



Northern
Territory
Government

Government Response:

Review into the Northern Territory Workers Compensation Scheme

September 2014



Government's Response to the Review Recommendations

The Northern Territory Government supports a balanced approach to assisting injured workers to return to work while reducing red tape and providing greater certainty to workers and employers. The Government is committed to ensuring long-term financial viability of the Scheme for NT employees and employers, and to making the Scheme best practice and comparable with other Australian schemes.

The Northern Territory Government acknowledges the comprehensive and detailed nature of the independent review into the Northern Territory Workers Compensation Scheme. The review, and its recommendations, was overseen by the Workers Rehabilitation and Compensation Advisory Council that is made up of industry members as well as business and worker representatives. The review also undertook considerable public and stakeholder consultation, including an 84-day public comment period, which resulted in 72 submissions. The recommendations made in the review have the broad support of the industry.

The last comprehensive review dates back to 1984, and paved the way for the *Work Health Act*, which has underpinned the scheme for 27 years. While there have been some small reviews on specific issues, the long time between comprehensive reviews now means that the Scheme is considerably out of step with other jurisdictions. This is concerning both to the insurance industry and the business community who have made a number of requests for a full review over the last decade.

The current scheme provides no fault coverage for eligible workers who are injured at work. Benefits of the scheme include weekly payments, medical treatment, rehabilitation costs and in some cases, payment for permanent impairment. The scheme is focused on rehabilitation and return to work but with the potential for injured workers to be paid income maintenance until pension age and medical expenses for life. It is a generous scheme in comparison with other schemes in Australia.

A recent independent actuarial review of the scheme indicated that insurers, as a whole, have lost money for 3 of the last 5 years, with the net outcome also being a loss. This indicates the scheme either needs to review benefits or increase premiums to employers. The necessary premium increase would be in the order of 15 to 20% and would be a considerable additional burden to local businesses which are already paying amongst the highest premiums in Australia.

In light of this, the review is advocating that changes to benefits are necessary if the Northern Territory scheme is to remain affordable for business and to ensure Northern Territory businesses continue to be competitive.

The major changes arising from the review include:

- Limiting the duration for weekly payments to 5 years, except if the level of permanent impairment is 15% or more;
- A new definition of worker based on PAYG;
- Presumptive legislation for career fire fighters;
- An increase in death and funeral benefits;
- Allowing for binding settlements of claims; and
- Eliminating compensation for most strokes and heart attacks

The full report and a summary document can be found on the NT WorkSafe website <http://www.worksafe.nt.gov.au/Publications/Reports/>

Government supports in principle every recommendation of the review. A summary of the recommendations and Government's response, together with additional changes Government requires are outlined in this paper.

Responses to recommendations

1. Definition of Worker

Retain the current results test definition but clarify 'is paid to achieve a specified result or outcome', or adopt a 'pay as you go" (PAYG) based definition.

Under the current definition a person is a worker unless they meet the results test or they supply a personal services business determination from the Australian Tax Office.

Government response: Supported by adopting the PAYG definition.

The results test currently used in the Northern Territory was used in Queensland up until 1 July 2013. After considerable consultation with business, Queensland then changed to align with the Australian Taxation Office definition based on PAYG. A change to PAYG has also been recommended in the 2014 review in Western Australia.

The effect of the Northern Territory moving to a PAYG test will achieve better consistency with Australian Taxation Office requirements and with the other northern Australian jurisdictions of Queensland and Western Australia.

2. Amend the legislation to align with the authorisation on the claim form

It is recommended that the relevant section in the legislation be amended to reflect the broader intent of the authorisation that appears on the claim form. This will help avoid any legal dispute.

Government response: Supported

3. Taxi Drivers to be workers unless a written bailment agreement exists

Taxi drivers are generally excluded from workers compensation coverage because their contractual arrangements are one of bailment rather than employment. It was recommended that taxi drivers not party to bailment agreements to be recognised under the definition of worker.

Government response: Supported but no longer required

Because of the proposal for a PAYG based definition of a worker, no special provision is proposed for taxi drivers. Under the proposed definition, taxi drivers whose contractual arrangements mean that they are subject to the PAYG taxation provisions will be workers, otherwise they will not.

