

RETURN TO WORK LEGISLATION AMENDMENT BILL 2015

SERIAL NO. 127

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR BUSINESS

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Return to Work Act* and Return to Work Regulations.

The purpose of the Bill is to reduce costs of the workers compensation scheme for Northern Territory employers while providing fair benefits to injured Northern Territory workers.

NOTES ON CLAUSES

Part 1 Preliminary Matters

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Return to Work Legislation Amendment Act 2015*.

Clause 2. Commencement.

This clause provides for the commencement of the amendment Act on the day fixed by the Administrator by Gazette notice.

Part 2 Amendment of Return to Work Act

Clause 3. Act amended.

This clause provides that Part 2 of the Bill amends the Principal Act.

Clause 4. Section 3 amended.

This clause amends section 3 of the Principal Act to provide definitions consequential to other provisions of this Bill, including a comprehensive meaning of “management action” for the purposes of the definition of injury at section 3A (clause 5).

Clause 5. Section 3A inserted.

Section 3A provides a definition of “injury” that includes a defence for a claim against the employer for mental injury if caused by management action taken on reasonable grounds and in a reasonable manner by the workers employer.

Clause 6. Section 4 amended.

This clause amends section 4 of the Principal Act to exclude most claims for injuries incurred while travelling on a journey to and from work.

The exceptions being where the journey is to or from a workplace other than the worker’s normal workplace at the request of the employer;

or where the worker is required to work outside their normal hours of work and is paid for the time taken for the journey to or from work.

Subclause (5) provides for the regulations to prescribe a class of worker to be covered for workers compensation for journeys to and from work. Please note that in this regard, new regulation 5AA (Clause 50) prescribes police.

Subclause (6) moves the schedule of deemed diseases to the regulations to facilitate likely future changes to the schedule.

Clause 7. Section 5A inserted.

This clause applies Part 11AA of the Criminal Code to offences provided in this Bill.

Clause 8. Part 2, Division 2, Subdivision 2A inserted.

New sections 7KA to 7KE provide the Authority with the power to give a prohibition notice (a stop work order) to an uninsured employer. This will facilitate enforcement of the compulsory insurance provisions without necessarily having to resort to time consuming and expensive prosecution action.

Clause 9. Section 50AA inserted.

This provision will enable automatic recognition of vocational rehabilitation accreditation in another jurisdiction. Currently vocational rehabilitation providers must be approved in the NT in order to provide vocational services to NT workers in another jurisdiction.

Clause 10. Section 53AA amended.

This clause is consequential to Clause 4 that provides the definition of “jurisdiction” in section 3.

Clause 11. Section 61B inserted.

This clause provides that formal notice must be provided to the worker of any pending step down (an automatic reduction or cessation) in benefits. Additionally, the step down will not take effect until at least 14 days after the worker has been notified.

Clause 12. Section 62 amended.

This clause is consequential to Clause 4 that provides the definition of “expert financial advice” in section 3.

Clause 13. Section 65A replaced.

As is the case with the existing section 65A, the new section 65A excludes persons from entitlement to received weekly benefits while detained in a prison or other correctional facility. However, the new section 65A also has provision to ensure that where the person is not actually in a prison and not otherwise maintained by the Territory

(e.g, a person in home detention) that the exclusion will not apply.

Clause 14. Section 65C inserted.

Section 65C creates an offence if an employer dismisses a worker during a period of six months following the date of injury, unless during that period the worker ceases to be totally or partially incapacitated because of the injury.

It also provides that this offence will not apply where the worker is dismissed on the grounds of serious and wilful misconduct.

Clause 15. Section 73 replaced.

New section 73 provides for compensation in respect of medical surgical, rehabilitation and other associated costs reasonably incurred by the injured worker.

