PUBLIC COMMENT RESPONSE FORM

Preliminary Report – NT Workers Compensation Scheme

Submissions will **not** be made public and will be used solely for the purpose of informing the Workers Rehabilitation and Compensation Advisory Council and NT Government on different stakeholder points of view.

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The workers compensation scheme is currently being reviewed by the Workers Rehabilitation and Compensation Advisory Council and the preliminary report is now available for feedback and submissions. Read the materials available.

The Public Comment Response Form lists the relevant areas of the report. It is not a requirement that you complete the entire form. You may choose to participate in only the areas that you have comment.

1. Definition of Worker (page 24)

Retain the current results test or have a new test based on PAYG

Comments:

2. Crew Members of Fishing Vessels (page 24)

Consideration on whether crew remunerated wholly or mainly by a share in the profits or gross earnings of a fishing vessel should have access to workers compensation

Comments:

3. Jockeys / Taxi Drivers

Access to compensation for these occupations was not part of the preliminary report however the Workers Rehabilitation and Compensation Advisory Council is interested in receiving any comments connected with these occupations

Comments:

4. Interpretation of legislation (page 25)

Interpretation – beneficial to workers or objective and balanced?

Comments:

5. Rehabilitation (page 30)

Alternative employer incentive scheme – rehabilitation plans – health benefits of safe work – a bio-psycho-social approach

Comments:

6. Return to Work programs (page 32)

Clarification of rehabilitation training and return to work programs

Comments:

Congress is of the view that insufficient emphasis is placed on return to work programmes for injured workers.

The existing legislation is unclear and provides limited guidance as to the undertaking of return to work programmes for injured workers. Similarly, the compulsions for injured workers to undertake / participate in return to work programmes appear to be less demanding; that is, the participation in retrun to work programmes by injured workers appears less onerous and less stringent than the obligations imposed on employers to provide an "appropriate work site" and participate in return to work programmes.

For example, Congress recently offered an injured (psychologicl stress) worker a safe, protected and flexible retrun to work option. The employee opted not to retrun to work and subsequently received a pay out of $105,000 after having worked for Congress for no more than 4 months.

Employers should have the right to pay and more determinant role in such cases and that the responsibility for retrin to work activities should be opened up to employers. Insurers are notoriously poor in undertaking these activities, communicating with workers and employers; they consistently make decisions in a vacuum.

7. Suitable Employment (page 33)

Definition of “suitable employment”

Comments:

The term "suitable employment" as it relates to work / alternative work offered to an injured worker by an employer, is not defined in the statute; neither is the term "most profitable employment", as used in the "assessment of a worker" for participation in a return to work programme.

A greater alignment between definitions and concepts used in respect of return to work programmes is critical to the effective implementation and conduct of return to work initiatives.

From experience, workers, and their treating medical officers, have little if any incentive to return a worker to work at an early time. Medical officers virtually always support a worker and his or her claims as to the nature and extent of their injury.

The conflict of interest that exists around the medical consultation transaction (financially based) between a "doctor and patient" is underpinned by mutual interest, a lack of independence and a lack of objectivity. Self interest could be said to underpin this relationship.

It is for these reasons that the definition of suitable work needs to be clarified; this will remove the ambiguity of an essential retrun to work mechanism and limit the flexibility medical officers and workers have that prolongs unnecesary time off work, and hence, costs to the employer.

8. The 104 Week Rule (page 34)

Clarify the 104 week rule which allows compensation to be reduced or cancelled if a worker has work capacity

Comments:

9. Mitigation of Loss (page 35)

Should the legislation be amended to recognise that a worker has a duty to mitigate their loss?

Comments:

Yes; as in all insurance contracts, the insured has an obligation to miminise his or her loss.

This is not always realistically possible for an employer as the insurer is responsible for the claims management, thereby largely eliminating the employer from options to minimise the loss.

In contrast, there are few effective tools that can be applied to injured workers to mitigate costs and or losses. If the employer is statutorily constrained or obligated by law, the employee should be equally bound by reciprocal and balancing provisions. Without these instrumets, the workrs compensation scheme will remain skewed and imbalanced.

10. Rehabilitation costs for counselling (page 36)

Access to counselling, including family, financial, employment and social rehabilitation counselling

Comments:

11. Medical Panels (page 38)

Establish a medical advisory committee – use of medical panels – treatment guidelines for common workers' compensation injuries

Comments:

Unquestionably a sound and balanced initiative.

