

LEGISLATION SCRUTINY COMMITTEE
RESPONSE BY THE DEPARTMENT OF THE ATTORNEY-GENERAL
AND JUSTICE

TO WRITTEN QUESTIONS FROM THE COMMITTEE
RETURN TO WORK LEGISLATION AMENDMENT BILL 2020

Clause 5, Section 3B inserted – Meaning of worker

1. In relation to proposed s 3B, the Committee's legal counsel advised:

The existing s 3(2) provides that a prescribed member of the immediate family of an employer whose specified details are disclosed to the employer's insurer is a worker for the purposes of the Act. Proposed s 34(3) provides that, subject to subsection (4), an immediate member of the family of the employer who lives with the employer is not a worker. Subsection (4) then qualifies this by providing that a 'prescribed member' of the immediate family is a worker if specified details are disclosed to the employer's insurer. That begs the question of why, where all relevantly employed members of the family are disclosed to the insurer, their status as a 'worker' depends on whether or not they are prescribed under the regulations.

- a. Please respond to the above comment.

NT WorkSafe response:

The construct of new subsections 3B(3) and (4) other than narrowing it to a family member who lives with the employer, has not changed markedly from the existing wording. The intent of the change is to align with the minimum benchmarks of the National Injury Insurance Scheme.

The prescription is for definitional purposes, has been in the legislation for over 25 years and has worked well.

Cl 6 – Proposed s 4(1A) – Journey to work

2. The Housing Industry Association (HIA) and the Motor Trades Association (MTA SA/NT) considered that motor vehicle accidents are adequately covered through the Motor Accidents Compensation Scheme and therefore there is no need to provide compensation for injuries incurred while travelling to or from the residence to the workplace.

- a. *What is the rationale for re-instating the setting that workers' compensation cover includes injuries sustained on a journey to or from work as specified in proposed s 4 (1A)?*

NT WorkSafe response:

This change recognises that how, when and why workers travel to and from work and home can be directly affected by the employer. There are a number of court cases around Australia where the linkage has been proven (see *Namoi Cotton Co-Operative Ltd v Easterman* (as Administrator of Estate of Easterman), *Singh t/as Krambach Service Station v Wickenden*, and *Field v Dept of Education and Communities*).

This change will assign the costs of an incident to the instigator of the travel (the employer) rather than the traveller (the worker) and the public health system (if the traveller cannot afford to pay for health care).

The other underlying intent is creating fairness for all workers, as workers driving to work are covered under the Motor Accidents Compensation scheme, while currently those walking to work or riding a push bike currently have no scheme coverage (unless they are hit by a motor vehicle).

3. The HIA commented on the importance of undertaking a cost/benefit analysis to determine the impact of journey claims on premiums and the scheme's viability.
 - a. *What, if any, analysis has been undertaken to establish the impact that re-instating journey to work claims will have on premiums and the viability of the workers' compensation scheme?*

NT WorkSafe response:

This change will be a cost to the Scheme. Over a 5 year period prior to the removal of journey provisions in 2015 there were 177 journey claims totalling \$6.7 million. These are claims that do not involve injuries from motor vehicle accidents which were (and will be) covered by MAC. In the same time the Scheme size was \$570 977 902 with the average yearly cost being \$114 195, 580 (this is not GST inclusive).

This will be an (greater than 1 per cent) increase in the number of claims. Insurers may increase premium rates to meet these costs.

4. The Insurance Council of Australia considered the proposed journey to work provisions to be unsuitable for the NT due to the large number of FIFO workers who have other personal injury insurance coverage.
 - a. *If a FIFO worker is covered under more than one type of insurance scheme what factors are taken into account when determining which scheme would best meet the worker's needs?*
 - b. *What impact, if any, will the provisions in proposed s 4 have on FIFO workers?*

NT WorkSafe response:

FIFO workers are not covered by a particular insurance scheme other than workers compensation (or for journey involving a motor vehicle, MAC) unless the individual chooses to take out their own personal insurance. Such insurance is usually accident and/or illness income replacement insurance. Such coverage is different to workers compensation in that it is only for income replacement and has restrictive time limitations on coverage compared to workers compensation with more generous and longer term income replacement benefits as well as all reasonable medical hospital surgical rehabilitation and associated treatment costs.

