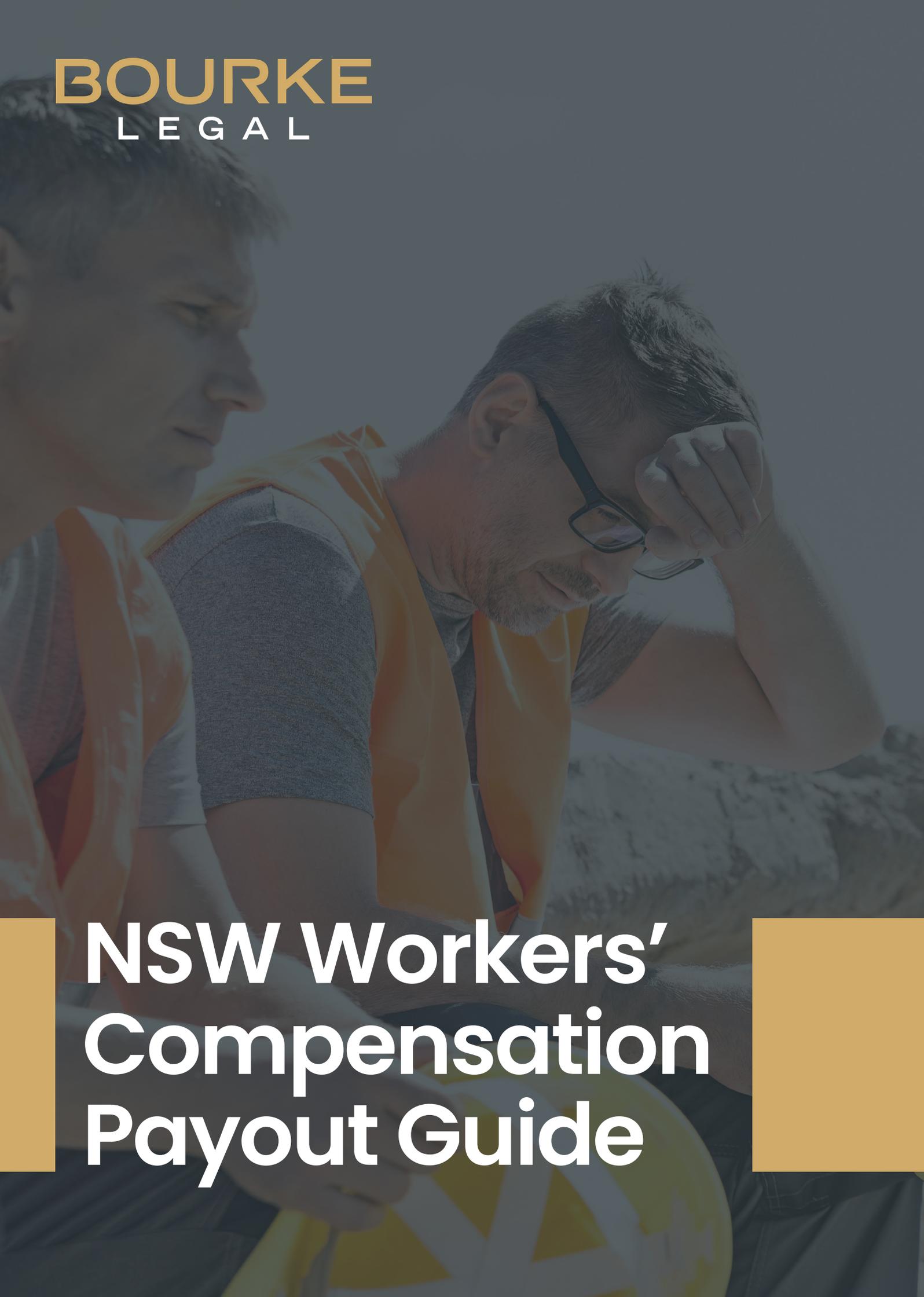


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NSW Workers' Compensation Payout Guide

You've been injured at work. You can't believe that this has happened to you. You might need to attend the hospital, your GP or a specialist for treatment. But after the initial shock has subsided, one of your next questions will likely be "What compensation am I entitled to?" It's a fair question. You may be receiving a reduced income, or no income at all. You have expenses to pay – perhaps a mortgage or rent, groceries, bills, expenses relating to your kids. And you could now have the added expense of medical treatment.

