

Workers Compensation and Injury Management Bill 2021 (Consultation Draft)

Submission Template

Bill Clause	Comments
<p>Reducing or discontinuing income compensation on basis of worker's return to work Bill ref: cl. 64</p>	<p>"The employer must give the worker notice in the approved form of why payments are being reduced or discontinued and specify the amount of income compensation that will be paid to the worker for any partial incapacity"</p> <p>Clarity is needed into when these notices are to be issued. Would a notice need to be issued for every RTW regardless of the circumstances? For example, a worker returning to their pre-injury role with their pre-injury employer after a brief period of incapacity. This would create a large administrative burden for insurers and risks notices being missed due to the volume of notices required.</p> <p>Further if it is the case that a notice is to be issued in every RTW scenario, what would be the consequence if a notice is missed?</p>
<p>Worker not residing in State: failure to provide declaration Bill ref: cl. 66</p>	<p>Three months is a long time to wait between medical certification particularly when someone has left the state or the country and there is less ability to influence or provide assistance with their return to work. Changing from being able to cease payments to a temporary suspension removes the importance for a worker to continue to have these reviews when there is little consequence for their non-compliance. Changing the timeframe to two months rather than 3 would encourage more active participation in their recovery and allow insurers more oversight into a workers progress and return to work (if able to manage).</p> <p>If a worker does not obtain the updated certification in the three-month period, consideration should be given to how long the suspension can be before an Insurer or Self Insurer can change this to a cessation. For example – if a worker does not provide a further certificate for 9 months, does this mean that payments must restart automatically on production of a certificate? Consideration should be given to cessation in the event the time taken to produce a certificate exceeds a prescribed timeframe</p>
<p>Suspension of income compensation while worker in custody Bill ref: cl. 67</p>	<p>To enable parties to obtain facts from the relevant government authority, can something be incorporated into this section or the consent authority to allow for faster access to this information. Can be difficult to obtain this information from government departments in a timely manner</p>

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<p>Restrictions on when application for registration of settlement agreement can be made Bill ref: cl. 148</p>	<p>cl. 148.(1)(a) appears to suggest that an insurer is not able to resolve a claim unless the employer has accepted liability. There may be instances where a worker's claim is declined, and a commercial settlement is reached before any applications are made at Workcover. Whilst this is likely to be limited in number, it would be worth consideration being given to this in the regulations. As the 6-month limitation in cl.148 refers to date of injury, this could also be applicable for late lodgement claims where there is a significant dispute between parties, but clear risks for both sides.</p> <p>cl. 148(2) Prescribed circumstances list is limited in its current form. There are occasions when workers genuinely want to exit the system for varied but valid reasons. Limiting the occasions when this can occur before 6 months could be detrimental to these workers and their recovery. Request consideration be given to an additional prescribed circumstance where a worker can make an application of some sort to their insurer or Workcover to have their claim resolved in the first 6 months if they want to proceed on that basis. In addition to or alternatively, allow legally represented workers to resolve their claims within the first 6 months. Workcover can then have confidence that a worker has been appropriately advised of the impact of their decision to exit the system early</p>
<p>Settlement agreement cannot apply to common law damages Bill ref: cl. 152</p>	<p>Preventing settlements from including an allowance for Common Law is likely to see an increase in common law actions being registered at the district court which will see a rise in overall claim costs. In order to register, both medical and legal costs will be incurred for time and action to have the WPI registered and then commence proceedings to enable a settlement in the common law arena. Being able to capture an allowance for this in a settlement is a much more cost-effective and timely way to proceed. Generally, workers are legally represented at this stage, so are receiving advice on their entitlements and the impact a settlement has on their ability to access common law.</p>
<p>Requirements when decision on liability deferred Bill ref: cl. 30</p>	<p>Current indications are that deemed liability acceptance day is likely to be 90 days from when the claim was given to the insurer or self-insurer. Depending on the reasons for not being able to make a decision, this 90-day timeframe may not allow insurers enough time to gather the relevant information. If a claim requires a factual investigation or medical records to be obtained this process can take time. An FOI request can take up to 45 days from when the application is received provided there are no concerns with release of the information. Medical records requests from medical practitioners also regularly take 6-8 weeks (often longer) to be received. If an independent medical review is then required to review and consider these documents, it is unlikely that the report will be received back before the expiry of the deemed liability acceptance day. This will potentially result in claims being declined whilst awaiting information, which ultimately may be accepted. This could lead to an increase in the amount of application at CAS and therefore increased legal fees and higher costs to the scheme. Based on the timeframes usually experienced in looking to obtain information for claims which are deferred for genuine reasons, we would recommend consideration be given to extending the deemed acceptance day by a further month to 120 days. Provisional payments should extend across these additional days.</p>
<p>Authority for collection and disclosure of information Bill ref: cl. 34</p>	<p>Consideration given to making Employers authorised recipients. Employers have a duty of care to provide a safe working environment for their employees and this can be difficult to do if they are limited in the information they are privy to. As the insurance policy is in the name of the Employer, it would make sense for them to be an authorised recipient.</p> <p>As an authorised recipient, an Employer would be subject to the same regulations in relation to use and disclosure of the information and this would only be allowed in the context of the workers claim.</p>

Bill Clause	Comments
<p>Employer, insurer, agent of insurer must not be present at medical examination Bill ref: cl.171</p>	<p>Clarification needed on the extent of this prohibition. Employers regularly attend medical reviews with Workers to discuss and promote RTW as is the purpose of the Act. We agree that nobody should be present when a worker is being physically examined, but the meaning of medical examination needs to be clarified.</p> <p>There was some discussion at a WorkCover information session that this applies to the actual examination of a worker, but that the Employer or representative can participate in the remainder of the appointment to discuss RTW following the examination.</p> <p>Whilst RTW case conferences will be required, the frequency of these, timing of getting them organised etc is potentially going to delay RTW if Employers or their representatives are not able to be present and participate in the early stages, as they currently do. It has been proven that early RTW delivers the best and most sustainable outcomes, and this should be allowed to continue in a way where all parties are respected and engaged</p>
<p>Terms of insurance and forms of policies Bill ref: cl. 240</p>	<p>Important that at some stage Principals Indemnity Extensions are addressed with industry before the regulations are finalised.</p> <p>Whilst there is no regulation of these extensions, they will continue to be utilised by Principals and Contractors. Insurers extensions vary in the scope of their coverage which creates complex legal issues for all parties involved. The cost of these extensions is artificially inflating the scheme and moving public liability losses into the WC system. Industry push back is expected but this needs to be address one way or another. Either with specific regulation detailing when and how they can be used or with prohibition of these extensions.</p>