



**REVIEW**  
OF  
(NT) WORKERS  
REHABILITATION AND  
COMPENSATION ACT  
***SUMMARY***

July 2014



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(NT) WORKERS REHABILITATION AND COMPENSATION ACT**

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## ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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<b>Actuary</b>	A specialist who applies the mathematical theory of probability to statistics
<b>ADR</b>	Alternative Dispute Resolution
<b>AEIS</b>	Alternative Employer Incentive Scheme
<b>AMA</b>	Australian Medical Association
<b>AMA4</b>	American Medical Association guidelines for the assessment of permanent impairment, 4th edition
<b>AMA5</b>	American Medical Association guidelines for the assessment of permanent impairment, 5th edition
<b>AMA Guides</b>	American Medical Association guidelines for the assessment of permanent impairment
<b>ATO</b>	Australian Taxation Office
<b>AWE</b>	Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory last published by the Australian Statistician
<b>CAT</b>	Civil and Administrative Appeals Tribunal
<b>Clinical Framework</b>	Clinical Framework for the Delivery of Health Services <sup>1</sup>
<b>FIFO</b>	Fly-in fly-out and Drive-in drive-out(DIDO). Fly in fly out “is a method of employing people in remote areas by flying them temporarily to the work site instead of relocating the employee and their family permanently.” <sup>2</sup> Includes workers who attend the work site via vehicle on a “drive in drive out” basis. Employees work on a rotational basis and return home during days off
<b>Hanks</b>	Safety, Rehabilitation and Compensation Act Review, Report, February 2013

<sup>1</sup> See [www.worksafe.vic.gov.au/forms-and-publications/forms-and-publications/clinical-framework-for-the-delivery-of-health-services](http://www.worksafe.vic.gov.au/forms-and-publications/forms-and-publications/clinical-framework-for-the-delivery-of-health-services)

<sup>2</sup> [http://en.wikipedia.org/wiki/Fly-in\\_fly-out](http://en.wikipedia.org/wiki/Fly-in_fly-out)

<b>Hopkins Agreement</b>	A workers' compensation agreement under which a lump sum amount is payable under workers' compensation legislation; there is no exclusion or limitation of the application of, or the rights or entitlements of a person under, that legislation; and the amount is repayable if those rights or entitlements are pursued. The name is derived from the decision of Justice Angel, Northern Territory Supreme Court in the matter of <i>Merle Hopkins v Collins/Angus &amp; Robertson Publishers Pty Ltd (1997)</i>
<b>HWCA</b>	Heads of Workers' Compensation Authorities
<b>Long tail claims</b>	The financial outcome for these claims will not be known with certainty for several years
<b>Loss ratio</b>	The proportion of claims paid or payable to premiums earned
<b>NDIS</b>	National Disability Insurance Scheme
<b>NIIS</b>	National Injury Insurance Scheme
<b>NT</b>	Northern Territory of Australia
<b>NWE</b>	Normal weekly earnings (as defined in section 49 of the WRCA)
<b>PI</b>	Permanent impairment
<b>PILDA</b>	(NT) Personal Injuries (Liabilities and Damages) Act
<b>Purcal and Wong</b>	Australian Workers' Compensation: A Review; October 2007, Dr. Sachi Purcal and Arlene Wong
<b>Preliminary Report</b>	The Review of (NT) <i>Workers' Rehabilitation and Compensation Act</i> Preliminary Report dated November 2013
<b>Report</b>	This report
<b>Review</b>	This review
<b>RTW</b>	Return to work
<b>Scheme</b>	Northern Territory workers' compensation scheme
<b>Short tail claims</b>	Insurance business where it is known that claims will generally be notified and settled quickly
<b>SI</b>	Serious injury

<b>SME</b>	Small to medium enterprise
<b>Step down</b>	Weekly payments are 'stepped down' by a percentage or to a set amount for workers who cannot earn an income because of a work related injury
<b>Subrogation</b>	The right of an insurer to recover any claim payments by standing in the place of the insured in taking any actions against third parties
<b>TAA</b>	(Cth) Taxation Administration Act 1953
<b>Weekly payments</b>	Income replacement payments in accordance with sections 64 and 65 of the WRCA
<b>WRCA</b>	(NT) Workers' Rehabilitation and Compensation Act
<b>WRCAC</b>	Workers' Rehabilitation and Compensation Advisory Council