This Bourke Legal Guide will answer all of your questions regarding your entitlements to compensation after a NSW work injury.

First things first

It is important to note, for all of the compensation that will be discussed in this Guide, you will only be entitled to receive it if your Employer's Workers Compensation Insurer is satisfied that:

1. your injury arose out of, or in the course of your employment; and
2. your employment was a substantial contributing factor to your injury.

If the Insurer does not agree that you are entitled to compensation based on either of the above, you should seek legal advice from the team at Bourke Legal immediately. We are experienced in challenging Insurer's decisions and ensuring you receive the compensation that you are entitled to.

What type of worker are you?

One other important note – there are two types of workers recognised under the NSW Workers Compensation scheme – exempt and non-exempt workers. Depending on what category you fall into, your compensation may be calculated differently. Exempt workers are Police Officers, Paramedics and Firefighters. Any worker that does not fit into this category is a non-exempt worker.

A few scenarios to assist

It is often easier to explain the complexities of the NSW Workers Compensation scheme by reference to a few examples. So, let's meet three fictitious workers – **Robert**, **Jane** and **Michael**, to assist us.

Non-exempt workers

- **Robert** is a 35-year-old roofer earning \$1,000 per week. He sustained a severe injury to his lower back when he fell from a ladder whilst at work. His injury will require surgery.
- **Jane** is a 40-year-old teacher earning \$1,500 per week. She sustained a psychological injury (depression and anxiety) due to persistent bullying and harassment by the school's principal.

Exempt workers

- **Michael** is a 45-year-old police officer earning \$2,000 per week (including around \$200 per week of overtime). Michael sustained an injury to his left knee during a wrestle with an offender, as well as a psychological injury (post-traumatic stress disorder) due to the 10+ years of exposure to violent, traumatic and stressful events during his policing career.

Now, let's look at what you, as well as **Robert**, **Jane** and **Michael**, may be entitled to:

Weekly benefits

If you are unable to work due to your work injury, you may be entitled to weekly payments of compensation from your Employer's Workers Compensation Insurer.

Non-exempt workers

For the first 13 weeks after your injury, you are eligible to receive 95% of your pre-injury weekly earnings. **Robert** would receive \$950 per week during this period, whilst **Jane** would receive \$1,425 per week.

From 14 weeks and up to 130 weeks (2.5 years) after your injury, you are eligible to receive 80% of your pre-injury weekly earnings. **Robert** would receive \$800 per week during this period, whilst **Jane** would receive \$1,200 per week.

You may continue to receive weekly compensation up to 5 years after your injury if you remain unable to work, or, if you are only able to work less than 15 hours per week.

After 5 years, you will only continue to receive weekly benefits if you are still unable to work, or if you are only able to work less than 15 hours per week, and you are agreed or assessed to have more than 20% Whole Person Impairment ("WPI") arising from your injury - more on this later.

Exempt workers

For the first 9 months after your injury, you are eligible to receive your full award rate, less any overtime. **Michael** would receive \$2,000 per week during this period.

For the next 7 years after your injury, you will receive a combination of payments from your Employer's Workers Compensation Insurer and your Income Protection Insurer, to add up to a total of 75% of your award rate. Michael would receive \$1,500 per week during this period.

After 7 years, Income Protection payments will cease, but you will continue to receive weekly benefits from your Employer's Workers Compensation Insurer. As at the date of this Guide, **Michael** would receive approximately \$545 per week as a single person. This rate increases if he has a dependent spouse and / or children. If he had a dependent spouse and three dependent children, for example, he would be receiving approximately \$1,075 per week.

If you return to work in any capacity, these weekly benefits would be reduced so you are not receiving more than your award rate.

For both non-exempt and exempt workers, all entitlements to weekly benefits cease at the age of 68.

Medical expenses

If you are receiving weekly benefits, you are also entitled to payment of your medical expenses. The amounts paid to you will either be paid directly to your treatment provider or reimbursed to you.