If a FIFO worker (or any other worker) did have such personal insurance, it would not affect their workers compensation entitlement. Quite often personal insurance coverage explicitly disallows claims where alternative insurance is available. As such it is unlikely that this issue would arise when determining premium costs. It should also be noted that FIFO workers who take such coverage are not likely the norm but rather the exception.

FIFO workers would be covered for workers compensation when transported to and from their workplace by air. However the carrier would have a legal liability (damages) if an accident occurred. In this regard there are provisions under the Return to Work Act enabling recovery by the employer/insurer from a liable third party.

The other incidents for FIFO workers that would require workers compensation coverage are for journeys to and from work **where the injury does not involve the use of a motor vehicle** (if they were driving then MAC would cover the accident), such as walking or riding (a pushbike) to a collection or departure point. A FIFO worker would be covered as per all workers under these new provisions.

5. In relation to proposed s 4(1A)(b), the Committee's legal counsel advised that:

Proposed s 4(1A)(b): by this provision, an injury to a worker is taken to be related to employment if the injury occurs while the worker is travelling 'by the shortest convenient route' between residence and workplace. There is a question of what 'the shortest convenient route' means. Is it a subjective or objective test? The same criterion was removed from the equivalent Queensland legislation through the Workcover Amendment Bill 1999. The Explanatory Note to that Bill states that this was because 'there was concern regarding the strict interpretation and application of the provision'. Section 36(2)(b) of the Qld Workers Compensation and Rehabilitation Act now provides that the injury is taken not to be related to employment if the injury occurs during or after:

- (i) a substantial delay before the worker starts the journey; or*
- (ii) a substantial interruption of, or deviation from, the journey.*

- a. *Please respond to the above comment and clarification on how the Bill could be amended to manage any potential issues with the interpretation of the phrase 'by the shortest convenient route'.*

NT WorkSafe response:

The test for 'by the shortest convenient route' is subjective. That is, the individual worker may deviate to do shopping, fuel the vehicle etc, on the way home. If that is normal practice or reasonable for that worker to do, then the particular deviation would be convenient.

With regard to counsel's suggestion re the Queensland wording, part (ii) of that wording is already included. In this regard subsection 4(2) qualifies coverage for the journey by saying: 'Subsection (1A) does not apply if an injury sustained while travelling is sustained during or after a substantial interruption of or substantial deviation from the workers journey made for reason unconnected with the worker's employment or'.

NT WorkSafe does not recommend the use of part (i) of the Queensland wording as the phrase 'substantial delay' can be strictly interpreted to mean that if a worker leaves for work late or stays back at work but is not working, then a claim may be disallowed. The conditions set down in s4(2) cover unreasonable delays in travel and have not been the cause of undue disputation since their adoption over 25 years ago.

CI 9 – Proposed section 65 – Long-term incapacity – Removal of cap on weekly benefits

6. Both the HIA and ICA commented that removal of the cap on weekly benefits (proposed s 65(3)(b)) would have an adverse impact on premiums while the ICA also expressed concern that removal of the cap would result in NT employers subsidising other states, due to the high number of FIFO workers in the Northern Territory.
- a. *What, if any, analyses have been conducted to assess the impact on premiums of removing the cap on weekly benefits?*

NT WorkSafe response:

During the first 26 weeks after claiming compensation, when a worker is unable to work, their compensation payments are paid at their normal weekly earnings. After 26 weeks, compensation payments are paid at 75 per cent of their normal weekly earnings.

The 2015 changes placed a cap on a worker's normal weekly earnings after 26 weeks of 250 per cent of the average weekly earnings. This change affected very high income earners (over \$219 000 per year). It is possible that one claimant was affected by the 2015 change. As such, the reversal of the 2015 change will have little or no impact on NT businesses or the Scheme.

