is determined from the first day weekly payments are made to the worker plus six months. Further extensions may be granted through application to the Dispute Resolution Director if the worker:

- is likely to undergo surgery related to the injury in the extension period;
- requires more time for medical reports to be prepared; or
- has work related pneumoconiosis, mesothelioma or chronic bronchitis [Reg 19N].

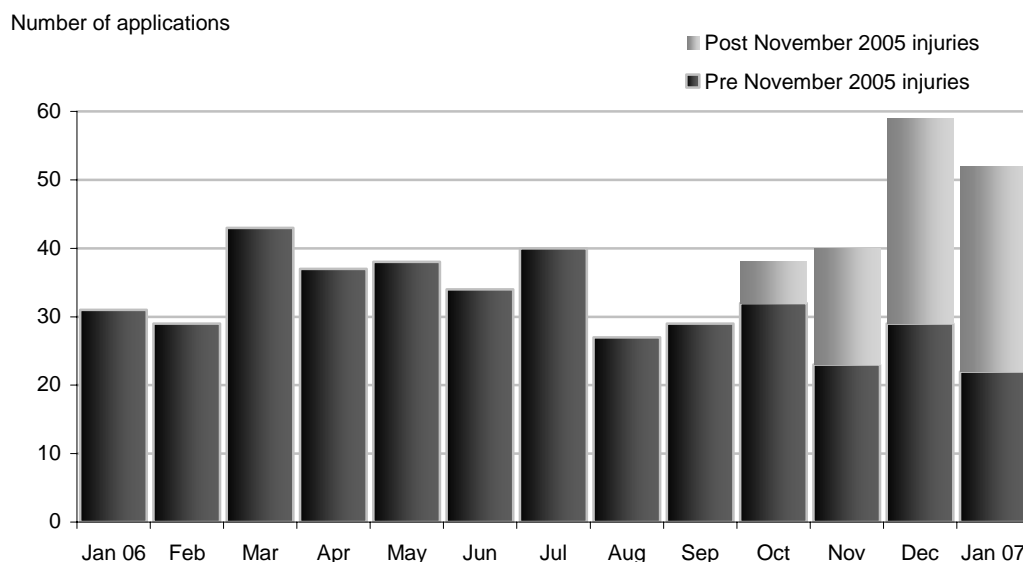
WorkCover WA data from the 2004 scheme

34. Workers injured on or after the reforms were implemented on 14 November 2005 are subject to the 2004 scheme provisions. Due to the time between injury and commencement of the common law process data has only been available since October 2006, providing only initial data and small sample sizes.

Scheme comparison

35. Chart one below shows the total number of applications made to the Dispute Resolution Directorate concerning common law access through both the 1993 scheme and the 2004 scheme. The graph illustrates the phase-in period of the 2004 scheme and shows an early indication of the phase-out of the 1993 scheme.

Chart one: Applications to progress common law claims – scheme comparison



Applications to proceed to common law

36. The Dispute Resolution Directorate provided the following information on 20 February 2007. Overall, 124 initial applications under the 2004 scheme were made by 120 injured workers to the Dispute Resolution Directorate to either:

- register an agreement about a permanent injury threshold (one);
- register a permanent injury assessment by an approved medical specialist (22);
- register an election to proceed to common law (one);
- or to request an extension of termination day (100).

37. The number of injured workers who have had registration accepted by the Dispute Resolution Directorate for a whole person permanent impairment assessment is 21. Of these:

- three registered 15 per cent;
- four registered 16 per cent;
- three registered 17 per cent;

- four registered 18 per cent;
- one registered 25 per cent;
- one registered 27 per cent;
- two registered 28 per cent;
- one registered 31 per cent;
- one registered 39 per cent; and
- one registered 40 per cent.

38. Of the 100 applications requesting an extension of termination day beyond the prescribed 12 months, 82 have been granted an extension.

39. The number of injured workers who met all requirements to access damages through common law under the 2004 scheme was 17 as at 20 February 2007. Although only one of these had elected to proceed to the court, it is expected others will elect prior to their termination day.

