# Description: Description: Description: Description: WorksafeEmailConsultation Overview Paper

## Red Tape Reduction in Rehabilitation and Compensation Act 1988

## Stage 2

## Potential Amendments

### Licencing of insurers

**Sections 98-103, 108-113**

**Issue:**

The Act requires insurers to be licenced by the Board prior to carrying out any employers’ liability insurance for workers compensation. The Act contains a number of provisions specifying how licencing arrangements are to be managed, criteria that must be satisfied prior to the WorkCover Tasmania Board granting a licence and any conditions that may be included. Subject to criteria specified in the Act, a licence remains in force for 36 months.

**Potential amendment:**

Proposal 1: Remove the requirement for licencing

This option would allow employers and (APRA) approved insurers to determine their own arrangements and would reduce the regulatory burden relating to licencing.

Proposal 2: Define another mechanism to set a standard

Other potential mechanism for ensuring good practice in workers compensation liability insurance are available which may provide more streamlined but still effective methods for dealing with this issue. For instance, any APRA[[1]](#footnote-1) approved insurer could be permitted to offer workers compensation insurance. The Board would have no involvement in setting performance standards.

Proposal 3: Simplify the process

This option would retain the requirement for insurers to be licenced, but to simplify or streamline the current requirements to reduce processing and red tape. One such amendment that is under consideration is extending the life of a licence beyond 36 months.

### Permits for employers wishing to self-insure

**Sections 104-113**

**Issue:**

This issue is similar to the licencing of insurers covered above, but relates to employers who wish to self-insure against workers compensation liability. The Act currently allows employers to apply for permits to self-insure, and contains a number of requirements for these. The WorkCover Tasmania Board must consider a number of factors before issuing a permit, including the employer’s financial history, ability to satisfy prudential standards, capacity to comply with the Act and commitment to health and safety, amongst others.

**Potential amendment:**

Proposal 1: Remove the provision for permits

In this scenario, employers would no longer have the ability to self-insure. Self-insurance provides minimal additional benefit to the workers compensation scheme but creates additional complexity to the Act’s requirements and removal of these sections would streamline the Act.

Proposal 2: Define another mechanism to set a standard

This option would modify or simplify the permit conditions and application process by removing many of the current permit and application requirements that currently protect workers.

Proposal 3: Simplify the process

This option would retain the provision for employers to self-insure, but to simplify or streamline the current requirements to reduce red tape. As suggested with the licencing of insurers, it may be helpful to extend the life of a permit beyond 36 months, together with other amendments as appropriate.

### Accreditation of medical practitioners, workplace rehabilitation providers and providers of prescribed services

**Sections 77A-H, 25, 69(1) and Regulation 19 of the Workers Rehabilitation and Compensation Regulations 2001**

**Issue:**

The Act contains a number of requirements for the accreditation of specified practitioners by the WorkCover Tasmania Board. The Act also contains a number of related provisions for to accreditation of these persons, such as the process for applying for accreditation, criteria to be satisfied before the Board may grant accreditation, the duration of accreditation and the process for revoking or suspending accreditation. The duration of accreditation is generally a period of three years.

*Accreditation of medical practitioners*

Medical practitioners are required to be accredited in order to carry out the following functions under the Act:

* signing a certificate accompanying a claim for compensation (Section 77A(1))
* certifying an injured worker’s total or partial incapacity for work (Section 69(1))
* certifying brucellosis (undulant fever) from a blood pathology examination (Section 25).

The Act requires the Board to consult with any representative bodies it considers represent the interests of the practitioner or person prior to revocation or suspension.

*Accreditation of workplace rehabilitation providers*

Workplace rehabilitation providers are required to be accredited by the Board before providing workplace rehabilitation services for the purposes of the Act. These services include:

* initial workplace rehabilitation assessment
* assessment of the functional capacity of a worker
* workplace assessment
* job analysis
* advice concerning job modification
* rehabilitation counselling
* vocational assessment
* advice or assistance with job seeking
* advice or assistance in arranging vocational re-education or training; or
* any other service that is prescribed by the regulations.

