

11 March 2020

Committee Secretary
Legislation Scrutiny Committee
GPO Box 3721
Darwin NT 0801

By email: LSC@nt.gov.au

Dear Committee Secretary

Return to Work Amendment Bill 2020

Thank you for the opportunity to provide feedback to the Legislative Scrutiny Committee on the Return to Work Legislation Amendment Bill 2020 ('the Bill').

The Insurance Council of Australia¹ (ICA) is the industry body of the General Insurance industry in Australia. ICA members are involved as underwriters and managers in a number of statutory insurance schemes in Australia, including the Northern Territory Workers Compensation Scheme ('the Scheme').

Our feedback is provided on behalf of the four licensed NT workers compensation insurers (QBE Insurance, GIO, CGU Insurance and Allianz (TIO) Insurance).

Please find enclosed insurers' detailed feedback on the specific sections of the Bill (Attachment A).

More broadly, the ICA is concerned that to date there has been very little consultation with the NT workers compensation insurers on the changes to the Scheme being introduced through the Bill.

Several of changes outlined in the Bill are significant and will have a financial impact on the Scheme. These changes include:

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2019 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$50.2 billion per annum and has total assets of \$129.7 billion. The industry employs approximately 60,000 people and on average pays out about \$152.3 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

- The expansion of coverage for journey claims (especially coverage for fly-in-fly-out workers);
- The removal of caps on nominal weekly earning (clause 9 of the Bill);
- Changes to settlement provision for catastrophically injured workers (clause 16 of the Bill).

However, prior to the tabling of the Bill there was no consultation with insurers or the ICA in relation to these proposed changes.

Further, no modelling has been undertaken in regard to the impact these changes will have on workers compensation insurance premiums for NT employers, particularly small businesses.

Therefore, the ICA and insurers are of the view that Bill should not be passed until the scheme actuary has been provided with the opportunity to undertake appropriate modelling to ascertain and report on the full financial and premium impact the proposed amendments will have the Scheme.

The ICA would welcome the opportunity to discuss this matter further with the Committee or provide any further information.

If you have any queries please contact Tom Lunn, Senior Policy Manager, Consumer Outcomes via email tlunn@insurancecouncil.com.au or phone (02) 9253 5122.

Yours sincerely



Robert Whelan
Executive Director & CEO
Encl.

Detailed Bill Response – Return to Work Legislation Amendment Bill 2020 (NT.)

Bill Clause (No.)	Proposed new section	Response and recommendation
5 7	3B 4A 4B (Extending the meaning of 'worker')	The Bill includes an additional definition of worker to include labour hire services. This is a positive change that provides more clarity and should reduce disputes in the scheme.
6 (4) 12	4(1A) 4(1B) 4(2A)(b) 4(2A)(c) 4(2A)(d) (Journey claims out of or in course of employment)	<p>The proposed amendment seeks to re-instate cover for a worker’s journey to and from work (journey claims).</p> <p>Since 2015, the N.T.’s workers compensation scheme has not covered journey claims in recognition that an employer has little or no ability to influence, control or mitigate the risk to an employee on their journey to and from work.</p> <p>In insurers’ experience, pre-2015 journey claims remain a challenge for the injured worker and the employer - typically there is little engagement from the employer to promote their return to work, and the employer is not able to make changes to their work place to make it safer, since the journey is outside of their control.</p> <p>Journey claims are not considered suitable for the NT market due to the number and proportion of employers with fly in/fly out (FIFO) workers. Workers travelling from other states have other personal injury insurance coverage from compulsory third party, travel, life and public liability. If journey claims are to be included in the scheme there will need to be further clarification where a journey starts and ends.</p> <p>In addition, there has not been sufficient opportunity for the insurance industry to model the premium impacts for businesses. Introducing journey claims again in the NT goes against the trend nationally that recognises that coverage exists for workers from other insurance products (ie. CTP insurance). The ACT is the only jurisdiction that maintains journey claims for workers travelling from home to the workplace.</p>

Bill Clause (No.)	Proposed new section	Response and recommendation
9	65(3) (Long-term incapacity, removal of caps on Normal Weekly Earnings)	<p>Removing the cap of 250 percent of the average weekly earnings will impact employers' premiums and may also reduce incentive for return to work. Most jurisdictions have caps on income replacement as a means of keeping premium affordable – particularly for small and medium businesses. Removing this cap will apply financial pressure on current small to medium business. The incentive for injured workers who remain on the scheme after six months to maximise recovery from injury and return to work may also be impacted by this change.</p> <p>The profile of NT workers includes large numbers of FIFO workers on larger salaries than local workers. Removal of this cap will mean NT employers are subsidising other states who have access to income protection and other insurances. If this provision remains in the Bill, guidance will be needed to provide clarity for open claims at the date of commencement of the changes.</p>
10	73(4) (compensation for medical, surgical and rehabilitation treatment, family counselling and other costs)	<p>This change expands workers entitlement to claim not just costs that have been incurred but also claims costs 'proposed to be incurred' by a worker. This will result in a proposal or anticipation of a costs being incurred being sufficient for an employer or insurer to be required to pay these costs, which may have a further financial impact on the Scheme.</p> <p>This change may also impact insurers' ability to monitor appropriate treatment and care and, where appropriate, deny treatment and care that is not reasonably required, which may also impact scheme costs.</p>
11	74 (Recovery of overpayments)	<p>Whilst due care and diligence is applied when processing payments for income replacement and services, mistakes do occur. Whatever the circumstances, there should be available a more cost-effective dispute resolution model than using the court system to recover overpayments, especially where the overpayments are not through the fault of the insurer.</p> <p>Errors (or evidence of fraud) can often take longer than six months to detect. Court proceedings add significant expense, resources as well as time to the recovery process, adding pressure on the cost of employers' premiums. It is recommended a less expensive and more efficient alternative workers compensation payments recovery and dispute resolution process be considered, rather than the court pathway.</p>

Bill Clause (No.)	Proposed new section	Response and recommendation
13	75B(1A) (Worker to undertake reasonable treatment and training, or assessment)	This is a welcome change and will promote better return to work outcomes for injured workers.
15 16	78A 78B (Settlements for catastrophic injuries)	The definitions in the Bill around catastrophic injury are a good initiative. However, whilst this is potentially a positive outcome for catastrophically injured, there has not been time to model the impact on employer premiums. This needs further consultation and consideration before being adopted into law.
19 31	164A(1) and (2) (Contributions by approved insurers and self-insurers) 17B	The Bill simplifies the law and is based on a principled approach. The implementation of this approach should be left to regulations. We support this approach.
33	9A (Prescribed diseases and kinds of employment)	Following the Senate’s Education and Employment Committee report - <i>The people behind 000: Mental Health of our First Responders</i> - the Federal government supports the recommendation for a Commonwealth-led process involving federal, state and territory governments to design and implement a national action plan on first responder mental health. The NT Government should look to work collaboratively with other state/territory governments for a consistent national action plan on first responder mental health.