## EXECUTIVE SUMMARY

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It is clearly in everyone's interest for rehabilitation and return to work to remain the core aims of the *Workers Rehabilitation and Compensation Act (WRCA)*. There are several recommendations made in this regard, including in relation to the Alternative Employer Incentive Scheme (AEIS), clarifying the roles of employer and employee; capping of some benefits and providing greater options to stakeholders in managing claims.

Most injured<sup>3</sup> workers return to work well within 13 weeks post injury; and the overwhelming number<sup>4</sup> by 26 weeks. The entitlement to weekly compensation is 100% of NWE for the first 26 weeks of incapacity; after which time there is a step down to 75% of NWE.

Regarding the duration of benefits, the Northern Territory workers' compensation scheme is open ended and does not discriminate between the less seriously injured and the more seriously injured.

We feel it reasonable and consistent with the major Australian workers' compensation jurisdictions, and the view of the Heads of Workers' Compensation Authorities (HWCA), that the maximum duration of non-serious injury claims be 260 weeks (5 years).

Accordingly, we recommend the maximum duration of weekly compensation for claims involving injury assessed at less than 15% of the whole person on the relevant AMA guides<sup>5</sup>, ends after 260 weeks of incapacity. In relation to medical and related expenses, we recommend this entitlement conclude 52 weeks after the end of the entitlement to weekly compensation.

For workers with a serious injury<sup>6</sup>, weekly payments of compensation should continue to retirement with lifetime medical care, as is presently the case.

Although, putatively, a long tail pension scheme, the NT Scheme is marked by significant amounts paid by way of lump sums. As stated, the primary focus should be on return to work and rehabilitation. However, we recognise stakeholders require the option to settle and close claims by negotiated agreement. Accordingly, we recommend the WRCA allow for negotiated agreements.

In relation to all claims, a negotiated agreement can be made at any time, in compliance with certain criteria. Consistent with the assessment of damages at common law, we believe the negotiated agreement should be guided by providing for a discount rate and consideration of assumptions about the injured person's future earning capacity, similar to principles currently applying to common law claims in the NT<sup>7</sup>.

The people working in the Scheme, particularly, Case Managers, rehabilitation providers and others, are key to the successful operation of the Scheme. We recommend NT WorkSafe work with registered training organisations to develop relevant and recognised educational pathways for careers in relation to NT workers' compensation law and practice.

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<sup>3</sup> 72%, *Safe Work Australia Comparative Performance Monitoring Report 15th Edition* pp8, 38, and 54-55.

<sup>4</sup> 85%, *Ibid* pp8, 38, and 54-55.

<sup>5</sup> As recommended in this report.

<sup>6</sup> Those injuries assessed at 15% or more of the whole person on the relevant AMA guides, excluding secondary medical conditions.

<sup>7</sup> Sections 21 and 22 PILDA.