*Accreditation of impairment assessors*

The Act also requires that any person must be accredited prior to:

* assessing the degree of a worker’s impairment from an injury for which compensation may be payable (Section 77A(3) and Regulation 19 of the Workers Rehabilitation and Compensation Regulations 2001)
* signing a certificate accompanying a claim for compensation (Section 77A(1))
* certifying an injured worker’s total or partial incapacity for work (Section 69(a)).

**Potential amendment:**

Proposal 1: Remove the requirement for accreditation

This option would remove the need for accreditation for medical practitioners, rehabilitation providers and impairment assessors. Other qualifications and criteria relevant to the profession can provide assurance of expertise and impartiality, and the removal of the requirement will simplify the process for practitioners, workers and employers, and provide opportunities for participation to a wider pool of professionals.

Proposal 2: Retain accreditation but simplify the requirements

This option would retain accreditation but to simplify the requirements related to this, including removing the requirement for consultation about revocation or suspension of accreditation. These proposed changes would streamline processes and allow smaller providers to participate more easily while still retaining a level of oversight by the Board.

Proposal 3: Retain accreditation but extend the duration

This option would extend the duration of accreditation (for instance, from three years to five or eight) to make it easier for practitioners to participate and reduce red tape. This option could be implemented in tandem with option 2.

Proposal 4: Replace the requirement for accreditation with an alternative mechanism

This option would replace accreditation with an alternative method of achieving assurance that practitioners are sufficiently well-versed in the requirements of the Act and are suitable professionals for this purpose. This would involve setting minimum training and qualifications criteria that would need to be satisfied.

### Injury management programs

**Sections 142 and 143**

**Issue:**

Under Sections 142(3) and 142(4), all employers must have in place an injury management program and must comply with it. Insurers also have an obligation to ensure that employers have a program in place.

An injury management program must be submitted to the WorkCover Tasmania Board or the employer’s insurer for approval. A program approved by the Board may be used by multiple employers. Once approved, a program remains in force for up to three years but must be reviewed every 12 months.

**Potential amendment:**

Proposal 1: Remove the requirement for injury management programs

Removing the requirement for injury management programs from the Act will reduce regulatory red tape for employers.

Proposal 2: Retain the requirement for injury management programs but simplify

This option would remove unnecessary complexity from the process and could include removing the need to review programs, simplifying the requirements for injury management program contents and reducing the scope as to whom and how they are applied.

Proposal 3: Amend the duration

This option would extend the duration of programs and/or the length of time between reviews. For instance, the program might remain in force for six years and be reviewed every two. This option could be implemented alone or in combination with Option 2.

### Return to work and injury management plans

**Section 143E and Regulation 24 of the Workers Rehabilitation and Compensation Regulations 2001**

**Issue:**

The Act requires a return to work plan be developed if a worker is likely to be partially or totally incapacitated for a period of 5–27 days. If the incapacity is expected to last for 28 days or longer, an injury management plan is to be prepared. These plans are to be developed by the injury management co-ordinator in consultation with the worker and other specified parties. The plan is to be regularly reviewed and if either a worker or their employer refuses to consent to the plan, the matter may be taken to the Workers Rehabilitation and Compensation Tribunal.

Regulation 24 requires return to work plans to include evidence of reasonable attempts to consult with the medical practitioner who is treating the worker.

**Potential amendment:**

Proposal 1: Remove the requirement for return to work and injury management plans

This option would remove the requirements for both types of plan.

Proposal 2: Amend the timeframes for return to work and injury management plans

This option would retain the requirements but change the point at which the return to work plan becomes necessary. The existing requirement for a return to work plan in instances where a worker’s incapacity may last as little as 5 days is rather onerous for a short-term injury on the minor end of the scale. A more appropriate requirement may be to require a return to work plan where the incapacity is anticipated to last for 14–27 days. This option would still allow for early intervention and ensure communication between the parties but places the focus on more complex injuries.