12. Medical and Treatment Costs (page 39)

Set rates for specific types of treatment

Comments:

13. Clinical Framework (page 39)

Treatment to meets objective standards such as those in the Clinical Framework for the Delivery of Health Services

Comments:

Again, and unquestionalbly logical, balanced and objective arrangment. If it is good enough for the rest of society to be assessed by such mechanisms, it should be good enough for injured workers.

These mechanisms have the benefit of at least some scientific and clinical underpinning; existing workers' compensation practices are deficient in these respects.

14. Medical Certificates (page 41)

Medical certificates to focus on work capacity, rather than incapacity

Comments:

A focus on work capacity in preference to incapacity in respect of medical certificates forces medical examiners to think about the worker's retrun to work and existing capabilities.

The negative phrasing of the concept of incapacity allows a medical practitioner to treat and manage a worker in the "now" rather than thinking of what is necessary in the further to promote effective and timely return to work.

15. Household and Attendant Care (page 41)

Limits on household and attendant care, other than for catastrophic injury

Comments:

16. Permanent Impairment (page 41)

Use of an algorithmic model

Comments:

This is a rational and contemporary initiative. Having extensive experience with the intoduction of similar mechanisms in Victoria (road accident and workers compensation and New Zealand all forms of accidnt related impairment)

17. Provisional Liability (page 42)

Without prejudice medical costs for a deferred claim – without prejudice payments recoverable in the event of dishonesty, fraud, obstruction by claimants

Comments:

18. Insurer and Employer Toolkit (page 43)

More flexible case management, including the use of incentives

Comments:

19. Death Claims (page 43)

Different mechanisms to manage particular needs of dependents – dependents to have access to common law

Comments:

20. Recurrence Claims (page 43)

A mechanism to manage recurrence claims

Comments:

21. The role of Independent medical assessments (page 45)

Should the current practice be maintained?

Comments:

22. Fraud (page 45)

Review the penalties for fraud

Comments:

23. Mental Stress Claims (page 47)

Employment to be the real proximate and effective cause – defining reasonable administrative action – defining reasonable administrative action – allow for consideration of management action taken in good faith

Comments:

Employment should be the real proximate and effective cause - and only cause - of mental stress claims.

Reasonable management actions, intervention and performance management undertaken in good faith must be protected from being the basis of a work place injury.

Workers claiming reasonable good faith actions of employers have created mental stress should be required to demonstrate that this is the case, not merely have a claim accepted because they state this to be the case. The employees performance should be open to questioning as part of this process.

Congress has recently experienced 2 substantial claims where payments exceeding 105,000 have been made to workers who have claimed mental stress when in one case, merely questioned about performance, and in the other case, advised that a performance managemnt process would be instituted.

In the first case, the employee worked for only 3 months before suffering mental stress as a result of questions concerning the employee's performance. This worker's claim was settled for $105,000.

In the second instance, the worker was advised they would be placed on a performance management scheme. The worker, who had been in the particular position for less than 3 month (but had been emplyed by Congress for nearly 1 year) immediatley obtained a medical certiicate for work induced mental stress. This workr did not retrun to work and received a settlement exceeding $150,000.

Medical practitioners accept mental stress claims to lightly; they make little in the way of genuine enquiries and often allow non-work related factors to influence their judgement / assessment of the workr's "injury". Commonly, there are substantial external factors at play in the mental health of workers claiming work place injury. The work place being a convenient resort and source of funding for such claims.

Commonly, workers with so called work related mental stress claims do not participate in recommended mental health management plans, simply because they know there is no need for such participation; howeve, they continue to receive compensation.

It should be mandatory that workers suffering workplace mental stress participate in mental health programmes if they are to continue receiving ongoing compensation.

24. Disease Claims (page 51)

Incidents that are a manifestation of an underlying disease should be connected to employment, that is, the employment is a substantial contributing factor or the real, proximate and effective cause

Comments:

25. Medical and rehabilitation treatment (reasonable and necessary costs, reasonably incurred) (page 51)

Define “reasonable and necessary”

Comments:

26. Weekly and Other Entitlements (page 53)

Revise definition of “normal weekly earnings” - consider a change to average weekly earnings

Comments:

27. Non Cash Benefits (page 55)

Cap on non-cash benefits

Comments:

28. Maximum weekly benefit rate (page 56)

Maximum weekly rate – introduction of a mechanism to adjust the compensation amount based on the nature and extent of expected lifetime employment

Comments:

29. Step Downs (pageS 56 - 58)

Base first 26 weeks on loss of earning capacity rather than “actual earnings” - reviewing step down stages, for example a step down at 13, 26 and 52 weeks - limit on the duration of weekly payments (for example 8 years for less serious claims) – reform section 86 of the legislation to allow weekly payments to be varied depending on workplace changes – a three tiered approach to compensate for a limit on the duration of weekly payments.