40. Currently, there are no records of a damages or other non-statutory settlement available for any case relating to the 2004 reforms.

Workers' Compensation claims data - data from the 1993 scheme

41. WorkCover WA workers' compensation claims data presented in this section relates to 1993 scheme applications only. The data set is collected from the Dispute Resolution Directorate database and the WorkCover WA claims database (WOCIS2).

42. The data set used, includes a total of 2429 cases collected since 1999 to February 2007, is determined by the following parameters:

- the worker must have met the common law thresholds set in the Act; and
- the worker must have elected to access damages through common law.

Defining the data used - applications to meet the common law thresholds

43. Table one shows the total applications is 2429, making up the data set for this analysis. Between July 2006 and February 2007 there were 56 initial applications by injured workers seeking common law under the 1993 scheme.

Table one: Applications made by workers to initiate common law proceedings by application year – 1993 scheme

application year	number of initial applications
1999-00	864
2000-01	204
2001-02	212
2002-03	235
2003-04	268
2004-05	329
2005-06	261
2006-07 year to date	56
total	2429

Duration

44. Table two shows the average duration in months from the time of injury to insurer finalisation date of common law claims. Note: Election to finalisation and injury to finalisation averages are calculated for finalised claims only.

Table two: Durations of common law claims – 1993 scheme

Injury year	average months from injury to application	average months from application to election	average months from election to finalisation	Injury to finalisation
1999-00	23	9	13	42
2000-01	21	9	13	40
2001-02	20	9	10	35
2002-03	17	8	7	31
2003-04	14	8	6	26
2004-05	9	7	4	18
2005-06	6	4	4	14

Summary of common law payments paid to injured workers under the 1993 scheme

45. Table three shows the number of cases that received common law payments by finalisation year.

46. The row titled 'other/no date' includes either:

- where the finalisation date is recorded as pre 1999-00 (22 cases);
- those with a zero amount recorded with or without a finalisation date (237 cases); or
- a recorded amount without a finalisation date (96 cases); or
- null record (150 cases).

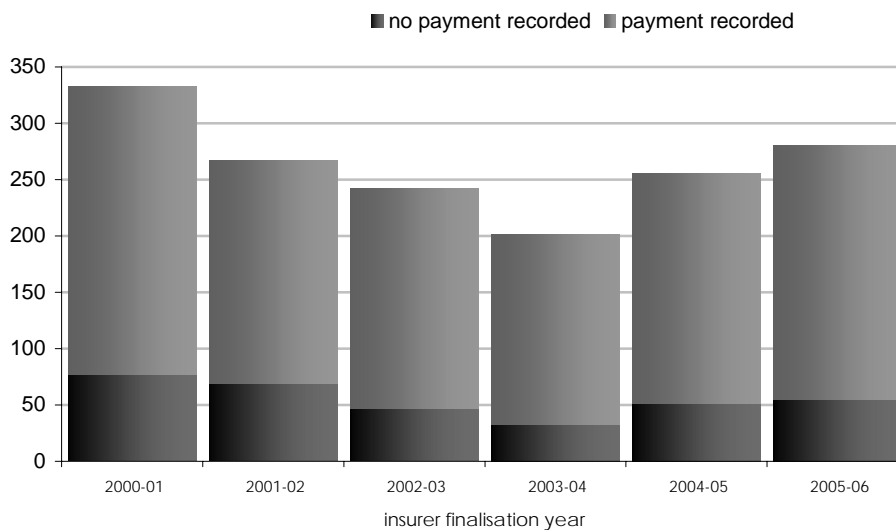
47. These 'no payment recorded' and 'other/no date includes cases may have resolved the claim by other means, been dismissed or not have been finalised at time of data capture.