- b. *What is the status of FIFO workers under the Bill?*

NT WorkSafe response:

The status of FIFO workers is unchanged by this proposal. The ability to also claim non-cash benefits which was removed in 2015 has not been reinstated by this Bill

- c. *If a FIFO worker has personal injury insurance are they still entitled to make a claim under the NT Return to Work Act?*

NT WorkSafe response:

The ability to source alternative insurance coverage does not affect a workers' entitlement to workers' compensation. FIFO workers with their own personal insurance usually have only accident and/or illness income replacement insurance. Such coverage is different to workers' compensation. Quite often personal insurance coverage explicitly disallows claims where alternative insurance is available in recognition that workers' compensation insurance is mandatory and designed for injured workers.

CI 11 – Proposed s 74 – Recovery of overpayments from the worker

7. Proposed s 74(2) states that unless there is a Court order, overpayments cannot be recovered if they result from an error by the employer or insurer, or if the payment was made in respect of a period more than 6 months before the date on which recovery of the overpaid amount was sought. The ICA recommended that consideration be given to replacing the "court pathway" with a less expensive and more efficient process for recovery of overpayments and dispute resolution.
- a. *What, if any, consideration has been given to implementing alternative methods of dispute resolution?*

NT WorkSafe response:

While the Department has no data on the number of times this occurs, it does receive a few complaints each year about insurers attempting to recover overpayments. However, incidents of overpayments have been significantly reduced since 2015 when the legislation was amended to provide for 14 days notice before a legislated stepdown took effect. If the notice of the stepdown is not issued at least 14 days before it takes effect, then it is deemed not to take effect until 14 days after the notice is issued. This effectively eliminated overpayments because of missed step-downs. This has been incentive for insurers to improve of this aspect of claims management.

With respect to other overpayments, what has been happening is that the insurer was realising there had been an error made, often well into the life of a claim, and has commenced recovering overpayments by reducing the amount of further payments. They have often been doing this contrary to s69 of the Act which requires that any cancellation or reduction in payments needs to be notified in writing to the claimant prior to action.

When either a reduction is noticed or a notification received, the claimant more often than not seeks mediation. Mediation is an expensive process for the insurer with each case costing \$1.5-3k.

While enforcement of s69 is now high on the Department's agenda, the financial and social cost of attempting to recover overpayments is high in comparison to the amount of debt owed (often less than \$10k and usually less than \$2k)

This new provision will remove the ability of insurers to make claims where they have clearly made an error or the overpayment is more than 6 months prior. This will not only reduce costs by removing the ability to recover overpayments in most cases but will also encourage insurers to improve their systems (most of the time this is human error when calculating payments or accepting claims costs – which is fixable with improved training) so that overpayments do not occur – which will be a net saving to the insurers in the long-term.

CI 13 – Proposed s 75B – Removal of subsection (1A) requirement to use an accredited vocational rehabilitation provider

8. Ward Keller raised concerns that the removal of the requirement for an employer to use an accredited vocational rehabilitation provider could result in employees being required to undertake any program regardless of the level of service they are able to provide to the worker.
 - a. *What is the rationale for removing the requirement that an employer of a worker who participates in a rehabilitation program or a workplace based return to work program must ensure the program is provided by an accredited vocational rehabilitation provider?*

NT WorkSafe response:

NT WorkSafe agrees that there has been a drafting error.

The drafting instructions set out that in 2015 a change was made to improve return to work outcomes by imposing an obligation on an employer to develop a proposal for a

return to work plan if the worker was likely to be incapacitated for more than 28 days. Section 75B(1A) should have been amended to allow for this plan to be developed by employers without the exclusive use of vocational rehabilitation providers.

Vocational rehabilitation providers are routinely used for more complex cases but are not used exclusively and it is impracticable and too costly for the Northern Territory scheme for this to be the case. The intention is that it should be clear that proposals for return to work plans may be completed by a vocational rehabilitation provider if the employer requires that assistance but it is not mandatory.

The drafting instructions provided that an amendment to section 75B(1A) may be appropriate. However, section 75A is the section that should have been identified, given this is where the requirement for employers to give a proposal in writing for a return to work plan currently exists.

The intent was to make it clear that an accredited vocational rehabilitation provider was not required to be used for section 75A(c) and this is not achieved through the amendment (or omitting) of section 75B(1A). That subsection supports section 50(7) which requires that a person, agency or body must not provide vocational rehabilitation services to an injured worker under the *Return to Work Act 1986* unless the services are provided by an accredited vocational rehabilitation provider.