4. Alternative Employer Incentive Scheme

The Alternative Employer Incentive Scheme (AEIS) be retained and NT WorkSafe promote the AEIS to stakeholders, in particular insurers and rehabilitation providers. NT WorkSafe to further promote the AEIS through the Department of Business networks.

Government response: Supported

5. Promote to industry the benefits of return to work

Although the obligations on the employer and employee in sections 75A and 75B of the Act are clear, simple and explained by the Courts, there is strong support for greater employer and worker accountability and involvement in rehabilitation and return to work. The recommendation is that NT WorkSafe provides information about the benefits to industry of return to work options; injury management; and early and prompt formulation of injury management or return to work plans.

Government response: Supported

6. Reform the definition of “rehabilitation”

Stakeholder feedback indicated there was a need to better understand what rehabilitation means. The Queensland definition (section 40 and regulation 109 of the Queensland legislation) provides a comprehensive definition that is intuitive and clearly understood and provides for the worker to be treated with appropriate respect and equity. The recommendation is to include a definition of rehabilitation based on the Queensland definition.

Government response: Supported

7. Define workplace based return to work program

Stakeholders expressed a need for clear meaning and definition of the intent of return to work programs. The recommendation is to define “workplace based return to work program” to include the provision of appropriate services which are aimed at maintaining the employee in, or returning them to, suitable employment.

Government Response: Supported

8. Define Suitable Employment

“Suitable employment” to be defined to include criteria similar to that in the definition of “most profitable employment” such as the workers age, experience, training and other existing skills, potential for rehabilitation training, language skills, the impairments suffered by the worker, self-employment and other location.

Government response: Supported

9. Employer to provide written notice before commencing review under section 104

After 104 weeks of incapacity, “loss of earning capacity” is assessed on the basis of the most profitable employment that could be undertaken by that worker, whether or not such employment is available to him or her.

It has been recommended that in relation to the “104-week rule”, a procedure be added requiring the employer to give the worker written notice of the review, setting out relevant information.

Government response: Supported.

10. Payment of reasonable expenses for family counselling, financial counselling and employment counselling

Counselling is specifically mentioned only once in the legislation, and that relates to financial counselling supporting an application for the commutation of weekly payments. The provision for broader counselling and support at an early stage, including in relation to a worker’s family would assist the process of rehabilitation

Government response: Supported

11. Treatment Guidelines

There was support for the development of treatment guidelines developed in other Australian jurisdictions and internationally, in relation to common injuries.

The review recommended that NT WorkSafe liaise with other jurisdictions, the AMA and other key stakeholders to adopt as appropriate guidelines developed for the treatment of common work injuries.

Government response: Supported

12. Regulation of medical and allied fees

NT WorkSafe to develop guidelines based on the schedule of fees recommended by health professional organisations such as the AMA and the Australian Psychological Society. Care should be taken that rates do not result in reduced access to treatment across the NT.

Government response: Supported in principle but the amendment is a variation on the recommendation

It has not been demonstrated that overcharging is a significant problem. The review has identified the possible concern that regulation of fees could restrict access to service in some parts of the Territory. Regulation of fees may lead to “gap” charges being imposed on injured workers.

Government intends creating a head of power for appropriate regulation should circumstances warrant in the future.

13. Clinical Framework

The Clinical Framework for the Delivery of Health Services is an evidence-based policy framework that outlines a set of five guiding principles for the delivery of allied health services to injured employees. NT WorkSafe has already afforded the opportunity to insurers to use the Clinical Framework in consultation with treatment providers. NT WorkSafe should continue work in relation to the adoption of the Clinical Framework in the Scheme.

Government response: Supported

14. Medical certificates should be revised

A key function of medical certificates is to describe the diagnosis, cause and nature and extent of incapacity including restrictions; and to guide workers and employers in relation to injury management and return to work

Medical certificates should be revised to focus on the worker’s capacity, rather than incapacity; and import from the Clinical Framework the appropriate matters that should be reported on.

