

# SUBMISSION

## PREAMBLE

The legislation primarily governing workers' compensation in the Northern Territory is the *Work Health Act 1986* ("the Act"). Under the Act, an employer must hold a workers' compensation insurance policy with an approved insurer if:

- They employ a person who performs work or services for them and does not provide the employer with an Australian Business Number (ABN) in writing; or
- The employer is based outside of the Northern Territory and has persons providing work or services for the employer within the Northern Territory and those persons do not provide the employer with an ABN in writing.

The Territory Insurance Office (TIO) is a body corporate established by the *Territory Insurance Office Act 1979* and is an approved insurer to provide workers' compensation cover.

The TIO is one of five (5) approved insurers and six (6) self insurers that operate in the Northern Territory. The TIO is the only approved insurer that operates solely within the Northern Territory.

Pursuant to an agency agreement, the TIO also manage claims for the self insured Northern Territory Government.

There are approximately 3,400 workers' compensation claims lodged with the Work Health Authority in the Northern Territory each year. In the 2001/2002 financial year, 972 commercial (i.e. non-Government) claims and 659 Government claims, a total of 1,631 claims, were lodged involving the TIO.

## MATTERS THAT WOULD BENEFIT FROM A NATIONAL CONSISTENCY

The TIO acknowledge that there are some issues in workers' compensation that would benefit from national consistency. The co-operative model would appear the best direction. There are various issues stemming from the administration of claims under the Act which would hopefully be overcome if the co-operative model was implemented effectively. A national body would inject more experience and consideration into these issues that is available in our local statutory body.

Issues that would benefit from national consistency include:

### Definition of Worker

The definition of "worker" in the Northern Territory is quite unique when compared to other jurisdictions in Australia. It is probable that the current

definition results in the scheme not receiving premium income for a significant number of workers. The net thrown out by the reverse nature of the definition

(i.e. will be a worker until such time as an ABN is provided in writing) is too broad and too onerous on employers. The Northern Territory is in the process of reviewing the current definition.

### Benefit Levels

Certain benefits under the Act are calculated according to average weekly earning levels that are set in the Northern Territory from time to time. In addition, different caps apply in varying jurisdictions. This leads to confusion amongst workers in certain industries, eg, mining, and can also lead to "forum shopping" by workers.

### Access to Common Law Benefits

The Act abolished a worker's common law rights against the employer or fellow workers for injuries occurring after January 1987. Benefit levels in the Northern Territory are comparatively generous to take into the account the limited common law access. Some jurisdictions in Australia either maintain the worker's common law rights or allow the worker to make an election between a statutory scheme and the common law. National consistency is required so that both workers and employers are aware of their rights and obligations. TIO does not support the reintroduction of common law rights in the Northern Territory.

### Fraud Provisions

Nationally consistent fraud provisions are essential in order to ensure validity of claims and control of expenditure. Minimum penalties for any level of fraudulent behaviour are necessary.

### Rehabilitation Obligations

Obligations of employers need to be considered on a national basis, particularly in respect to OHS issues.

Workers obligations need to be clearly defined, with clear and sustainable penalties for non-compliance.

## **HOW CAN THIS NATIONAL CONSISTENCY BE ACHIEVED?**

The required national consistency can be achieved through existing structures and bodies that are already working towards that purpose.

The existing co-ordinating mechanisms, such as the Workplace Relations Ministers' Council and Heads of Workplace Safety and Compensation

Authorities, are appropriate peak bodies to effectively implement the co-operative model.

### **COMMENTS REGARDING A NATIONAL INSURANCE SCHEME**

Although there are some issues in workers' compensation that would benefit from national consistency, the TIO does not support a national insurance scheme.

A national insurance scheme will lead to a decrease in service levels by national employers/insurers in certain jurisdictions, particularly claims service. This is relevant in the Northern Territory where regional issues, such as the number of workers in the mining industry and the large aboriginal population, require special attention.