To reiterate, the intention is to make it clear that proposals for return to work plans may be completed by an approved vocational rehabilitation provider if the employer requires that assistance but it is not mandatory, remembering that section 75A(1)(c) is that an employer give a proposal in writing for a return to work plan to the worker.

To achieve this intent, a suggested insertion into section 75A(1) would be appropriate to make it clear, for example:

- (d) Notwithstanding section 50 and section 75B an employer may, but is not required, to use an accredited vocational rehabilitation provider for the purpose of section 75A(1)(c).

Section 75B(1A) should remain without amendment as removing this could inadvertently remove the requirement for the use of approved vocational rehabilitation providers in providing vocational rehabilitation services to an injured worker.

It is important that this be rectified to ensure the intent of the amendment as outlined in the drafting instructions is met and that the use of approved vocational rehabilitation providers pursuant to s75B in providing vocational rehabilitation services to an injured worker is still required.

CI 15 – Proposed s 78A(4B) – Agreement not enforceable

9. In relation to proposed s 78A(4B), the Committee's legal counsel advised:

Proposed s 78A(4B): Section 78A(1) of the Act allows a claimant to enter into an agreement with the employer for payment of a lump sum or structured settlement in relation to an injury. Before such an arrangement can be entered into, by proposed s 78A(4) the employer must invite the claimant to obtain independent legal and financial advice. Proposed s 78A(4A) provides that whether or not an agreement is entered into, the employer must pay the reasonable cost of that advice. Proposed s 78A(4B) then provides: 'Any agreement entered into is not enforceable until subsection (4A) is satisfied'. Should subsection (4B) state that it is not enforceable by the employer only?

Otherwise, a claimant is unable to enforce the agreement in circumstances where the employer refuses or fails to comply with their obligations under subsection (4A).

- a. Please respond to the above comment.

NT WorkSafe response:

Section 78A of the Act reads in part:

- (4) Subject to subsection (5) [Cooling off period], an agreement under subsection (1) becomes enforceable when it is entered into if the following conditions are met before the agreement is entered into:
 - (a) the employer invites the claimant to obtain independent legal advice and pays the reasonable costs of the legal practitioner chosen by the claimant to provide that advice;

The language of the proposed section 78A(4B) has split [the current] section 78A(4) into two sub-sections without changing the intent. The operation of section 78a(4) has not been of issue to date – the change has been made to provide clarity about the requirement for the reasonable costs of legal advice (in regard to settlement negotiations) to the injured worker to always be covered by the employer regardless of outcome.

CI 15 – Proposed s 78A(5B) – Settlement by agreement

10. Proposed s 78A(5B) states that a claimant who withdraws from an agreement with the employer during the cooling off period must repay any payments made by the employer. Under proposed subsection (5C)(b), if the claimant fails to repay the employer within the time specified the employer can initiate legal proceedings to recover the unpaid amount. Ward Keller commented that this would adversely affect a worker's ability to pursue their entitlements after they have withdrawn from an agreement, with this being particularly problematic for those who have finalised their claim early in their recovery; for a nominal amount; and during the cooling off period "have suffered an exacerbation of their injury (not during any new/separate employment), no longer have the settlement sum funds and due to the exacerbation need to reopen their claim". (p.2).

- a. *What would be the effect on the operation of the Bill of redrafting the amendment so that the employer cannot initiate debt recovery proceedings while the worker maintains his/her claim?*

NT WorkSafe response:

When a claimant withdraws from a settlement during the cooling-off stage, the claim still stands. During the settlement process, the claimant is made very aware through legal advice, and information provided by NT WorkSafe, that monies may need to be repaid if the settlement is cancelled.

The scenario described by Ward Keller where, during the management of a claim, an insurer would in effect, provide a lump sum payment in lieu of future benefits and then be doubling up by providing financial support and fully-paid access to medical services without the ability to recover would appear very inequitable.

This inequity was the basis of the advice to include this new provision in the Bill to allow legal proceedings to recover monies. This advice is contrary to the opinion provided by Ward Keller to the Committee.

To explicitly disallow such recovery removes an option from the insurers who will have to factor loss of recovery into premium costs. However in the overall standing of the Act and the Scheme, this clause can be removed without significant impact.