Government response: Supported

15. Northern Territory to adopt AMA5 with modifications

Currently, the assessment of impairment is determined by reference to American Medical Association Guides to the Evaluation of Permanent Impairment (4th Edition), known as AMA 4.

Other jurisdictions use AMA guides or variants as part of their permanent impairment assessment processes. Work has been done at a national level with a view to more consistency between jurisdictions. Most jurisdictions support moving to a modified version of AMA 5.

Government response: Supported

16. Reasonable payment for medical and rehabilitation costs during deferment

In the case of a decision to defer the consideration of liability, there is a requirement on the employer to make weekly payments of compensation, and, in the case of claims for mental stress, engage in rehabilitation.

Many deferred claims are subsequently accepted. If insurers paid for treatment and rehabilitation during a deferral (within limitations) it would ensure that a worker's recovery was not compromised by lack of treatment or rehabilitation during the deferral period.

Government response: Supported in principle but the amendment is a variation on the recommendation

This is supported but it would not be reasonable for an employer to fund expensive treatment when liability has not been determined. For claims not involving mental stress the provision will exclude hospital inpatient and associated surgical costs as well as the costs of interstate evacuations.

17. Right of recovery where an injured employee has acted dishonestly

There should be a right of recovery where an injured employee has acted dishonestly, the claim is fraudulent, or an injured employee has obstructed or delayed the determination of the claim, and liability is subsequently determined not to exist.

Government response: Supported

18. Tools to permit individual budgets for workers

Claims management can be improved for the benefit of worker and employer with legislation supporting the formulation of individual budgets and financial help towards remuneration generating activity. Access to this flexibility would encourage innovation in claims service delivery.

Government response: Supported

19. Increase in Death benefit and Funeral Costs

It is recommended that the lump sum payment for death increase from 260 times average weekly earnings (AWE) to 364 times. This would mean an increase from \$376,818 to \$527,345. It is also recommended that the benefit for funeral costs increase from 10% to 20% of the annual equivalent of AWE, resulting in an increase from \$7,536.36 to \$15,073.

In addition introduce a new benefit, being counselling for family members to a maximum of 5% of the annual equivalent of AWE.

Government response: Supported

20. Review of recurrences and reactivation of claims

NT WorkSafe to carry out a review of recurrences and reactivation of claims and determine whether to place eligibility criteria around recurrences and whether to place time limits. In particular, that the legislation includes a process and time limits for the reopening or reactivating of existing claims.

Government response: Supported

21. Fraud

The fraud and penalties provisions should be reviewed. The legislation currently contains no specific provision for fraud or misleading information relating to information provided to insurers and self-insurers and it is recommended consideration be given to adopting provisions similar to sections 533–537, of the Queensland Workers Compensation and Rehabilitation Act.

Government response: Supported

22. Mental stress claims

There is currently a defence to a mental injury claim based on reasonable administrative action and reasonable disciplinary action.

It has been recommended that there is an amendment to replace the current formulation of “administrative action” with “management action” using section 40 of the (Vic) *Workplace Injury Rehabilitation and Compensation Act 2013* as a model.

This change will make it clearer what management action is available to an employer in dealing with employment issues. An employer that takes reasonable management action will minimise their exposure to a claim for work related stress.

Government response: Supported

23. Strokes and heart attacks

It has been recommended the legislation be amended so that ordinary diseases of life are not compensated; and incidents that are a manifestation of an underlying disease (such as heart attacks and strokes caused by degenerative disease and similar phenomena) will not be covered unless the employment was the real (or dominant), proximate or effective cause of the incident.

Government response: Supported

24. Definition of normal weekly earnings

The calculation of Normal Weekly Earnings (NWE) is of key importance to determining an injured workers compensation entitlement.

It is recommended that the definition of NWE be amended to reflect the average amount paid to the employee for the 12 months prior to the injury.

Government response: Supported in principle but the amendment is a variation on the recommendation

Government’s position is that Normal Weekly Earnings should reflect as closely as possible the amount a person would have continued to earn had they not been injured, with averaging only being used where the person’s earnings are irregular

25. Cap on Non Cash Benefits

The legislation currently allows for non-cash benefits for accommodation, meals and electricity, to be included in the assessment of a workers normal weekly earnings for compensation purposes. A cap of \$500 has been recommended.