Table three: Common law claims finalised by insurer finalisation year

insurer finalisation year	number finalised	payment recorded	no payment recorded
1999-00	140	111	29
2000-01	333	256	77
2001-02	267	198	69
2002-03	242	195	47
2003-04	201	168	33
2004-05	255	204	51
2005-06	280	225	55
other /no date	505	96	259

48. Chart two below represents the data from Table three between 2000-01 and 2005-06. Data is provided for the last six full financial years.

Chart two: Number of common law payment by insurer finalisation year - 1993 scheme



49. Table four below provides an overview of the common law payments recorded in the data set by insurer finalisation year. This overview provides for each year: an average amount; the lowest amount; the highest amount; and a total sum of common law payments. Averages have been calculated where there is a record over \$999.

50. It is important to note that the amounts recorded are likely not to be the final amount the worker receives. In some cases the worker will need to pay for their legal fees and there may be other charges, fees or recoveries related to the claim required from the worker's damages.

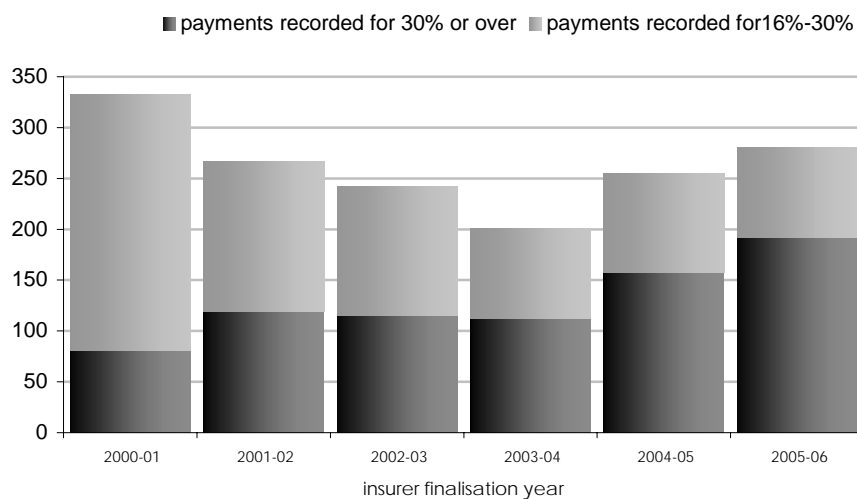
Table four: Common law payments by insurer finalisation year

insurer finalisation year	average common law payment	lowest common law payment	highest common law payment	sum of payments
1999-00	\$71,505	\$8,000	\$297,014	\$7,937,103
2000-01	\$74,174	\$2,950	\$820,000	\$18,988,661
2001-02	\$105,826	\$4,500	\$920,000	\$20,953,635
2002-03	\$145,445	\$2,596	\$1,639,918	\$28,361,826
2003-04	\$203,486	\$1,153	\$5,900,000	\$34,185,743
2004-05	\$170,545	\$5,000	\$973,342	\$34,791,372
2005-06	\$196,859	\$1,000	\$3,511,845	\$44,293,325
no date	\$201,753	\$3,000	\$860,000	\$19,368,305

Registered degree of disability and common law payments

51. Chart three shows the number of payments recorded for each threshold of permanent injury degree of disability. The chart indicates an increasing number of common law payments recorded for permanent injury degree of disability of over 30 per cent.

Chart three: Number of common law payments by insurer finalisation year showing permanent injury threshold – 1993 scheme



