

FACT SHEET

Workers Rehabilitation and Compensation Amendment Bill 2009

The *Workers Rehabilitation and Compensation Amendment Bill 2009* has two key objectives to:

1. implement the Government's response to the Report on the Review of the Tasmanian Workers Compensation System by Alan Clayton (the Clayton Report); and
2. establish the legal framework for the WorkCover Return to Work and Injury Management Model.

The Bill will deliver substantial benefits for injured workers by increasing statutory benefits, improving access to common law damages and by ensuring that arrangements for managing workplace injury maximise opportunities for workers to return to work.

The Return to Work and Injury Management Model was developed by a working group of representatives of key stakeholders including unions, employers, insurers, general practitioners, the Tasmanian Risk Management Fund, Workplace Standards and the Workers Rehabilitation and Compensation Tribunal. The Model was strongly endorsed by Mr Clayton in his Report. The general response from stakeholders has been favourable.

Mr Clayton's Report was released for public comment in January 2008. Mr Clayton consulted extensively during the course of his review. Further periods of consultation occurred following the release of the Report in January 2008 and later, following the release of detailed actuarial analysis.

The Government publicly released its detailed response to the Clayton Report in July this year. In response to feedback from stakeholders, some changes were made to the some of the

proposed amendments as well as some additional change to further improve the scheme.

A Regulatory Impact Statement (RIS), analysing the costs and benefits of the proposed amendments, was released on 20 August 2009 for public comment. A draft Bill was publicly released on 3 September and was forwarded to more than 40 key stakeholders seeking their views.

Four written submissions were received following the release of the RIS and the draft Bill. In addition to this, a number of comments were received during meetings and telephone discussions with stakeholders which led to further changes to the draft Bill.

The reform package to be implemented by the Bill is expected to increase claim costs by around 15%. However, it should be recognized that over the past decade workers compensation insurance costs in Tasmania have declined by 45%.

In summary, the proposed reforms will:

- foster and reinforce a return to work culture among employers, workers and other stakeholders;
 - provide greater income security for workers by increasing the level of weekly compensation and extending the period of entitlement;
 - provide additional financial incentives for workers and employers to participate in rehabilitation and return to work;
 - increase the level of lump sum compensation for permanent impairment and death to levels more comparable to those provided in other states and territories;
 - ensure that before a claim for compensation or damages is settled the worker has received appropriate legal and financial advice and all reasonable return to work, rehabilitation and retraining options have been exhausted;
 - provide a power to extend a workers entitlement to medical and related services where a worker requires further surgery or treatment to remain in employment;
- and

- improve access to common law by reducing the whole person impairment threshold from 30% to 20%.

More particularly, the main amendments in the Bill, including those arising from the Clayton Report, will:

- insert a statement of scheme goals;
- encourage early reporting by holding the employer liable for claims expenses until the claim is reported;
- require the Workers Rehabilitation and Compensation Tribunal to approve any settlement of a worker's entitlement under the Act within two years of the date of the worker's claim (variation to Clayton Recommendation No 8);
- provide for the payment of counselling services for families of deceased workers;
- provide for the payment of medical and other expenses for up to 12 months after a worker ceases to be entitled to weekly compensation with the possibility of extension on application to the Tribunal;
- increase the maximum lump sum payment to a dependent on the death of a worker to \$250,000;
- increase weekly payments payable to a dependent child of a deceased worker to 15% of the basic salary (Clayton Recommendation No 14);
- increase the maximum lump sum payment payable for permanent impairment to \$250,000;
- provide for the extension of weekly payments from nine years to 12 years for workers with a whole person impairment (WPI) between 15% and 19%, to 20 years for workers with a WPI of between 20% and 29% and until the age of retirement for workers with a WPI of 30% or more;
- amend the first step-down to 90% of normal weekly earnings rather than 85% of normal weekly earnings;
- delay the operation of the first step-down, so that it comes into effect at 26 weeks of incapacity rather than 13 weeks;
- provide that the step-downs are not to apply where a worker has returned to work for at least 50% of his or her pre-injury hours or duties;
- provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to

- provide suitable alternative duties;
- reduce the threshold for access to common law damages from 30% whole person impairment to 20% whole person impairment. No narrative test; and
- repeal section 138AB requiring a worker to make an election to pursue common law damages.

The Bill also includes a range of measures that support the WorkCover Return to Work and Injury Management Model including:

- requirements for return to work and injury management plans;
- obligations on employers to encourage early reporting of injuries and claims;
- providing an entitlement to the payment of limited medical costs before the claim is accepted; and
- introduction of an injury management coordinator to oversee the injury management process.

The Bill will strike a better balance between the needs of employers and the rights of workers whilst continuing to provide a cost effective workers compensation system for Tasmania.