Government Response: Supported but with an additional limitation

Concerns have been raised over non-cash benefits being paid to workers who have returned to their own residence following an injury. This typically applies to the fly in, fly out worker (FIFO). In this situation it is not unusual for benefits to exceed the workers normal wage once non cash benefits have been applied. This has the effect of discouraging early return to work.

Therefore where a worker works for an employer under a drive in drive out, or fly in fly out arrangement or any similar arrangement and is receiving accommodation, meals and/or electricity that is provided as a benefit in a form other than an amount paid or credited to a worker, the value of these benefits shall not be included in determining the worker's normal weekly earnings.

26. Normal Weekly Earnings (NWE) should be capped at 250% of AWE

For the first 26 weeks of incapacity, weekly payments are paid at the workers pre-injury level, as calculated in accordance with the definition of NWE. There is currently no cap on NWE. It is recommended that after 26 weeks of incapacity, a workers' Normal Weekly Earnings (NWE) should be capped at 250% of Average Weekly Earnings (AWE). On current AWE, it would produce a weekly cap of \$3,623.25.

Government response: Supported

27. Formal notice be provided to the worker of any pending step down

Formal notice be provided to the worker of the pending step down; and the step down not to take effect until 14 days after the worker has been notified.

Government response: Supported in principle but the amendment is a variation on the recommendation

Such notice also to be provided pending legislated cessation of benefit after 5 years of incapacity and in respect of older age workers.

28. Limiting duration of compensation for incapacity and medical expenses

In most jurisdictions there is a limit to the duration of weekly payments and medical costs. Currently in the Northern Territory a workers entitlement to compensation can continue until retirement age.

The recommendation is that the majority of claimants will cease to have an entitlement to weekly compensation when 260 weeks compensation have been paid; with other medical and treatment costs to end 12 months after that date.

However this time will not apply to an injured worker whose injury results in permanent impairment if the degree of permanent impairment resulting from the injury is 15% or greater. The assessment of impairment is to be limited to the primary injury and exclude secondary injury, such as functional overlay (psychiatric).

Government response: Supported

29. Legal representation at Mediation

Stakeholders supported alternative dispute resolution. Most of the issues raised by stakeholders concerned the right to legal representation, disclosure of information, and process.

In relation to legal representation, the current position is that “a party is not entitled to legal representation in the mediation” unless the Mediator agrees.

Stakeholders supported parties being represented by a lawyer at mediation “as a right”.

Government response: Supported in principle but the amendment is a variation on the recommendation

Government supports either party having legal representation, subject to the mediator’s approval - see comments in response to recommendation 30

30. Payment for legal advice

NT WorkSafe to approve a fee (up to \$1,500) payable by the employer or insurer for workers to obtain legal advice of and incidental to the Mediation.

Government response: Supported in principle but the amendment is a variation on the recommendation

Government does support the worker having access to legal advice, paid for by the employer (insurer), where the mediator is of the opinion that legal representation will facilitate the mediation process.

However Government is concerned that to provide access to legal representation “as a right” will become the norm and that it will unnecessarily increase scheme costs. Experience has shown that the majority of mediations do not require involvement of lawyers.

31. The Mediation provision be enhanced by the creation of protocols

The mediation provisions are aimed at reducing the time taken to deal with disputes. This was to be achieved by providing for the early disclosure of information by the parties; requiring the parties to clarify and consider issues in dispute; and provide an opportunity to settle the dispute. The overall process, including disclosure of information, can be assisted by adopting a similar protocol to Northern Territory Supreme Court Practice Direction 6.

Government response: Supported in principle but the amendment is a variation on the recommendation

Government supports the concept of improving the engagement of the parties in the mediation process but prefers the inclusion of time limits in the legislation for the provision of information rather than establishing protocols as recommended.

32. Administrative Appeals Tribunal

The Northern Territory Attorney- General has announced the creation of a centralised Administrative Appeals Tribunal.