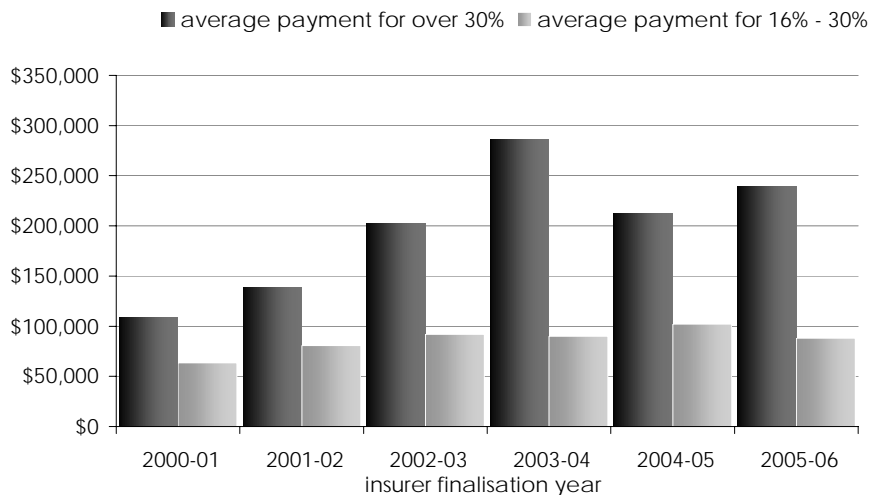
52. Table five provides the average payment amounts and the highest payment amount recorded for common law by permanent injury threshold. The average payments and the highest payments were more for those workers with a permanent injury threshold of 30 per cent or over.

Table five: Overview of payments by permanent injury threshold – averages and highest - 1993 scheme

insurer finalisation year	average payment for 30% or over	average payment for 16% - 30%	highest payment for 30% or over	highest payment for 16% - 30%
2000-01	\$109,437	\$63,379	\$820,000	\$166,500
2001-02	\$139,221	\$80,706	\$920,000	\$214,279
2002-03	\$202,879	\$91,992	\$1,639,918	\$220,000
2003-04	\$286,564	\$89,985	\$5,900,000	\$225,359
2004-05	\$212,989	\$101,983	\$973,342	\$324,000
2005-06	\$239,206	\$87,966	\$3,511,845	\$201,453

53. Chart four below shows the average payment amount by permanent injury threshold at insurer finalisation date. The chart indicates that injured workers with the higher degree of disability were paid higher average damages.

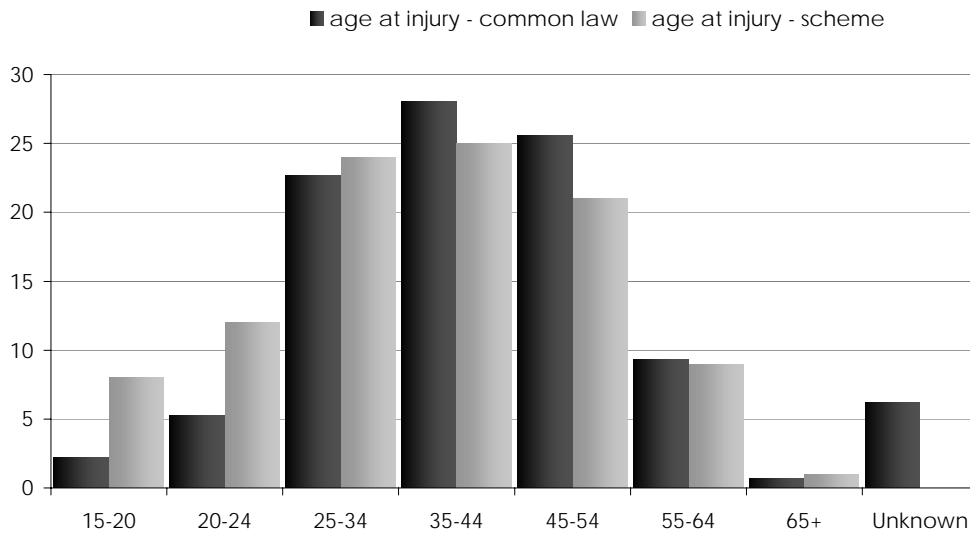
Chart four: Average payment amounts per permanent injury threshold–1993 scheme



Common law claims by age

54. Chart five below shows common law claims by the age group of workers at the time of injury. The data set indicates that workers who are aged between 35 and 44 are the largest age group that pursued common law proceedings by a small margin. The common law cases generally reflect the overall claims experience and the proportion of workers in the labour force.