Comments:

30. Portability of Benefits (page 58)

Restrictions for claimants residing outside Australia

Comments:

31. Journey Claims

Compensation for injuries when travelling to and from work

Comments:

32. Dispute Resolution/Mediation/Sanctions (pages 63 – 65)

Legal Representation – protocols for speedier resolution – sanctions to encourage the exchange of full information and to participate meaningfully

Comments:
Injuryed workers and employers should be compelled to conduct genuine mediation and resolution meetings. It also should not be sufficient to merely attend such sessions. Failure to genuinely and constructively participate should be reason to impose a meaningful sanction. Similarly, mediation and resolution meetings should not be a once only event. It should be mandatory that at least 3 meetings occur to be able to demonstrate effort and sincerity.

33. Judicial Review (page 65)

Introduction of a Supreme Court, Administrative Tribunal, to deal with workers compensation disputes

Comments:

34. Occupational diseases (page 66)

Presumptive legislation for fire fighters

Comments:

35. National Injury Insurance Scheme (page 67)

Interaction with the National Injury Insurance Scheme

Comments:

36. Lump Sums /Negotiated Settlements (pages 68 – 71)

Formal machinery to enable negotiated settlements, linked to a tiered approach

Comments:

A system, or mechanism that enables negotiated settlements tied to a tiered approach / agreed schedule of payments is highly desirable.

It is important that employers are able to participate in this settlement process as currently, employers are effectively excluded from these decision making processes; that is, they are at the end of a phone at best, at worst, they are advised by letter or email many days later.

This is disadvantageous to the employer; it enies the financial, organisational and control realities and obligations placed on employers.

The implementation of a structured / negotiated settlement process enables a greater consistency of decision making, clearer alignment of settlements with injury types / severity and minimises the progressive creep in the quantum of settlements paid for common types of injury.

37. Common Law (page 73)

No access to common law

Comments:

38. Setting of Premiums (page 75)

Management of premium increases

Comments:

39. Recovery of Incapacity Payments (page 75)

Recovery of money paid in some circumstances - sick leave to be credited

Comments:

40. Legal Costs (page 75)

Limit on legal costs awarded by the Court

Comments:

41. Regular Scheme Review (page 76)

Review every 5 years

Comments:

42. Any Other Comment

Comments:

Greater rights for employers to participate in the real proximate management of a claim and return to work arrangements for injured workers are essential.

The isolation of employers from all matters relating to workers' compensation claims management is disadvatageous to the employer. The employer, in almost every case, has a great interest in having a worker retrun to work. The employer has generally invested considerable time and money in each employee. This has been necessary to enable an employee to achieve and make a meaningful contributory role in the organisation.

For this reason, employers should have the right to elect to manage the injured worker's return to work in preference to the insurer. The reasosn for this include the financial incentive for the employer to achieve a suitable and beneficial return to work arrangmebt for the employer and worker; the worker and employee have a personal relationship they should preserve and utilise to facilitate the return to work; both parties know and understand the work place better than an insurer; both parties have a direct interest in a positive outcome where as an insurer has an indirect interest;

Worker's Rehabilitation and Compensation Advisory Council representation.

Aboriginal corporations, many of which operate in very remote locations have distinctive disadvantages and needs in respect of workers compensation and the management of injured workers.

These organisations are generally unskilled in this area, they have limited knowldege of the complex legislation, their organisational options are limited and they can be very isolated with no professional, technical or clinical support; alternative work options are unlikely to exist.

Aboriginal corporations constitutue a substantial propotion of the employer body of the Northern Territory and its revenues.

Importantly, these organisations are without representation or a voice in critical opinion forming structures. The Workers Rehabilitation and Compensation Advisory Council should have provision for special interest institutions. As such, provision should be made to provide for a representative of the Aboriginal and Torres Strait Islander sector.

43. Specific comments on preliminary recommendations 1 to 29 (pageS 6 - 8)

Comments:

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