NT WorkSafe to further consider the merit of transferring the adjudication of disputes to the Administrative Appeals Tribunal

Government response: Supported

33. Revise Deemed Diseases

NT WorkSafe to continue its work with other jurisdictions through Safe Work Australia with a view to revising Schedule 1 of the Act in relation to deemed diseases.

Government response: Supported

34. Presumptive legislation for firefighters

New presumptive workers' compensation legislation is recommended to benefit full time firefighters who contract cancer in the performance of firefighting duties. This type of legislation has been enacted in several jurisdictions in Australia and internationally.

Government response: Supported

35. Align the NT Scheme with National Injury Insurance Scheme (NIIS)

Consideration to be given to minimum NIIS benchmarks (which are pending) and the need to align the NT workers compensation scheme with NIIS.

Government response: Supported

36. Settlement of disputed claims

There should be provision in the legislation to allow for the settlement of disputed claims for compensation (whether disputed on a question of fact or law or both); and settlement of contested Applications to the Work Health Court.

Government response: Supported in principle but the amendment is a variation on the recommendation

Government intends that any settlement within the first 104 weeks from injury be subject to a 6 month cooling off period. In other words, the settlement is not binding until 6 months has elapsed.

It is also intended that any settlement in which the worker is not legally represented will carry an obligation that the insurer will pay the reasonable cost of the worker receiving independent legal advice, at any time in the 6 month period.

37. Negotiated Settlements

There is currently no provision in the Act for the finalisation of the claim by the payment of a lump sum. It is recommended that the Act should provide for negotiated settlements of statutory benefits in the appropriate cases. The legislative machinery of negotiated settlements should seek to avoid the availability of lump sums militating against effective rehabilitation.

Government response: Supported

It is intended that there be a qualifying period of 104 weeks before a negotiated settlement. This will minimise the possibility of negotiated settlements preventing effective rehabilitation.

38. Assessment of weekly payments of compensation component of lump sums in accordance with principles similar to sections 21 and 22 of PILDA

Provision to be made for the assessment of weekly payments of compensation component of lump sums in accordance with principles similar to sections 21 and 22 of the *Personal Injuries (Liabilities and Damages) Act* (PILDA). The calculation of future weekly compensation would be based on assumptions about the injured worker's future earning capacity; and accord with the injured worker's most likely future circumstances had the injury not occurred

Government response: Supported

39. Structured settlements

Provision should be made for structured settlements, allowing for settlements that are paid by way of an annuity.

Government response: Supported

40. No Common Law

It is recommended that the scheme maintain the abolition of common law action by a worker against his or her employer.

Government response: Supported

41. Specify Objectives of Act

Although the legislation has as one of its functions the requirement to "further the objects of the WRC Act", there are no objects specified in the Act.

It is recommended that objects be included. For example that the scheme is fair, affordable, efficient and effective and provides adequate and just compensation to injured workers, balanced to ensure workers compensation costs are contained to reasonable cost levels for employers and minimise the burden on Northern Territory businesses.

Government response: Supported

42. Scheme Monitoring Committee to continue examining scheme performance

The Scheme Monitoring Committee to continue examining pricing, funding ratios and scheme performance.

Government response: Supported

43. Recovery of compensation

There should be specific provision to allow for the recovery of compensation where the compensation has been paid because of a false or misleading statement or representation; has been paid because of a failure or omission to comply with a provision of the Act.

There should be some bar to recovery where the insurer or employer has failed to calculate benefits accurately or the period over which the overpayment seeks to be made is old (for example, no recovery after 6 months has elapsed).

Government response: Supported

44. Improved benefit for older workers

Provision to be made for weekly payments for up to 104 weeks of incapacity for older workers injured at or about the legislative retirement age (currently a person injured after 66.5 years of age gets a maximum of 26 weeks).

Government response: Supported

45. Review contractual indemnities

In 2012, WorkCover WA issued a Bulletin in relation to contractual indemnities. It was concerned that certain contractual indemnities and mutual indemnity arrangements threatened the viability of the WA workers' compensation scheme. It is recommended that these arrangements be reviewed in the Northern Territory.