Chart five: Age at injury year - 1993 scheme

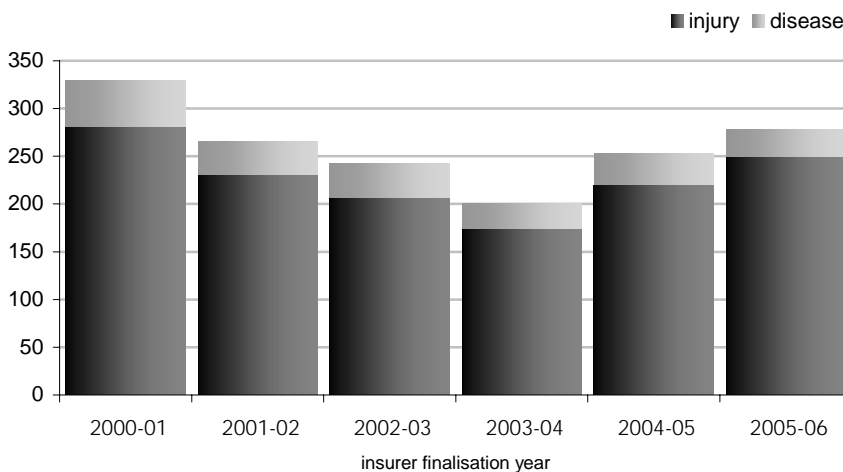


Injury and disease

55. Chart six below indicates the breakdown of injury or disease in common law by insurer finalisation year. The chart shows injuries made up most common law proceedings.

56. It should be noted when analysing the charts regarding injury and disease comparisons that 'diseases' include musculoskeletal disorders. Musculoskeletal disorders may include degenerative conditions that have resulted from injury.

Chart six: Common law by injury or disease by insurer finalisation year - 1993 scheme



57. Chart seven below shows whether workers who registered a degree of disability of 30 per cent or more pursued common law because of injury or disease. The information is shown by insurer finalisation year. Chart eight presents the same for workers with between 16 per cent and 30 percent degree of disability. The proportion of 16% to 30% cases has declined while the proportions of 30%+ cases have increased over time.

Chart seven: Common law by injury or disease - degree of disability 30% + - 1993 scheme

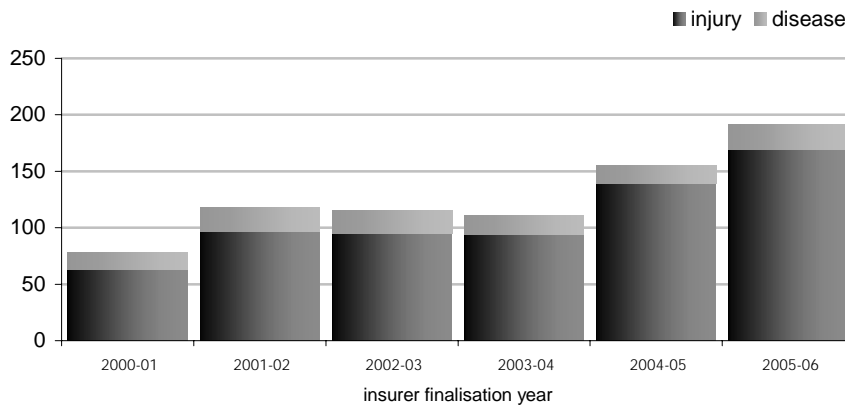
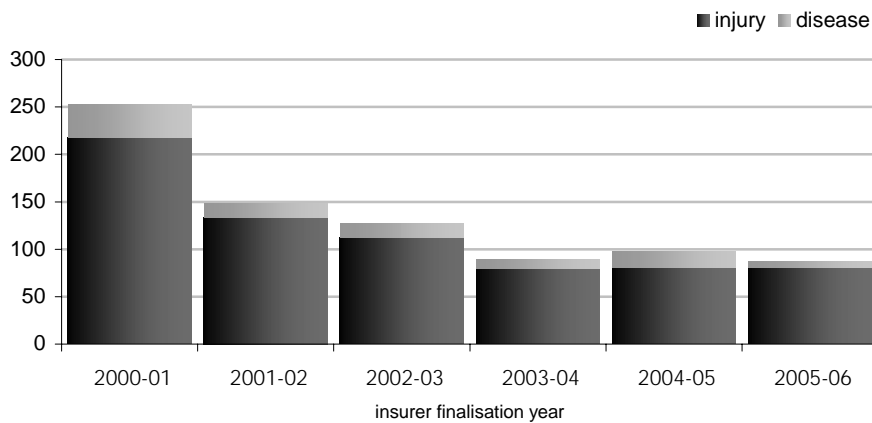