Subsections (2) and (3) provide for family counselling for the injured worker and his or her family to assist the worker or family member to cope with the psychological impact of the injury. Compensation for the total costs incurred is payable to a maximum of 1.5 times average weekly earnings (\$2,125.80 in today's figures). Compensation for family counselling is in addition to any other benefit payable in respect of the worker's medical, surgical, rehabilitation or associated treatment.

Subsections 73(4) and 73(5) provide that if an insurer refuses payment for treatment, they must within 14 days provide a written notice stating that the employer (insurer) believes that the treatment does not relate to the injury or is not required and the reasons for that belief, and advise of the rights of appeal.

If the employer (insurer) believes the treatment is not required they must include an opinion from a medical practitioner supporting the employer's belief.

Clause 16. Part 5, Division 3, Subdivision E repealed.

Clause 16 removes the commutation (payment of a lump sum instead of ongoing weekly benefits) provisions. This is because these provisions will be made redundant by new Part 5, Division 4A "Settlement by agreement of entitlement to compensation" (Clause 18).

Clause 17. Sections 75 and 75A replaced.

This clause provides that an employer liable to compensate an injured worker must take reasonable steps to provide suitable employment for that worker and where appropriate, make efforts to retrain the worker.

To assist in improving return to work outcomes, new section 75A also provides that the employer must produce a return to work plan, developed and agreed between the employer and worker, for any injury that involves incapacity of more than 28 days. It also creates offences for not complying with the requirements of this section.

Subsection 75A(6) provides some guidance for employers for determining “suitable employment”.

Clause 18. Part 5, Division 4A inserted.

Section 78A provides for negotiated settlements, including structured settlements of a workers claim, after a qualifying period of 104 weeks. This qualifying period will minimise the possibility of negotiated settlements preventing effective rehabilitation. Every settlement will require mandatory legal advice for the claimant, paid for by the employer/insurer. The provision also requires that financial advice is to be provided at the claimant’s request

Subsection 78A(5) provides for the settlement of disputed claims for compensation. However, any settlement made within the first 104 weeks from injury is to be subject to a six month cooling off period. In other words, the settlement is not binding until 6 months has elapsed. These settlements will also require mandatory legal advice for the claimant (paid for by the employer/insurer) as well as the provision of financial advice at the claimant’s request.

Section 78B provides for periodic agreements between the employer and the injured worker for advanced payments of benefits, to allow workers to manage their own affairs for (but not limited to) treatment, training and/or rehabilitation.

Clause 19. Section 79 repealed.

This clause is consequential to clause 4 that provides for the definitions currently in section 79, in section 3(1).

Clause 20. Section 84 amended.

Section 84 is amended to provide faster and improved access to the Nominal Insurer for claims of workers of uninsured employers. Under this change, uninsured employers will be required to forward claims to the Nominal Insurer as if the Nominal Insurer was their insurer; and that the Nominal Insurer determine and manage such claims.

Clause 21. Section 85 amended.

Section 85 is amended to ensure that where an employer defers liability to obtain further information before making a decision as to liability, the employer must meet the reasonable cost of medical and rehabilitation treatment during the period of deferral.

For claims not involving mental stress, the benefit will exclude hospital inpatient and associated surgical costs and costs of interstate evacuations. These costs are high and it would be unreasonable to impose this cost on employers in circumstances where liability has not been accepted.

Subclause (3) provides that payments made during the period of a deferral are recoverable, but only where there is dishonest or fraudulent behaviour on the part of the worker and liability is subsequently determined not to exist.

Clause 22. Section 87 amended.

Existing section 87 deems a claim to have been accepted if the employer fails to make a decision on the claim within the time specified in section 85(1).

This clause provides that if the employer does not subsequently make a decision to either defer or deny liability within a specific time, the employer will be considered to have accepted liability unconditionally.

This amendment removes the possibility of the claim decision being left 'in limbo'.

Clause 23. Part 6 inserted.

This clause creates penalties for fraudulent behaviour in relation to a compensation claim.

Clause 24. Section 103A amended.