Government response: Supported

46. Review the indemnity provided “independently of the Act”

The Act currently requires every employer to obtain a policy of insurance to cover the employers liability “for an amount of not less than the prescribed amount in respect of his or her liability independently of” the Act. Considering that common law is excluded in the Northern Territory it is unclear what the purpose is for this protection. The recommendation is that the indemnity “independently of the Act” should also be reviewed.

Government response: Supported

47. Keep Scheme under Review

The Workers Rehabilitation and Compensation Advisory Council should review relevant parts of the Scheme annually; and the Scheme be reviewed substantively every 5 years.

Government response: Supported

48. Comcare changes

Changes regarding Comcare need to be monitored and the appropriate representations be made to the Commonwealth government regarding the impact on the Northern Territory scheme.

Government response: Supported

49. Training for insurance company staff

NT WorkSafe, the Department of Business and training providers such as Charles Darwin University examine how training can be delivered in the specialised area of workers' compensation and personal injuries claims management via relevant formal course material to assist the learning and development of case managers and others.

Government response: Supported in Principle.

Training in personal injury management is already available through recognised training institutions.

Rather than create additional industry training courses, NT WorkSafe will continue to work with insurers and self-insurers to ensure that appropriate in house training is provided by insurers and self-insurers.

50. Review and update penalties in the legislation

NT WorkSafe review and update penalties in the legislation.

Government response: Supported

51. Weekly payment time limitations to be calculated in aggregate

The date of injury may not necessarily be the start of the period incapacity. Periods of incapacity may not be linear and could be disjointed, depending on when incapacity results in actual loss of wages.

The recommendation is that weekly compensation should be for the aggregate of the periods of incapacity that results in actual loss of wages, not simply based on lapsed time.

Government response: Supported

52. Definition of Shortness of time

In calculating Normal Weekly Earnings (NWE), the expression 'shortness of time' is not defined and this could cause delay in benefit payment because of the calculation method used.

Defining 'shortness of time' to be less than 4 weeks will clarify when this concept should be used.

Government response: Supported

53. Recognition of a rehabilitation provider accredited in another jurisdiction

Vocational rehabilitation providers must be approved under the current legislation in order to treat a NT workers compensation claimant, regardless of the jurisdiction in which the treatment is being given.

This approval process takes time and could potentially cause unnecessary delay if a claimant is being treated in another jurisdiction. The recommendation is that the Northern Territory legislation permit automatic recognition of a rehabilitation provider accredited in another jurisdiction.

Government response: Supported

54. Safeguards against delaying a liability decision after a deeming of liability

When the employer does not make a decision on liability for a new claim in legislated time frames, liability is deemed accepted. The provision which deems the employer liable, allows for a deemed liability to be removed by providing Notice; and this can be effected at any time, even months or years later. The legislation requires amending to remove the possibility of the claim decision being left 'in limbo'.

Government response: Supported

55. Indemnity for Mediators

Section 181 (which protects specified persons from certain liability) should be extended to Mediators.

Government response: Supported

56. Internal Dispute Resolution

In conjunction with insurers, NT WorkSafe has developed an Internal Dispute Resolution Process (IDRP) that provides a 5 days response time by the insurer or self-insurer if a request is made by a worker for review under internal dispute resolution.

An IDRP is an effective mechanism to quickly remedy administrative oversights. The current non-regulated process is limited to claims involving approved insurers and self-insurers. To ensure government workers and claimants on the Nominal Insurer also have access to an IDRP, legislation is required.

Government response: Supported

57. Ability for NT WorkSafe to issue infringement notices

It is time and resource consuming and cost ineffective to prosecute a person for failing to meet their responsibilities under the legislation. Flexibility in enforcement options is required.

The recommendation is to provide the ability for NT WorkSafe to issue infringement notices for breaches of the legislation.

Government response: Supported

58. Faster access to Nominal Insurer

The recommendation is that uninsured employers will be required to forward claims to the Nominal Insurer as if the Nominal Insurer was their insurer; and that the Nominal Insurer determine and manage such claims.

By permitting the Nominal Insurer the ability to intervene at an earlier time, the costs of the claim are likely to be better managed and the claimant's entitlements more accurately and quickly addressed.