## KEY POINTS

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- ▶ A separate category for serious injury (defined as WPI 15% or greater). Serious injury claims to be paid weekly benefits to retirement age; plus all medical and care services for life.
- ▶ All other claims, income maintenance ceases after 260 weeks (5 years) of incapacity.
- ▶ Medical and related services will end after the entitlement to income maintenance has ceased for 12 months.
- ▶ All times limits are in the aggregate, recognising incapacity may not be continuous.
- ▶ Adopt AMA5 with modifications as proposed by NT WorkSafe.
- ▶ Provide for machinery enabling negotiated settlements and the closure of claims in the appropriate cases.
- ▶ Provide legislative tools for the development of individual budgets for workers suffering permanent or long term incapacity; and assistance for those considering self-employment.
- ▶ Retain a broad based definition of worker; or consideration be given to a PAYG based definition of worker.
- ▶ Compensability of ordinary diseases of life (such as heart attacks and strokes caused by degenerative disease and similar phenomena) only where employment is the real (or dominant), proximate or effective cause of the incident.
- ▶ Substantial increase of the lump sum death benefit; and in reimbursement for the cost of the funeral. Provision of a new benefit for family counselling.
- ▶ Medical certificates to focus on the worker's capacity.
- ▶ Development of guidelines based on the schedule of fees recommended by health professional organisations.
- ▶ Provide definitions for 'workplace based return to work program' and 'suitable employment.'
- ▶ Provide 'return to work plans' for workers exceeding 10 days absence from work due to work-related injury.
- ▶ Add a procedure around the '104-week rule', and require the employer to give the worker written notice of the review, setting out relevant information.
- ▶ Presumptive legislation for firefighters.
- ▶ Review the definition of NWE; and define non-cash benefits.
- ▶ Allow legal representation at Mediations. Employers / insurers to meet the worker's costs of legal representation at Mediation.
- ▶ Enhanced provisions relating to the exchange of information regarding Mediations.
- ▶ NT WorkSafe to review and substantially increase the fraud penalties provisions in the WRCA; and update penalties in the legislation, including the introduction of infringement notices to secure scheme compliance.

## RECOMMENDATIONS

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>1</b> The Northern Territory retain a broad based definition of worker. If the current results based definition of “worker” proves to be difficult to apply, then we recommend consideration be given to a PAYG based definition of worker.</p>	<p>Difficulty in establishing all three of the criteria in the current definition could capture persons who might be otherwise regarded as independent contractors.</p>	29
<p><b>2</b> Section 82(4) be amended to reflect the broader intent of the authorisation on the claim form.</p>	<p>The legislation provides that when claiming compensation a worker must authorise the release “to his or her employer and the employer’s insurer of all information concerning the worker’s injury or disease.” The authorisation forms part of the claim form. For the efficient management of a claim it is often necessary for information concerning the worker’s injury or disease to be provided to others besides the employer and insurer, such as medical practitioners, rehabilitation providers, investigators, legal practitioners, and other experts and consultants.</p>	30
<p><b>3</b> Taxi drivers not party to bailment agreements to be recognised under the definition of worker (in a similar way to the relevant Queensland provisions).</p>	<p>Although taxi drivers are deemed workers, as no approval has been provided by NT WorkSafe under the Regulations, the common law position regarding taxi drivers continues to apply. Queensland transport legislation sets out the requirements of a taxi service bailment agreement, including a list of matters that need to be included in the bailment agreement, such as percentage of the takings; who pays for fuel; that the driver contributes to the cost of premiums for insurance; and other provisions related to insurance.</p>	31



RECOMMENDATION	BACKGROUND	PAGE REFERENCE
4	<p>The 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.</p>	33
5	<p>NT WorkSafe to provide 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.</p> <p>Although the obligations on the employer and employee in sections 75A and 75B of the WRCA 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.</p> <p>NT WorkSafe could have programs to:</p> <ul style="list-style-type: none"> <li>▶ Better communicate return to work options and the benefits for the employer and employee.</li> <li>▶ Increase the understanding of return to work options.</li> <li>▶ Provide further and better information regarding injury management.</li> <li>▶ Encourage the appointment of return to work coordinators (particularly for the larger employers).</li> <li>▶ Encourage early and prompt formulation of injury management or return to work plans.</li> </ul>	35
6	<p>Reform the definition of ‘rehabilitation’ along the lines of section 40 and regulation 109 of the Queensland legislation.</p>	37
7	<p>Define ‘workplace based return to work program’ similar to that the definition of ‘workplace rehabilitation plan’ proposed by Hanks (as including the provision of appropriate services which are aimed at maintaining the employee in, or returning them to, suitable employment (with the services being defined)).</p>	38

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<b>8</b>	'Suitable employment' could 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; (c) potential for rehabilitation training; (d) language skills; (e) the impairments suffered by the worker; (f) self-employment; (g) other location).	39
<b>9</b>	In relation to the '104-week rule', add a procedure requiring the employer to give the worker written notice of the review, setting out relevant information.	40
<b>10</b>	The provision for the payment of reasonable expenses for family counselling; financial counselling; and employment counselling in relation to rehabilitation.	41
<b>11</b>	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.	41
<b>12</b>	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 but include fees for initial medical certificates and for common items.	42
<b>13</b>	NT WorkSafe should continue work in relation to the adoption of the Clinical Framework in the Scheme.	42