Chart eight: Common law by injury or disease - degree of disability 16% to 30% - 1993 scheme



Common law claims and bodily locations

58. Bodily locations recorded in the data provide primary information only about the main part of the body involved in the injury.

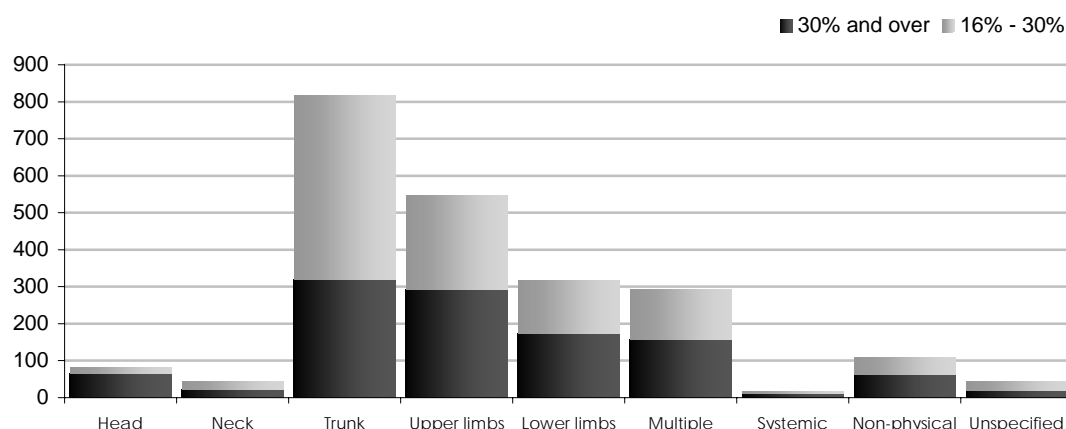
59. Table six shows the types of injuries to the main bodily location that lead to common law proceedings. The table indicates that 74 per cent of common law proceedings result from injuries involving the trunk, upper and lower limbs.

Table six: Common law by types of injuries by bodily location

Bodily locations	Percent of total
Head	4
Neck	2
Trunk	36
Upper limbs	24
Lower limbs	14
Multiple	13
Systemic	1
Non-physical	5
Unspecified	2
Total	100

60. Chart nine shows similar information as Table five but breaks down the information by the main types of injury, by bodily location and permanent injury threshold that lead to a common law claim. The proportions are typical of claims overall.

Chart nine: Bodily locations and common law -1993 scheme



61. Table seven shows the average common law payment in the data set by injury or disease on bodily location. Averages are calculated for records where payout is over \$999.

Table seven: Average common law payments by bodily location – 1993 scheme

bodily location	average common law payment by bodily location affected by injury	average common law payment by bodily location affected by disease
Head	\$159,971	\$123,348
Neck	\$477,289	\$111,800
Trunk	\$135,578	\$143,496
Upper limbs	\$139,782	\$97,104
Lower limbs	\$140,953	\$97,070
Multiple	\$207,421	\$188,899
Systemic	\$232,383	\$113,562
Non-physical	\$43,303	\$86,861
Unspecified	\$153,152	\$68,500
Total averaged	\$187,759	\$114,515

Average common law payments by industry

62. Table eight shows the average common law payments in the data set by either injury or disease for each industry. Averages are calculated for records where payout is over \$999.