Proposal 3: Remove provision

This option would remove the provision from the legislation and make it a requirement under the insurers’ injury management program.

### Requirement for employers to give notice to advise the right to claim

**Section 33A**

**Issue:**

The Act currently requires an employer who has been informed of a worker’s injury to serve a written notice on the worker within 14 days advising of their right to claim (unless the employer has been served with a claim for compensation).

**Potential amendment:**

Proposal 1: Remove requirement

Remove this requirement from the Act.

Proposal 2: Amend the wording to link the requirement to section 33

If the requirement is retained, amend the wording to read *‘An employer who has been* ***given notice******of*** *an injury…’* (replacing ‘informed of’). This would link the requirement more clearly with section 33 (notice of injury).

### Requirement for the employer to notify their insurer of injury

**Section 143A**

**Issue:**

This section of the Act requires employers to give their insurer notification of any workplace injury that may result in a level of incapacity for work or that is required to be notified under their injury management program. This must be done within three days of the employer becoming aware of the injury.

This provision contains a drafting error as it refers to ‘*worker’s* approved injury management program’ rather than ‘*employer’s* approved injury management program’ as intended.

Further, there is limited evidence that this type of notification assists insurers or has improved outcomes.

**Potential amendment:**

Proposal 1: Remove requirement

Remove this requirement from the Act.

Proposal 2: Amend the wording

Amend ‘worker’s approved injury management program’ to read ‘employer’s approved injury management program’.

### Workers’ obligations when changing primary treating medical practitioners

**Sections 143(G)(1), 143(G)(3) and 143(G)(5)**

**Issue:**

Injured workers are required to notify their employer of the name of their primary treating medical practitioner as soon as practicable after suffering a workplace injury. The Act also requires the worker to advise their employer if they decide to replace that practitioner with another primary treating medical practitioner. In addition, the worker must authorise the initial practitioner to release relevant records to their replacement. If an injured worker does not comply with any of these requirements, the employer or insurer may notify the Workers Rehabilitation and Compensation Tribunal about the matter.

**Potential amendment:**

Proposal 1: Remove all obligations associated with a primary treating medical practitioner

This would simplify processes for workers, employers and medical practitioners.

Proposal 2: Modify the requirements associated with a primary treating medical practitioner

This option involves modifying the requirements to allow the injured worker to have a primary treating medical practitioner if they so choose, but without the legal obligation to provide their details to their employer.

### Examination of the need for a claim excess

**Section 97(1)**

**Issue:**

This section of the Act provides for an insurance claim excess for compensation. It prevents employers from insuring against liability for the first weekly compensation payment that is payable and the first $200 of any other benefits payable under the Act for an injury. Two options have been proposed:

**Potential amendment:**

Proposal 1: Remove excess

Remove the excess.

Proposal 2: Increase the excess to a more appropriate level

Increasing the excess would also simplify the process, as employers would deal with any small claims, and overall costs to the scheme would be reduced. An excess of around $500 is being considered.

Note that it is also proposed to remove the provision for an exemption to the excess to be applied for, as detailed below.

### Exemption from claim excess

**Section 97(1C)**

**Issue:**

Section 97(1C) provides for the WorkCover Tasmania Board to grant a certificate effectively exempting the above requirement for a claim excess. This certificate allows an employer to insure against liability for the first weekly payment payable and the first $200 of any other benefits payable. This provision is considered to create unnecessary red tape and it may be more appropriate to allow insurers to determine any issue relating to excess.

**Potential amendment:**

Remove this requirement from the Act. Note that it is also proposed to either increase the excess or remove the requirement for an excess entirely, as detailed in Part 9 above. Removal of the exemption provision is proposed whichever of the two options in Part 9 eventuates.

### Requirement for an insurer to forward a copy of the claim to the WorkCover Board

**Sections 36(2)**

**Issue:**

This section requires an insurer who has received a compensation claim to forward a copy to the WorkCover Tasmania Board within 5 days. This is a duplicate provision as the Insurer Determination contains a similar requirement.