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>14</b> Medical certificates should be revised to focus on the worker's capacity for employment, rather than incapacity; and import from the Clinical Framework, and the UK fit note the appropriate matters that should be reported on. There is no reason the medical certificate should not be titled the 'Statement of Fitness for Work.'</p>	<p>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.</p>	43
<p><b>15</b> Consistent with the nationally harmonised approach to permanent impairment assessment, the Northern Territory adopts AMA5 with modifications as proposed by NT WorkSafe and advised to SafeWork Australia and that assessor accreditation and training be provided if practicable.</p>	<p>Currently, the assessment of impairment on a whole of person basis relies on AMA4. Jurisdictions use AMA guides or variants as part of their permanent impairment assessment processes which include the establishment of panels of doctors that translate AMA guides into local guides.</p>	44
<p><b>16</b> Section 85 of the WRCA to be clarified to confirm that where the employer defers liability, in addition to making payments of weekly compensation, an employer should also meet the reasonable costs for medical and rehabilitation costs (limited to medical and rehabilitation costs that arise from treatment provided during the period of the deferral; and on the basis discussed in the Report). The nature and extent of the liability for medical expenses should be defined.</p>	<p>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. However, it is not clear that medical expenses may, provisionally, also be paid.</p>	45
<p><b>17</b> 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.</p>	<p>Regarding the payments made on a without prejudice basis in the event of a decision to defer liability, the legislation provides that, in the event the employer is not liable for the claim, those payments cannot be recovered. There should be provision to allow for recovery in certain circumstances.</p>	45

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<b>18</b>	Provide legislative tools for the development of individual budgets for workers suffering permanent or long term incapacity; and assistance for those considering self-employment.	46
<b>19</b>	Provide for the cost of a funeral to increase to the lesser of the cost of the funeral or 20% of the annual equivalent of AWE; the lump sum payment provided in section 62(b) to increase to 364 times AWE. In addition, a new benefit, being financial assistance for counselling for family members to a maximum of 5% of the annual equivalent of AWE.	47
<b>20</b>	NT WorkSafe carries out a review of recurrences and reactivation of claims and determines 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.	47
<b>21</b>	Consideration be made to adopting provisions similar to sections 533 – 537, (Qld) <i>Workers Compensation and Rehabilitation Act</i> , and allow for infringement notices as an alternative to prosecution.	48
<b>22</b>	The WRCA be amended to replace the current formulation of ‘administrative action’ with ‘management action’ using section 40 of the (Vic) <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> as a model.	49

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>23</b> The WRCA should 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 be covered for workers' compensation purposes on the same basis as a "disease"— that is, where employment was the real (or dominant), proximate or effective cause of the incident.</p>	<p>Even though there is a requirement that employment be 'the' real, proximate or effective cause of a disease, strokes and heart attacks involving rupturing or frank injury to arteries, for example, can be considered frank injuries, and therefore compensable without need to prove employment was the real cause.</p>	50
<p><b>24</b> NT WorkSafe reviews the definition of NWE. A consolidation of the definition of NWE, along the lines of an example suggested by Hanks could be considered – that the average remuneration of an employee before an injury is taken to be the average amount paid to the employee where remuneration includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>▶ Wages and/or salary.</li> <li>▶ Any regular and required overtime.</li> <li>▶ Allowances that relate to a skill the employee has or a service the employee provides.</li> <li>▶ Any earnings from other employment the employee undertakes in addition to her or his work with the employer, if: a full-time employee can demonstrate permission from their employer (if required) to engage in outside employment; and an employee (either full time or part time) can demonstrate the additional employment was regular—that is, they were engaged in additional employment for at least six weeks in the 13 weeks before injury.</li> <li>▶ Remuneration does not include allowances paid in relation to expenses incurred.</li> </ul>	<p>The calculation of NWE is of key importance. Employer payment declarations are completed, and premiums are calculated, on the basis of NWE. Weekly compensation is paid on the basis of NWE. The WRCA refers to 'remuneration' frequently through the legislation. However, save for some instances, the term 'remuneration' is not defined.</p>	54
<p><b>25</b> Non-cash benefits are assessed at the actual value of those benefits, or \$500 whichever is the lesser.</p>	<p>In relation to the non-cash benefits of accommodation, meals and electricity, the basis of valuation is not spelled out in the legislation.</p>	54