This clause is consequential to clause 4 that provides for the definition of “claimant”, “mediator”, “Rules” and “teleconferencing” in section 3(1).

Clause 25. Section 103BA inserted.

Section 103BA ensures that claimants whose claims are managed by the Nominal Insurer and claimants who are government workers have access to an internal dispute resolution process. Currently only persons whose claims are managed by approved insurers and self-insurers have access to an internal dispute resolution process.

This is an effective mechanism to quickly remedy disputes that may arise from claims administration oversights or errors.

Clause 26. Section 103D amended.

This clause sets a time limit (seven days) in which parties to mediation must supply written medical reports and other written reports (in their possession) for the mediation.

Clause 27. Section 103F amended.

This clause amends section 103F to enable a party to be represented at a mediation conference by a support person. This is conditional upon the mediator being satisfied that such representation would facilitate the conduct of the mediation.

Clause 28. Section 103FA inserted.

Section 103FA provides that where, in the opinion of the Mediator,

a claimant requires legal advice or representation at or incidental to the mediation, the Mediator may make a recommendation to the Authority that the employer fund the claimant’s legal expenses.

The Authority may then require the employer to pay up to one x average weekly earnings (currently \$1,417.20) for that legal representation or advice.

Such payments can only be required to be made where the dispute relates to a decision over initial claim liability or a decision to cancel or reduce weekly

benefits.

Clause 29. Section 103H replaced.

New section 103H creates penalties where a party to mediation fails to attend a conference at the request of the mediator, fails to provide written information requested by the mediator or the Authority and/or fails to provide the information within a specified time.

Clause 30. Section 108 repealed.

This clause removes section 108, “recording agreements” as a consequence of new Part 5, Division 4A “Settlement by agreement of entitlement to compensation” (clause 18).

Clause 31. Section 117 amended.

This clause is consequential to Clause 4 where the definitions of “approved insurer” and “Nominal Insurer” are now provided.

Clause 32. Section 119 amended.

Insurers need to be approved by the Authority. Clause 32 will enable the Authority to impose conditions on the approval given to insurers.

This will enable the Authority to manage insurance coverage under the scheme by the approval process rather than a prescriptive process in legislation

Clause 33. Section 120 amended.

Consistent with clause 32, this clause will enable the Authority to impose conditions on the approval given to self-insurers.

Clause 34. Section 120A inserted.

This clause will allow the Authority to vary the conditions of an insurer or self-insurer’s approval. Before implementing any such variation, the Authority must give the insurer or self-insurer prior notice and explanation of the proposed variation, and invite the insurer or

self-insurer to submit a response.

The Authority, after considering the response, must notify the insurer or self-insurer, explaining the variation and advising of its date of effect which must be

more than seven days after the giving of the notice.

Clause 35. Section 121 amended.

Section 121 is amended to enable the Authority to impose conditions upon renewal of the approval, whether or not those conditions were imposed on the original approval.

Clause 36. Section 126 replaced.

This clause separates the current section 126 into 3 sections, being sections 126, 126AA and 126AB.

New section 126 provides a definition for “adequate policy of insurance or indemnity”.

New section 126AA provides the compulsory workers compensation insurance provisions for employers and penalty for failure to insure.

New 126AB provides for the insurer’s responsibilities with regard to compulsory workers compensation insurance and provides a penalty for failure to meet those responsibilities.

It requires the policy of insurance to comply with provisions that are ‘prescribed by regulation’, rather than the current ‘in accordance with Schedule 2’. In this regard see Clauses 54 and 55 (new regulation 15A and schedule 3).

It also includes in those responsibilities a consequential provision to clauses 32 to 35 requiring that a policy of insurance issued by an approved insurer must comply with any condition imposed by the Authority in accordance with sections 119, 120A or 121.

Clause 37. Section 129 amended.

This is an amendment consequential to the moving of the provisions for compulsory workers compensation policies from Schedule 2 of the Principal Act to Schedule 3 of the regulations.