**Potential amendment:**

Remove this duplicate requirement from the Act.

### Requirement to display a summary of the Act in the workplace

**Section 152(1)(a)**

**Issue:**

The Act requires all employers to display a summary of the Act’s provisions in their workplace for the information of workers. However, this is considered to be unnecessary as workers are provided with information from the insurer and also have access to WorkSafe Tasmania’s website.

**Potential amendment:**

Remove this requirement from the Act.

### Requirement to display details of the insurer in the workplace

**Section 152(1)(b)**

**Issue:**

Employers are currently required to provide a statement containing details of the insurer with whom they have a workers compensation policy. This provision provides minimal benefit.

**Potential amendment:**

Remove this requirement from the Act.

### Requirement for insurers to provide indicative workers compensation industry rates

**Section 102(A)**

**Issue:**

The Act requires a licensed insurer to provide the WorkCover Tasmania Board with details of the industry rates they intend to base their insurance premium calculations on for the following year. This gives the Board some prior knowledge of how insurers view the market and the relevant industries. However, this places an additional regulatory burden on the sector.

**Potential amendment:**

Remove this requirement from the Act.

### Requirement for provision of a death certificate

**Section 34(2A)(b)**

**Issue:**

At present, the Act requires any claim for compensation by a worker’s dependant for a work related death to be accompanied by a death certificate signed by a medical practitioner.

**Potential amendment:**

Remove this requirement, to streamline the process for dependants of the deceased worker. An approved Death Claim form will be introduced.

### Coverage for partial dependents

**Sections 67 and 68**

**Issue:**

Section 67 of the Act sets out how compensation in the event of a work related death should be distributed amongst the deceased worker’s dependents. It makes a distinction between dependents who were *wholly* dependent on the deceased worker, and those who were *partially* dependent. These may be a spouse/partner or one or more children, or a combination of these.

The Act provides for various permutations of dependents, such as a *wholly* dependent spouse/partner and a *partially* dependent spouse or child/children. However, there is no specific provision for a *partially* dependent spouse andone or more *partially* dependent children. This is considered to be an oversight which does not reflect the intention of the Act.

Section 68 provides for a determination by the Workers Rehabilitation and Compensation Tribunal to make, as to how compensation should be apportioned amongst total and/or partial dependents where there is a dispute. However, it is considered that this step ought not to be necessary as a means to address a legislative deficiency, and places an unwarranted burden on those who have experienced a bereavement.

**Potential amendment:**

Add a provision to Section 67 to specifically cover situations where dependents include a partially dependent spouse or partner *and* one or more partially dependent children.

### Workers Compensation medical certificates certifying total incapacity exceeding 14 days

**Section 143**

**Issue:**

The Act currently prohibits medical practitioners from issuing medical certificates certifying that a worker will be totally incapacitated for work for longer than 14 days, unless they provide reasons for this timeframe. This requirement is considered administratively burdensome.

**Potential amendment:**

Remove this requirement from the Act.

### List of deemed diseases

**Schedules 4 and 5**

**Issue:**

As with most Australian workers’ compensation and rehabilitation schemes, Schedule 4 of the Act contains a list of diseases deemed to be work related, and specifies various occupations at risk of these. This list has changed little since the Act first came into force.

(Note that Schedule 5 contains a second list of diseases which are deemed to be related to firefighting but these are not currently under consideration for amendment.)

**Potential amendment:**

There is the potential to replace the Schedule 4 list with a new list of deemed diseases, recently developed by Safe Work Australia. This list is based on up to date, evidence-based research and includes conditions currently not recognised under the Act. The list can be found at

[www.swa.gov.au](http://www.safeworkaustralia.gov.au)

### Return to work co-ordinators

**Section 143D**

**Issue:**

The Act requires employers who employ more than 50 workers to appoint a trained return to work co-ordinator to assist any worker who suffers a significant injury. The co-ordinator assists with return to work planning, monitors the worker's progress, and assists the worker perform their duties in a safe and appropriate manner. There is limited evidence that this requirement affects outcomes.