RECOMMENDATION	BACKGROUND	PAGE REFERENCE	
<b>26</b>	After 26 weeks of incapacity, a workers' 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. However, at the appropriate time, there should be an upper limit regarding NWE.	56
<b>27</b>	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.	The worker should be provided with advance notice of the approaching step down.	57
<b>28</b>	A separate category for serious injury (defined as WPI 15% or greater). The assessment of impairment should be limited to the primary injury and exclude secondary injury, such as functional overlay. Serious injury claims to be paid weekly benefits to retirement age; plus all medical and care services for life. Regarding all other claims, income maintenance ceases at the 5 year point; and medical and related services will end after the entitlement to income maintenance has ceased for 12 months.  In relation to medical and rehabilitation benefits, there should be a duration limit of 52 weeks after the cessation of weekly payments.	The consensus around Australia is to limit the duration of weekly payments and the duration of medical costs. Currently, no provision is made in the WRCA to distinguish the seriously injured from the less seriously injured. The HWCA recommended a duration limit of five years for incapacity benefits; and continuing to retirement for serious injury.	58
<b>29</b>	We recommend that Alternative Dispute Resolution (currently Mediation) under the WRCA allow for parties to engage legal representation.	Mediation is compulsory, lawyers are not normally allowed and the mediation must be held and dealt with promptly. Workers are often in a position of disadvantage in the mediation as they do not have access to advice and support.	62
<b>30</b>	NT WorkSafe to approve a fee (eg \$1,500) payable by the employer or insurer for workers to obtain legal advice of and incidental to the Mediation.	Currently, the parties must bear their own costs of the Mediation. To facilitate the obtaining of advice by workers, there should be some provision to assist with legal costs.	63

RECOMMENDATION	BACKGROUND	PAGE REFERENCE	
<b>31</b>	The mediation provisions be enhanced by the creation of protocols similar to Practice Direction 6 modified to maintain as little formality and technicality, and with as much expedition, as the requirements of the WRCA and a proper consideration of the matter permits.	The mediation provisions were 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.	65
<b>32</b>	NT WorkSafe have input into the development of the NT CAT with a view to further considering the merit of transferring the adjudication of disputes under the WRCA to the NT CAT.	The Northern Territory is to create a Civil and Administrative Appeals Tribunal.	65
<b>33</b>	NT WorkSafe to continue its work with Safe Work Australia and consider revising Schedule 1 of the WRCA after the results of Safe Work Australia's deemed diseases work are available.	The WRCA sets out at Schedule 1 a list of diseases that are deemed to arise out of employment. Schedule 1 has not been revised for a considerable period of time. Safe Work Australia has commenced a 'Deemed Diseases Project' with the objective of developing an up-to-date Australian list of deemed diseases.	66
<b>34</b>	New presumptive workers' compensation legislation as either part of an amended WRCA or new legislation to benefit full time firefighters who contract cancer in the performance of firefighting duties. Schedule 1 of the WRCA be revised with a specific schedule of deemed diseases to include reference to the 12 types of primary site cancer as well as asbestos and liver cancers which are to be covered by the presumption with the accompanying qualifying periods of service for firefighters.	Presumptive legislation in favour of fire fighters who contract certain cancers, or the purpose of facilitating access to workers' compensation, has been enacted in several jurisdictions in Australia and internationally.	70
<b>35</b>	Regarding the NDIS, consideration be given to minimum benchmarks (which are pending). Regarding the NIIS, the provisions related to the seriously injured should be aligned with this Commonwealth scheme.	The Heads of Agreement between the Commonwealth and the Northern Territory Governments on the National Disability Insurance Scheme provides that the NDIS in the Northern Territory will, among other things, develop nationally-consistent minimum benchmarks for workplace accidents by 1 July 2016.	72



RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<b>36</b>	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.	74
<b>37</b>	The WRCA should provide for formal machinery enabling negotiated settlements of statutory benefits in the appropriate cases, as discussed in the Report. The legislative machinery of negotiated settlements should seek to avoid the availability of lump sums militating against effective rehabilitation. Provision should also be made for boundaries around recurrences and further claims in current employment or other employment, after the receipt of the lump sum.	76
<b>38</b>	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 PILDA.	76
<b>39</b>	Provision should be made for structured settlements.	77



RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>40</b> Particularly in light of the recommendations relating to negotiated lump sums, statutory workers' compensation should remain the exclusive remedy for an injured worker for a work related injury and that the scheme maintain the abolition of the common law action by a worker against his or her employer.</p>	<p>Common law damages for employment-related injuries are not available in every Australian workers' compensation jurisdiction. Since the mid-1980s, all jurisdictions except the Australian Capital Territory have restricted the availability of damages at common law, and some jurisdictions have completely removed access to common law damages, for employment-related injuries.</p>	77
<p><b>41</b> The WRCA include an objectives clause covering return to work and rehabilitation as key objectives for the legislation, including these objects – that the Northern Territory workers' compensation 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.</p>	<p>Although NT WorkSafe has as one of its functions to 'further the objects of' the WRCA, there are no objects of the WRCA specified.</p>	78
<p><b>42</b> NT WorkSafe and the Scheme Monitoring Committee to continue examining pricing, funding ratios and scheme performance.</p>	<p>Stakeholders submitted that insurers should be responsible for charging adequate premium. Employers were concerned about unanticipated and significant increases in premium. Issues of pricing turn on several variables, including health and safety at the workplace and the nature and extent of compensation benefits in the event of injury.</p>	79

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>43</b> There should be specific provision in the WRCA 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 WRCA; that should not have been paid (for example, overpayments). 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).</p>	<p>There is no specific provision in the legislation allow for recovery of payments made in circumstances of fraud or misleading statement or representation.</p>	79
<p><b>44</b> 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. A cut off of weekly benefits once the worker reaches the age at which they are eligible for the age pension with a time limited benefit of 104 weeks if they are injured within 104 weeks of reaching retirement age or after reaching retirement age.</p>	<p>Most jurisdictions adopt arrangements for coverage of older workers which extend coverage for workers to the Commonwealth's pension age based arrangements; currently until age 67. Currently, if you are injured and sustain compensable incapacity, your entitlement to weekly compensation may be limited to 26 weeks.</p>	80
<p><b>45</b> The use of contractual indemnities, including in relation to the waiver of subrogation and the mutual indemnity irrespective of cause and notwithstanding negligence, should be reviewed.</p>	<p>In 2012, WorkCover WA issued a Bulletin in relation to contractual indemnities. WorkCover WA was concerned that certain contractual indemnities and mutual indemnity arrangements are not contemplated by the legislation and threaten the viability of the workers' compensation scheme. There appear to be different approaches to the handling of risk allocation in other jurisdictions and these could be examined.</p>	83
<p><b>46</b> The indemnity provided regarding risks 'independently of the Act' should also be reviewed.</p>	<p>The WRCA requires every employer to obtain a policy of insurance to cover the employers liability under the WRCA and 'for an amount of not less than the prescribed amount in respect of his or her liability independently of' the WRCA. That expression ('independently' of the Act) should be clarified.</p>	84