CI 24 – Regulation 3 – First responder

11. The UWU noted that in Tasmania, the relevant legislation includes a “presumptive provision that a PTSD diagnosis is work-related to all state government employees which, in addition to emergency workers, includes correctional officers”.

The Committee’s Question 11 has three parts:

- a. *In relation to this Bill, under what conditions, if any, would correctional officers be considered to be first-responders?*

NT WorkSafe response

Correctional officers would not be considered first responders under this legislation. Even though they may attend an incident inside a correctional facility, there is no expectation that a corrections officer would have the skill or knowledge to provide expert life-saving care beyond that that any individual trained in first-aid could provide.

- b. *What is the rationale for limiting post-traumatic stress disorder as a deemed disease to first responders?*

NT WorkSafe response

The rationale for limiting post-traumatic stress disorder as a deemed disease to first responders come from the Australian Senate report ‘*The people behind 000: mental health of our first responders*’ that was published in February 2019. While that report recognises and supports the mental issues faced by all emergency services personnel, it clearly identifies a need for the mental health of on-the-scene first responders to be prioritised.

The report defines the term ‘first responder’ as most commonly referring to professionals such as paramedics, police officers, fire fighters and other emergency personnel trained to provide assistance in time-critical, often life-threatening situations. The report goes on to say that ‘first responders’ **may** also refer to individuals who perform those functions in a volunteer capacity and emergency control centre workers.

The report further defines ‘first responders’ as highly skilled men and women who deliver the initial response in emergency situations, interacting with people and the forces of nature in extreme circumstances. It defines emergency situations as incidents requiring emergency response that often involve serious injury or death, or a threat to life, safety and property.

The proposed definition of first responder and the incidents first responders need to attend to be eligible for claiming PTSD under the deemed disease provisions in this Bill utilises the definitions of the Senate report.

- c. *What would be the effect on the operation of the Bill of treating all injuries that are diagnosed as post-traumatic stress disorder as being caused by the worker's employment where there is absence of evidence to the contrary?*

NT WorkSafe response

Most jurisdictions in Australia have a Deemed Diseases List (the List) as part of their workers' compensation system. This List comprises a list of diseases that are deemed to be work-related. The effect of this is to reverse the onus of proof. A worker with the disease who has been exposed to the relevant exposure in the course of their work is assumed to have developed that disease because of the exposure unless there is strong evidence to the contrary.

Diseases that are not included on the List can still be the subject of a workers' compensation claim through the normal approach, where the reverse onus of proof would not apply. The Deemed Diseases approach simplifies relevant claims on the assumption that there is a high likelihood that the disease has arisen as a result of work-related exposures.

A national review of deemed diseases in 2015 (published by Safe Work Australia at <https://www.safeworkaustralia.gov.au/doc/deemed-diseases-australia>) defined "Stress-related diseases" as describing anxiety, depression, and related psychological diseases. The review recognised that the nature and causes of these conditions can be very different for different people; and that work and non-work factors interplay to such an extent that it is often not possible to clearly assign a condition exclusively to work factors. It recommended that stress-related psychological diseases not be included on the List.

The review also discussed Post-Traumatic Stress Disorder (PTSD) in an occupational setting. The review acknowledges that PTSD appears to be more common (than in the general public) in military personnel and emergency service workers (police, ambulance officers and fire fighters) and in some areas of nursing, such as mental health nursing.

The review highlighted that just like with general 'stress related diseases', the triggers for PTSD appear to be individual and often cross-over work and non-work. It also highlighted that the diagnosis is made largely on self-report of symptoms which leaves considerable room for measurement bias, making it difficult to be confident in diagnoses and makes the work-related component, contribution or cause difficult to establish with confidence.

The review concluded that given the uncertainty in the risk associated with specific exposures that appear related to the risk of PTSD, issues with establishing the diagnosis, and uncertainty about the prevalence of the disorder in apparently at-risk populations, PTSD did not seem appropriate to include on the List with the current state of knowledge, and was not recommended for inclusion on the List.

Given the current lack of clear association in non-first responders, the decision was made to restrict eligibility. While the deemed disease eligibility makes it easier for those workers known to have increased risk of getting PTSD to make successful claims, it should be remembered that all workers can make a claim for work-related PTSD.