Table eight: Common law by industry – 1993 scheme

ANZSIC industry code	numbers of injury	average payment for injury	numbers of disease	average payment for disease
Agriculture Forestry & Fishing	58	\$233,457	4	\$103,250
Mining	216	\$277,331	29	\$170,864
Manufacturing	428	\$164,067	37	\$131,545
Electricity Gas & Water Supply	17	\$236,629	3	\$78,333
Construction	214	\$147,637	21	\$153,217
Wholesale Trade	69	\$119,305	6	\$170,956
Retail Trade	125	\$127,239	15	\$107,142
Accommodation Cafes & Restaurants	28	\$90,417	4	\$112,615
Transport & Storage	83	\$125,335	10	\$109,676
Communication Services	1	\$85,000	0	\$0
Finance & Insurance	4	\$70,180	5	\$100,013
Property & Business Services	56	\$101,066	17	\$65,689
Government Administration & Defence	27	\$106,012	14	\$71,858
Education	38	\$105,471	19	\$74,427
Health & Community Services	125	\$109,948	19	\$89,133
Cultural & Recreational Services	22	\$205,017	4	\$130,250
Personal And Other Services	43	\$112,577	12	\$107,248
Total	1554		219	
Total averaged amount		\$142,158		\$104,483

Common law cases with a writ in the District Court

Data supplied from the District Court

63. Since October 2005, the District Court has reported information about finalised common law claims to WorkCover WA. This report is provided monthly to WorkCover WA and reflects common law claims at the District Court resulting from incidents occurring prior to the 14 November 2005 reforms.

64. Table nine below shows the reason for completion reported to WorkCover by the District Court². The figures shown in both tables represent cases from the 1993 scheme. The table shows that most cases finalised were consent judgements.

Table nine: Finalised cases reported to WorkCover WA by the District Court, reason for completion – 1993 scheme

month	total cases	consent judgement	dismissed by consent	due to case management	discontinued prior to trial	other
Nov-05	28	15	7	4	1	1
Dec-05	25	14	9	1	1	0
Jan-06	25	14	8	2	0	1
Feb-06	25	15	9	1	0	0
Mar-06	40	23	11	6	0	0
Apr-06	28	19	8	1	0	0
May-06	41	20	16	2	3	0
Jun-06	33	14	14	4	1	0
Jul-06	41	23	12	6	0	0
Aug-06	41	13	18	6	4	0
Sep-06	23	15	6	1	0	1
Oct-06	39	19	16	4	0	0
Nov-06	47	24	18	5	0	0
Dec-06	44	26	12	3	1	2
Jan-06	35	16	14	3	2	0
total	515	260	178	49	13	5

²The data is collected from the Perth District Court only. The data has not been verified against WorkCover WA data used elsewhere in this report.

65. The total cases finalised between November 2005 and November 2006 is reported by the District Court to be 515.

66. Table ten below shows the dollar values reported to WorkCover WA by the District Court for cases where a consent judgement was made.² Of these, 239 were consent judgements for plaintiffs, which is 46 per cent of the total cases with a writ in the District Court. The average consent judgement amount calculated from the District Court between November 2005 and December 2006 was \$164,246.

Table ten: Finalised cases reported to WorkCover WA by the District Court – 1993 scheme

month	consent judgements for plaintiffs	highest	lowest	total value	Average judgement for plaintiffs
Nov-05	14	\$490,000	\$12,000	\$2,669,532	\$190,680
Dec-05	12	\$262,500	\$14,200	\$970,529	\$80,877
Jan-06	9	\$307,500	\$97,652	\$1,625,073	\$180,563
Feb-06	14	\$414,956	\$7,500	\$289,788	\$206,913
Mar-06	20	\$475,000	\$31,000	\$3,450,156	\$172,508
Apr-06	17	\$269,009	\$10,000	\$2,073,309	\$121,959
May-06	19	\$585,000	\$50,000	\$2,896,788	\$177,379
Jun-06	11	\$364,400	\$30,000	\$1,696,801	\$154,254
Jul-06	22	\$626,098	\$20,000	\$4,033,634	\$183,347
Aug-06	13	\$270,000	\$14,490	\$1,459,990	\$112,306
Sep-06	11	\$600,000	\$70,000	\$1,979,798	\$179,981
Oct-06	19	\$820,000	\$62,000	\$3,472,393	\$182,757
Nov-06	22	\$509,928	\$47,500	\$4,508,453	\$204,928
Dec-06	24	\$852,029	\$6,000	\$5,680,625	\$236,692
Jan-07	12	\$405,305	\$50,000	\$2,448,005	\$204,000
total	239	\$7,251,725	\$522,342	\$39,254,874	\$2,589,149
per month average	16 cases	\$483,448	\$34,822	\$2,616,991	\$172,609

