

# STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.

## Return to Work Legislation Amendment Bill 2020

### PURPOSE OF BILL

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

### OVERVIEW OF THE BILL

The purpose of this Bill is to amend the *Return to Work Act 1986* and Regulations (the legislation) to expand and improve the operation of the NT workers' compensation scheme. Along with numerous administrative and technical changes, the main changes are:

- revision to the definition of a worker;
- provision that post-traumatic stress disorder for first responder police officers, firefighters and ambulance officers be a deemed disease;
- expansion of the number of diseases under the fire fighters presumptive legislation;
- removal of the cap on normal weekly earnings for payments made after 26 weeks of incapacity;
- provision that the legislation covers injuries incurred on the way to or from work;
- provision for the nominal insurer to manage claims made against uninsured employers; and
- provision that alleged overpayments arising from an error of the employer or insurer or left unrecovered for more than six months can only be recovered by court order.

### HUMAN RIGHTS IMPLICATIONS

The Bill positively engages the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

Article 6 of the ICESCR provides that State Parties must recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. Under Article 6(1), that right to work should be protected through ensuring workers have just and favourable conditions of work, including safe working conditions.

Article 7 of the ICESCR provides that State Parties must recognise the right of everyone to the enjoyment of just and favourable conditions of work. The right to just and favourable conditions of work under Article 7 encompasses a number of elements, including remuneration which provides all workers, as a minimum, with fair wages and

equal remuneration for work of equal value without distinction of any kind (Article 7(a)(i)), and safe and healthy working conditions (Article 7(b)).

Article 9 of the ICESCR requires State Parties to establish a social security system within its maximum available resources, that ensures access to minimum essential levels of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The right to social security under Article 9 extends to employment injury and illness and therefore establishes duties in relation to providing adequate and appropriate workers compensation and rehabilitation services where a person is injured or becomes ill through their employment.

Article 12 of the ICESCR establishes a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health, which extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

Article 12(2) of ICESCR provides that the steps to be taken by countries to achieve the full realisation of the right to health shall include those necessary for, amongst other things, the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment and control of epidemic, endemic, occupational and other diseases. The term 'industrial hygiene' in Article 12(2)(b) refers to the minimisation, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment.

The amendments contained in the Bill positively engages the ICESCR through extending the scope and application of the *Return to Work Act 1986* to workers, and the possible injuries and diseases that may be suffered by workers when carrying out their employment, including when the employer is uninsured.

In the context of statutory compensation schemes, such as that under the *Return to Work Act 1986*, it is important that workers are not unduly disadvantaged as a result of an administrative error that results in an overpayment. The Bill reflects this through inserting a requirement that an insurer may only seek recovery of overpayments arising from an error of the employer or insurer, or left unrecovered for more than six months, by court order. Article 14 of the ICCPR provides that everyone shall be entitled to fair and public hearings by a competent, independent and impartial tribunal. Requiring insurers and employers to apply to the court for recovery of overpayments provides a fair and reasonable approach to alleged overpayments to an injured worker arising from an error of the employer or insurer by instilling the Article 14(1) right to a fair hearing, thereby allowing the worker the opportunity of presenting their case under conditions that do not disadvantage them.

## **CONCLUSION**

This Bill is compatible with human rights as it positively engages human rights and does not raise any negative human rights issues.