As stated above, Post-Traumatic Stress Disorder (PTSD) is already covered under the Act provided the worker can show the illness was materially contributed to by the employment. NT Workers' Compensation Scheme data shows that (across all sectors) 117 claims were submitted for PTSD in the five year period to 2017. A total of 78 were

accepted, 37 disputed and two were deferred (deferred involves all expenses being paid for eight weeks until a final decision), at a cost of approximately \$14,350,000.

12. The NT Police Association, UWU and St John's Ambulance NT recommended that proposed Regulation 3 be amended so that the definition of "first-responder" includes first-responders who do not physically attend the site of an incident but are nevertheless exposed to trauma through the aid they provide remotely.

- a. *What would be the effect on the operation of the Bill of amending the definition of first-responder in Regulation 3 to include personnel with specialised training who are remote first-responders, such as Emergency Dispatch Operators and call takers at the Joint Emergency Services Communications Centre?*

NT WorkSafe response

The Senate Inquiry received a submission from the Royal Australian and New Zealand College of Psychiatrists which stated in part:

Exposure to trauma or 'critical incidents', such as disasters, interpersonal violence, traffic accidents, and combat, forms an important part of the work of first responders and emergency service personnel. Research on Australian firefighters provides a valuable snapshot of trauma exposure in emergency services. A study on South Australian metropolitan firefighters found that 76% of the workforce reported exposure to 10 or more critical incidents throughout their career, and almost all those involved reported witnessing death on the job.

The mental health of non-operational and operational first responders and emergency service workers can be influenced by a number of factors, including traditional workplace risks such as large workloads, lack of control over work and demanding deadlines and targets. Operational first responders and emergency service workers face unique risks in addition to traditional workplace risks, including repeated exposure to trauma. Individuals recruited often have high expectations of their own performance and a low tolerance for failure.

This distinction between those workers attending a scene and providing critical assistance and those workers providing assistance and direction from a command centre is the basis for the Bill not including Emergency Dispatch Operators and the like.

If the Bill was expanded to include emergency personnel who were not first responders the language would need to be extremely explicit to restrict eligibility only to those employees of emergency services. The alternative would be to allow any person who may provide assistance in any way to be eligible which is not the intent of the Bill.

13. The NT Police Association considers that exposure to traumatic events is not limited to the scene of the incident itself but includes exposure to visual and audio evidence associated with those events before, during and after the event as a result of the response, attendance and investigation process.
 - a. *How does the Act provide coverage for trauma arising from these types of exposures?*

NT WorkSafe response

All workers can make a claim of PTSD. The data indicates that almost 70 per cent of all such claims are accepted.

PTSD is defined by the American Psychiatric Association in the fifth edition (2015) of its Diagnostic and Statistical Manual of Mental Disorders (DSM-5) — which is the most widely used diagnostic system in Australia. DSM-5 now also recognises traumatic stress conditions that can arise from indirect or vicarious exposure where the staff member is not under any direct personal threat but repeatedly experiences details of such exposures.

The report 'When Helping Hurts: PTSD in First Responders' (<http://australia21.org.au/product/when-helping-hurts-ptsd-in-first-responders/>) discussed vicarious post-traumatic stress conditions and acknowledged that they are an emergent workplace psychological health and safety risk that can be as debilitating as traditional forms of post-traumatic stress disorder. Such a diagnosis for a police officer dealing with repeated exposure to such material as outlined by the NT Police Association would be grounds for a workers compensation claim without recourse to a PTSD claim as a first responder.

14. St John's Ambulance requested that Patient Transport Officers be included in the definition of first-responders. Proposed Regulation 3 defines first-responder as "a person with specialised training".
 - a. *How is specialised training defined?*

NT WorkSafe response

Specialised training has deliberately not been defined as it would be overly prescriptive and inherently limiting and dated. However the expectation is that the assistance they provide is clearly different from that provided by a bystander or a non-trained worker (regardless of the basic skills such individuals may have).