Case 3

The worker was a machinist in the manufacturing/engineering industry. He sustained injuries through two incidents:

- thumb severed in lath; and
- slipped causing back and knee injuries.

The amount settles damages for both incidents.

Injured worker: Male **Year of birth:** 1953
Date of injury: 15/07/2004 **Permanent degree of disability:** 30%
Date case completed by District Court: 24/11/2005
Duration in days between date of injury and case completed by District Court: 497 days
Total value of case including statutory benefits: \$284,214.55
Consent judgement amount: \$185,000 includes judgement fee of \$15,000
Legal costs: \$33,350.91 16 – this figure represents the legal costs of the employer not the worker
Weekly payments quantum: \$35,652
Date of first weekly payment: 24/01/2005 **Date of last weekly payment:** 18/01/2006
Medical costs: \$10,266.75
Hospital costs: \$2,107
Treatment and appliance: \$7,779.25
Vocational rehabilitation: \$5,908.63
Miscellaneous payment: \$4,149

Case 4

Worker was a carer in a nursing home and sustained neck, back, arm, psychological injuries when a resident of the nursing home struck her in the throat with his elbow.

Injured worker: Female **Year of birth:** 1954
Date of injury: 07/05/2005 **Permanent degree of disability:** 16%
Date case completed by District Court: 01/03/2006
Duration in days between date of injury and case completed by District Court: 298 days
Total value of case including statutory benefits: \$122,443
Consent judgement amount: \$80,000, includes judgement fee of \$7,000
Legal costs: \$11,325 – this figure represents the legal costs of the employer not the worker
Weekly payments quantum: \$20,033.87
Date of first weekly payment: 30/06/2005 **Date of last weekly payment:** 05/04/2006
Medical costs: \$10,203.67
Hospital costs: nil recorded
Treatment and appliance: nil recorded
Vocational rehabilitation: nil recorded
Miscellaneous payment: \$880

Appendix

Common law rights in other jurisdictions

Other workers' compensation jurisdictions in Australia have various approaches to the issue of claims at statute and common law.

Common law rights have been abolished under the Commonwealth's Comcare and Seacare schemes. South Australia, the ACT, the Northern Territory and New Zealand have also abolished common law claims for workplace accidents.

In Victoria, actions are available for workers with a level of impairment in excess of 30 per cent or those deemed 'seriously injured'.

Tasmania also has a 30 per cent impairment threshold and workers have two years in which to elect to pursue common law.

New South Wales employs a 15 per cent minimum impairment threshold test, similar to that of Western Australia.

Queensland has no formal threshold, however workers with a work related impairment (WRI) of at least 20 per cent are entitled to common law access and statutory lump sum compensation. Workers with less than 20 per cent WRI must elect whether to accept lump sum payments offered by WorkCover Queensland or pursue common law. WorkCover Queensland, as the publicly underwritten workers' compensation insurer of Queensland employers, makes the injured worker an offer of a statutory lump sum payment in redemption of any proven work related injury. If WorkCover Queensland and the injured worker cannot agree on quantum, the injured worker may pursue a common law claim, regardless of the degree of injury. However, in the event that a court makes an award of damages that is less than the amount originally offered by WorkCover Queensland, the injured worker will be liable for the entire of court costs.