Clause 38. Sections 167 to 169 replaced.

This amendment is consequential to clause 20 that provides for faster and improved access to the Nominal Insurer for workers of uninsured employers.

- (d) section 73 payment of medical, surgical and rehabilitation expenses;
- (e) section 75A employer to provide suitable employment;
- (f) section 84 claims on Nominal Insurer;
- (g) section 85 decision regarding eligibility to compensation;
- (h) section 87 failure to decide (claim) within specified time;
- (i) section 103F representation at mediation by support person;
- (j) section 167 claims on Nominal Insurer where employer dead, wound up;
- (k) section 170 effect of service of claim on Nominal Insurer;
- (l) section 171 notice of claim (on Nominal Insurer) to be given to employer;
- (m) section 172 conduct of claim by Nominal Insurer; and
- (n) section 173 persons excluded from claiming on Nominal Insurer.

only apply to injuries that occur after the commencement date of the amending Act. Those provisions in force before the commencement will continue to apply to pre-commencement injuries.

Section 209 provides that an offence provision of this Bill only applies to offences committed after the commencement of the amending Act. Those offence provisions in force before the commencement will continue to apply to offences that occur before the commencement.

Clause 46. Schedules 1 to 2 repealed.

This clause repeals schedules of the principal Act as a result of them being moved to the Regulations.

Part 3 Amendment of Return to Work Regulations

Clause 47. Regulations amended.

This clause provides that Part 3 of the Bill amends the Return to Work Regulations.

Clause 48. Regulation 3 and 3AA inserted.

Regulation 3 provides definitions consequential to the new Regulations.

Regulation 3AA is consequential to the moving of schedule 1A from the Act to the regulations (Schedule 1)

Clause 49. Regulation 3A amended.

This clause amends Regulation 3A to clarify that cover for jockeys and stable hands includes track work and the working of horses on or adjacent to racecourses (whether or not for fee or reward).

Clause 50. Regulations 5AA and 5AB inserted.

Regulation 5AA prescribes police officers as persons who are entitled to be covered for journeys to and from work.

Regulation 5AB is consequential to the moving of Schedule 1 from the Act to the Regulations (Schedule 2).

Clause 51. Regulation 6AA amended.

This amendment is consequential to the definition of “expert financial advice” in section 3(1).

Clause 52. Regulation 15 replaced.

Regulation 15 and 15A are consequential to changes to the numbering of section 126 at clause 36.

Clause 53. Regulations 19 to 24 and Schedules 1 to 4 inserted.

Regulations 19 to 23 provide for infringement notices (on the spot fines) for certain breaches of the legislation. They provide for the specifications of such notices as well as the mechanics concerning the issuing, payment and withdrawal of notices.

Regulation 24 provides that the giving of an infringement notice does not affect proceedings for the relevant offence, unless the notice is paid.

It provides that the giving of an infringement notice is not mandatory and, if not

given, does not excuse the person from prosecution for the offence.

It provides that more than one notice may be given for same offence but where more than one notice is given to a person, the person only has to pay in respect of one of the notices.

Schedule 1 describes adjacent areas for the Australian jurisdictions, including the Northern Territory for the purposes of a worker's employment being connected with a particular jurisdiction in accordance with section 53AA of the Principal Act.

Schedule 2 is a schedule of prescribed diseases that are presumed to have been caused by the kinds of employment corresponding in the schedule to the particular disease (for the purposes of section 4(6) of the Principal Act).

Schedule 3 prescribes the wording and conditions for a workers compensation insurance policy required in accordance with the compulsory insurance provisions of the Act.

Schedule 4 prescribes infringement notice offences and amounts.

Those offences being:

1. not complying with a stop work notice;
2. not having a return to work plan;
3. not complying with a mediator request;
4. not having a workers compensation insurance policy;
5. not supplying a wage declaration.

Clause 54. Expiry of Act.

Provides that the amending Act expires on the day after in commences.