**Potential amendment:**

Remove this requirement from the Act.

### Nominal Insurer Committee membership and governance

**Section 122**

**Issue:**

The Act established a body named the Nominal Insurer to ensure compensation claims are handled correctly and workers receive fair compensation in the event of certain unforeseen eventualities (for instance, an employer failing to insure in accordance with the Act or an insurer becoming bankrupt). The Nominal Insurer is funded by insurers and self-insurers (employers that insure themselves) and can therefore be considered an ‘insurer of last resort’. The Nominal Insurer is based on a committee structure; however, only a small number of claims are received by the Nominal Insurer and the current structure is not considered the most cost effective option.

**Potential amendment:**

Replace the committee structure with a Commissioner and to use existing departmental expertise to manage any claims.

### Injuries not considered to be employment related

**Section 25(6)**

**Issue:**

This section of the Act lists a number of instances where an injury is not considered to be related to a worker’s employment. This is to provide clarification in instances where there might otherwise be confusion about whether the injury is work related or not.

**Potential amendment:**

Retain the section but simplify the wording.

### Legislative drafting errors

**Relevant sections of the Act as shown below**

**Issue:**

A number of minor amendments are proposed to various sections of the Act to correct drafting errors, unintended consequences or ambiguity:

| **Relevant section** | **Proposed amendment** |
| --- | --- |
| 1. **Definition of Medical Practitioner**   **Section 3(1)** | The term ‘medical practitioner’ is used throughout the Act, but is not defined there. The term is defined in Section 46 of the Acts Interpretation Act: ‘a person registered under the Health Practitioner Regulation National Law (Tasmania) in the medical profession’.  An unintended consequence of applying this definition in the context of the Act is that a legally qualified medical practitioner of another country is not able to issue a certificate or provide treatment.  It is proposed to add a broader definition to the Act to rectify this issue. |
| 1. **Non-application of Act**   **Section 4(5)** | Amend to exclude Commonwealth employees and workers employed by Commonwealth self-insurers under the Safety Rehabilitation and Compensation Act 1988 (Cth). |
| 1. **Assessment of degree of impairment**   **Section 72** | Amend the process for the issuing of Impairment Assessment Guidelines to provide clarity about when the Guidelines apply. It is important that there is certainty around the commencement and application of the Guideline issued by the Board. Amendments may include a more formal process of Gazettal of new Guidelines. |
| 1. **Additional compensation for travelling expenses**   **Section 76(1)(a)** | This provision refers to medical examinations conducted under section 85 of the Act. However, Section 85 has since been repealed. Amend the reference to now refer to section 90A(2), which allows employers/insurers to require a worker to undergo an independent medical review. |
| 1. **Obligation of employers to insure**   **Section 97(1)(b)** | Amend the wording of section 97(1)(b): ‘arising out of and in the course of’ employment to ‘arising out of or in the course of…’. This is to be consistent with section 25(1). |
| 1. **Employer obligations on termination of policy**   **Section 97(7)** | Replace the word ‘termination’ with ‘expiration’ to be consistenct with section 97AA. |
| 1. **Maintenance of secrecy**   **Section 158** | Amend to remove any barrier created by the Right to Information or Privacy legislation to ensure WorkSafe Tasmania can carry out its proper function of enforcing compliance with the Act, which requires access to accident and claim information. |
| 1. **Amount of compensation in case of incapacity – normal weekly earnings and relevant period**   **Section 69(14)** | Clarify the wording of this section to ensure the method of calculating normal weekly earnings is fair for casual and short term workers. This is in response to concerns that the word ‘continuously’ in the definition of ‘relevant period’ may create problems for casual workers who may be regarded as having a new contract of employment on each occasion they are called on to work. |

1. Australian Prudential Regulation Authority (APRA) [↑](#footnote-ref-1)