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>47</b> The Workers' Rehabilitation and Compensation Advisory Council should review relevant parts of the Scheme annually; and the Scheme be reviewed substantively every 5 years.</p>	<p>Workers' compensation schemes are by their nature dynamic, complex and influenced by many factors, including several external factors (economic conditions; changes in technology; changes in industry and employment). Accordingly, a regular review of the Scheme is necessary to maintain stability and sustainability.</p>	84
<p><b>48</b> Changes regarding Comcare need to be monitored and the appropriate representations be made to the Commonwealth government regarding the impact on the Scheme.</p>	<p>In March 2014, the Commonwealth government announced that it 'introduced reform which seeks to expand access for national employers to compensation and work health and safety coverage under the Comcare Scheme'. If these proposed reforms are enacted, then the prospect of national employers currently insured in the NT moving out of the Scheme to Comcare is likely to impact on the NT premium pool and would also likely impact Scheme viability and sustainability.</p>	85
<p><b>49</b> NT WorkSafe work with registered training organisations to develop relevant and recognised educational pathways for careers in relation to NT workers' compensation law and practice; and 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.</p>	<p>Training and qualified people are essential to the viability of a scheme. Competency in case management is essential to achieving the outcomes discussed in this report and in managing the Scheme generally. Training would provide case managers with a professional career path; recognition of their competency and career progression. This should in turn improve job satisfaction, assist staff retention; and address the costs of the high level of employee turnover.</p>	86
<p><b>50</b> NT WorkSafe review and update all penalties provisions in the legislation.</p>	<p>Several of the penalties set out in the WRCA have not been reviewed for a considerable period of time. For example, the penalty for breaching the confidentiality provision is 200 penalty units or imprisonment for 2 years. Contrast the penalty for not taking reasonable steps to provide suitable duties (body corporate – 25 penalty units; a natural person – 8 penalty units or imprisonment for 3 months); and the penalty for failing to report a return to work (25 penalty units or imprisonment for 6 months).</p>	86

RECOMMENDATION	BACKGROUND	PAGE REFERENCE	
<b>51</b>	For the purposes of section 64, that provision should reflect weekly compensation is for the aggregate of the periods of incapacity resulting in actual loss of wages.	The date of injury may not necessarily be the start of the period of incapacity. Periods of incapacity need not be linear and could be disjointed, depending on when incapacity results in actual loss of wages.	87
<b>52</b>	The 'shortness of time' (for the purpose of calculating NWE) be defined to be a period of less than 4 weeks.	In calculating NWE, the expression 'shortness of time' is not defined and this could cause both delay and resulting financial hardship in benefit payment.	87
<b>53</b>	The WRCA allow for Northern Territory recognition of a rehabilitation provider accredited in another jurisdiction.	Vocational rehabilitation providers must be accredited by NT WorkSafe. This requirement can cause delay in provision of such services when a claimant under the WRCA requires rehabilitation services interstate. Reciprocal recognition of interstate accredited rehabilitation providers should be available for those providers seeking to practice in the NT.	88
<b>54</b>	Section 87 to be reviewed to introduce safeguards against delaying a decision regarding liability after a deeming of liability.	In the case the employer does not make a decision on liability regarding a new claim, liability is deemed liable. The provision which deems the employer liable, section 87, allows for a deemed liability to be removed by providing Notice; and this can be effected at any time, even months or years later.	88
<b>55</b>	Section 181 (which protects specified persons from certain liability) should be extended to Mediators.	Currently, Mediators appointed in accordance with section 103C(1) are not protected.	88
<b>56</b>	Insurers, self-insurers (including the Territory) and the Nominal Insurer should adopt an internal dispute resolution process, as developed by NT WorkSafe in consultation with those bodies.	NT WorkSafe notes that the Northern Territory Best Practice guidelines have been developed by NT WorkSafe in consultation with approved insurers and self-insurers. An important guideline is the requirement for insurers and self-insurers to have an internal dispute resolution process.	89
<b>57</b>	Provide ability to NT WorkSafe to issue infringement notices for breaches of the workers' compensation and insurance provisions.	It is very 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.	89

RECOMMENDATION	BACKGROUND	PAGE REFERENCE
<p><b>58</b> Uninsured employers should be required to forward claims to the Nominal Insurer as if the NI was the employer’s workers’ compensation insurer; and that the NI determine and manage such claims.</p>	<p>By permitting the Nominal Insurer ability to intervene at an earlier time, then the costs of the claim are likely to be better managed and the claimant’s entitlements would be better and more quickly addressed by the Nominal Insurer.</p>	90



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