For **Robert**, this could include payment for his surgery, physiotherapy and medication expenses. For **Jane**, this could include sessions with a Psychologist and Psychiatrist, medication expenses and inpatient treatment. For **Michael**, this could include any or all of the above treatment. If it is related to your injury, and reasonably necessary, it should be paid for.

Lump sum compensation

If your injury has left you with permanent impairment, you may be entitled to a payment of lump sum compensation. These payments are also referred to as section 66 claims. All lump sum compensation payments are tax-free.

Non-exempt workers

If you have sustained a physical injury, you can be assessed by an Independent Doctor to determine your level of Whole Person Impairment ("WPI"). If your WPI is 11% or more, you may be entitled to lump sum compensation for this injury. As at the date of this Guide, 11% WPI equates to a lump sum amount of \$24,810 whilst a 30% WPI equates to a lump sum amount of \$86,370. **Michael's** injury may be assessed at around 15% WPI, entitling him to \$37,770.

If you have sustained a psychological injury and are assessed by an Independent Doctor to determine your level of Whole Person Impairment ("WPI"), you must reach the threshold of 15% WPI or more to bring a claim for lump sum compensation. The same monetary amounts apply, it is just a higher threshold to receive lump sum compensation for psychological, rather than physical injuries. **Jane's** injury may be assessed around 19% WPI, entitling her to \$50,730.

Exempt workers

The tables used to determine the amounts of compensation exempt workers are entitled to are different to the non-exempt worker tables. However, for exempt workers, there is no minimum threshold for bringing a lump sum compensation claim. If you have even 1% WPI, you can bring a claim which, depending on the precise date of your injury, could equate to a lump sum amount of \$1,375. **Michael's** knee injury may be assessed around 6% WPI, entitling him to \$8,250, whilst his PTSD may be assessed around 21% WPI, entitling him to a further \$33,000.

If an exempt worker is assessed to have WPI of 10% or more, as with **Michael's** PTSD claim, he can bring a further claim for pain and suffering arising from that injury, up to a maximum of \$50,000. These are also referred to as section 67 claims. **Michael** may receive a further \$20,000 for the pain and suffering he has experienced due to his PTSD.

Death benefits

If a worker – exempt or non-exempt – dies due to an injury sustained in the course of their employment, their dependent family, or their Estate, can make a claim for the Workers Compensation death benefit.

As at the date of this Guide, the lump sum benefit available upon the death of a worker is over \$860,000. Funeral expenses of up to \$15,000 can also be claimed, as well as a weekly payment for each child (currently over \$150 per week) until that child reaches the age of 16, or 21 if they continue to study.

Work Injury Damages

If your WPI has been agreed or assessed to be over 15% (regardless of whether you have sustained a physical or psychological injury), and you can show your injury was caused by your Employer's negligence, you may be able to bring a Work Injury Damages claim.

A Work Injury Damages claim, also known as a Common Law claim, provides compensation if you are unable to return to your pre-injury employment. You can claim past and future loss of wages and superannuation, to retirement age. These lump sums are also tax free.

It is important to obtain legal advice about whether bringing a Work Injury Damages claim is right for you. Some people may not meet the 15% threshold, or be able to prove their Employer was negligent. For example, **Robert** might find it difficult to argue his Employer was negligent if he was talking on his mobile phone whilst at the top of the ladder. In contrast, it would be much easier to prove negligence if his Employer instructed him to use a ladder that it knew was faulty, even after **Robert** had raised some concerns about the ladder.

It might be financially worthwhile for **Jane** to bring a Work Injury Damages claim against her Employer. If she has no ongoing work capacity due to her depression and anxiety, she would effectively have a claim for the next 28 years of her working life at \$1,500 per week, plus superannuation. This could equate to a claim in the millions of dollars.

This might not be the same for **Michael**, however. As an exempt worker, he is guaranteed weekly benefits to 68, which might work out to be more financially valuable to him than bringing a Work Injury Damages claim.

What next?

If you have been injured at work, you may be entitled to compensation. Although it will not change what has happened to you, it may make navigating life with an injury that little bit easier.

At Bourke Legal, we can assist you to ensure you receive all of the compensation you are entitled to. Give us a call today.