Governments response: Supported

Additional changes

Government is taking the opportunity to make additional changes to assist in the operation of the scheme.

1. Exclusion of Journey Claims

Currently the Northern Territory covers workers for a journey to and from work, unless the injury arises from the use of a motor vehicle. Injuries arising from the use of a motor vehicle are covered by TIO MAC.

Injuries that occur in these circumstances are beyond the control of employers and the majority of jurisdictions exclude claims during a journey to and from work.

2. Medical treatment

On occasions insurers have refused treatment even though they do not have in their possession any differing medical opinion.

Where a worker's medical, surgical and rehabilitation treatment is given by, or under the direction of the worker's treating medical practitioner, the treatment should not be suspended or refused by the employer/insurer unless:

- there is a dispute that the treatment relates to the work related injury, or
- there is a dispute based on a supporting medical opinion held by the employer

If a decision to dispute treatment is made - reasons for the decision will be required to be given in writing to the treating medical practitioner and to the worker, setting out the grounds on which the treatment is disputed.

3. Funding WorkSafe

The Northern Territory is the only jurisdiction in Australia where funding is not fully or partially met from premium contributions. This includes the privately underwritten schemes in Tasmania, Western Australia and the ACT.

Insurers and self-insurers will be required to contribute to funding the operating cost of NT WorkSafe.

4. Time limits for the provision of information for Mediation.

The legislation provides for 7 days for a mediator to be appointed and the mediator has 21 days to conduct the mediation. Without a time limit to supply information, NT Worksafe is hindered in its ability to provide information to the mediator in a timely manner.

The parties will be required to provide the required information in their possession or control to NT WorkSafe within specified time lines.

5. Enforcement of compulsory insurance provisions by ability to stop work

Uninsured employers are not only a financial risk to themselves and the workers they employ but also for the NT's workers compensation scheme. Currently there is no power to provide an immediate remedy to this risk, other than prosecution.

If an employer doesn't hold the necessary workers compensation insurance policy there will be power to order the employer to stop work until such time as the situation is rectified.

6. Directors of a Body Corporate

Currently the legislation only requires that Directors who wish to be covered must be named, together with the nature of their employment and remuneration. When remuneration is in a form other than wages or salary there are issues created in collecting proper premium and in dealing with the calculation of normal weekly earnings for compensation purposes.

Directors who wish to be covered by the company's workers compensation policy will for transparency; be required to be on the company's payroll.

7. Exclude prisoners

The Work Health Court found that a prisoner was a worker under the *Workers Rehabilitation and Compensation Act* (whilst performing paid voluntary work whilst in prison) and was entitled to pursue a workers compensation claim for an injury suffered.

A conclusion by the Court was that Parliament did not intend to exclude prisoners from obtaining benefits under the Act. This outcome was not intended and so clarification is required.

8. Jockeys

Uncertainty has arisen for jockeys who are engaged in unpaid track work.

The legislation will be changed to clarify that cover is provided for track work and working of horses and the situations when the Act will apply.

9. Involvement of Support Persons at Mediation

The legislation currently allows a claimant to be accompanied at mediation by another person who is not a lawyer, but the claimant cannot be represented by that person.

Sometimes the claimant is not best equipped to fully present their own case. The worker should be able to have assistance from a more experienced family member, union representative or other experienced advocate to present their case so long as the Mediator considers that it will facilitate the conduct of the mediation.

This change will allow the Mediator to consent to a person, who is not a legal representative, to represent a claimant during the mediation.

10. Improving Return to Work Outcomes

To assist in improving return to work outcomes the legislation will be amended to introduce the following:

- The employer must produce a return to work plan, developed and agreed between the employer and worker for any injury that involves incapacity of more than 28 days.
- A worker will put their compensation payments at risk if they fail to comply with the return to work plan.
- An employer will be unable to dismiss a worker for a period of 6 months following the date of injury unless during that period the worker ceases to be totally or partially incapacitated because of the injury.

This is not to apply if the employer proves the worker was dismissed on the grounds of serious and wilful misconduct.



For more information:

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