The definition of first responder includes not only that they must have specialised training but also the criteria for an incident. These scenarios provide guidance on the types of training a first responder would need.

b. *Would this definition include Patient Transport Officers?*

NT WorkSafe response

The St John Ambulance job description for the role of a Patient Transport Officer is to “provide safe patient transport of medically stable patients who require care and observation during transport from healthcare facilities, clinics and private residences”. The training and expectations upon such individuals if they were tasked with attending an emergency scene is such that they would not meet the full scenario test to be a first respondent. It should be recalled that all workers can claim PTSD regardless of job description or training.

Please note that while the initial intent of the Bill did not envisage remote clinic nurses/doctors to be included as eligible first responders, the final language of the amending Bill can be interpreted to include those workers. This is a social contract point that NT WorkSafe agrees with for those workers attending the site of an incident in the circumstances provided.

However, the advice of the Department of Health is that Aboriginal Health Workers and Aboriginal Health Practitioners would not be expected to respond to emergency incidents; or if they did they would be driving the ambulance or health clinic vehicle and would not be providing assistance to the injured party. Which means they would not meet the full scenario test to be a first respondent.

CI 29 – Regulation 5B – Prescribed diseases and qualifying periods: fire fighters

15. The UWU recommended a qualifying period of 5 rather than 15 years, particularly for primary site skin cancer which they state is a higher risk in the NT.

a. *What criteria were used to determine the qualifying periods?*

NT WorkSafe response

The qualifying periods were determined based mainly upon two reports:

- ‘Deemed Diseases in Australia’ written by Dr Tim Driscoll (MBBS BSc (Med) MOHS PhD FAFOEM FAFPHM) (Professor of Public Health, University of Sydney) in August 2015. The report was commissioned and published by Safe Work Australia and can be found at <https://www.safeworkaustralia.gov.au/doc/deemed-diseases-australia>.
- ‘Final report of the Australian Firefighters’ Health Study’ which was a three-year national retrospective study of firefighters’ mortality and cancer incidence conducted by Monash University and published in December 2014. That report

In summary, those reports found that for all four conditions the common latency period was 15 to 20 years which is the reason all four diseases have qualifying periods of 15 years. The breakdown of the findings for each condition is:

- Asbestos related diseases
 - The Monash study found that compared to the Australian population, mesothelioma was statistically significantly increased for those male career full-time firefighters who had served for less than 10 years, but not for those in longer employment duration groups, but the report noted that those analyses were based on small numbers
 - The Deemed disease review found that the latency period for most asbestos-related diseases after exposure is at least 5 years and is commonly 15 to 20 years while malignant mesothelioma was commonly at least 20 to 25 years.
- Skin cancer
 - The Monash study found that the risk of melanoma was significantly increased for male career full-time firefighters, and especially those who were employed for more than 10 years. The melanoma risk was significantly associated with more than 20 years of employment for male part-time paid firefighters when compared to the Australian population. However melanoma risk for males did not appear to be related to volunteering as a firefighter.
 - The Monash study also found that overall cancer incidence for female volunteers was similar to that of the Australian female population but there were statistically significantly more melanomas, particularly for firefighters recruited after 1994 but the excess did not appear related to service duration or number or type of incidents.
 - The Deemed disease review found that the latency period for skin cancer (melanoma and non-melanoma) after exposure to a causal agent is at least five years and is commonly 15 to 20 years.
- Lung cancer
 - The Monash study found that lung cancer incidence was not increased compared to the Australian population for any type of male firefighter regardless of employment type or time in service.
 - The Deemed disease review found that the latency period for carcinoma of the lung after exposure to a causal agent is at least five years and is commonly 15 to 20 years.
- Liver cancer
 - The Monash study found that for male and female firefighters regardless of type or length of service there was no significant increase in liver cancer.

- The Monash study did find that for male volunteer firefighters while there was no overall increased risk of digestive system cancers (which includes liver cancer), or increased risk with duration of service, but there was a trend of increased cancer with the incidents attended. It found however that for male part-time paid firefighters digestive tract cancers were significantly raised for firefighters with more than 20 years employment compared to those with less than 10 years employment and the trend was significant but there was no relationship with incidents attended.
- The Deemed disease review found that the latency period for liver cancer after exposure to a causal agent is at least five years and is commonly 15 to 20 years.