Safety, Rehabilitation and Compensation Amendment (Early and Effective Rehabilitation) Bill 2017

Submission to Department of Employment regarding Summary of Proposals

2 November 2017

ACTU
australian council of trade unions

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Introduction

1. The Australian Council of Trade Unions (ACTU) welcomes the opportunity to have input into the issues raised in your letter of 3 October 2017 to the ACTU enclosing the following:

    a. *Safety, Rehabilitation and Compensation Amendment (Early and Effective Rehabilitation) Bill 2017,* Regulation Impact Statement Consultation Draft (RIS); and

    b. Summary of Proposals to Reform the SRC Act (Summary of Proposals).

2. The ACTU has consulted with the Australian Lawyers Alliance (ALA), Maurice Blackburn lawyers, Slater & Gordon Lawyers and other stakeholders in relation to these proposals. We repeat and rely on many of the submissions provided by the ALA, in collaboration with Maurice Blackburn Lawyers, in their reply to the Department dated 2 November 2017.

    We also endorse and adopt the submission made to the department by slater & Gordon Lawyers.

Background

3. It is imperative that the Comcare scheme performs both efficiently and economically, whilst protecting the wellbeing and interests of the employee. Currently, it does not meet these requirements. Whilst some of the proposals made by the Department suggest, in principle, a move in the right direction, many of the proposals represent a further diminution in the rights of the injured claimant without providing any meaningful improvement in the economic viability of the scheme for the Commonwealth authority or licensee employers.

4. We note that, despite the Summary of Proposals and RIS purporting to be made in relation to the *Safety, Rehabilitation and Compensation Amendment (Early and Effective Rehabilitation) Bill 2017* (2017 Bill) we have not been provided with a copy of the proposed 2017 Bill.

5. The Summary of Proposals provided is lacking in detail and clarity. This significantly impacts our ability to undertake adequate consideration of the issues.

6. We object to the RIS annexed to the Summary of Proposals. It purports to provide the impacts of the proposed 2017 Bill, despite the 2017 Bill not being provided for consultation; therefore it is not compliant. We also note that many of the individual items proposed in the Summary of Proposals have not been addressed in the RIS; therefore it is deficient. Stakeholders such as the ACTU cannot provide a meaningful response to the Summary of Proposals without a comprehensive RIS addressing each of the proposed amendments.

7. Despite its title, we submit the RIS does not pertain to the 2017 Bill, but rather the *Safety, Rehabilitation and Compensation Legislation Amendment (Improving the Comcare Scheme) Bill 2015* (2015 Bill) which lapsed in 2016.

8. In addition, whilst face to face consultation has occurred with licensee employers in relation to the 2017 Bill, we have not yet been afforded a similar opportunity. We note this has now been scheduled for 8 and 14 November 2017, following an urgent request made by us. We submit that any earlier consultation that has occurred in relation to the 2015 Bill by us or other stakeholders is not adequate for the 2017 amendments.

9. It is imperative that consultation takes place on production of a draft 2017 Bill, a compliant RIS and a comprehensive Summary of Proposals with the ACTU and other stakeholders before the 2017 Bill is introduced.

10. We strenuously oppose the manner in which consultation has taken place in relation to the proposed Bill and the provision of a non-compliant RIS. As such, we must limit our reply to the Summary of Proposals. We will also provide other general recommendations for reform, which we note have been overlooked in the current Summary of Proposals.

11. Given the lack of information, failure to disclose a Bill, the provision of a non-complaint RIS and lack of consultation in relation to the proposed Bill, **we must oppose the introduction of the 2017 Bill**. We must be provided with a complete copy of the 2017 Bill together with the compliant RIS so that proper consultation can take place.

12. We will refer to the Australian Government Agencies, the ACT Government and the self-insured licensed companies collectively as the 'relevant authority'.

Summary of Proposals

EARLY INTERVENTION, REHABILITATION AND RETURN TO WORK

Early notification of injuries and making of claims - supported, in principle, subject to changes

Lodgement of claims by the claimant

13. Workers' compensation schemes throughout Australia have defined timeframes within which claimants are required to lodge a claim, unless special circumstances of a broad nature exist. In addition, most jurisdictions have legislative provisions which allow for an extension of time for the claimant to lodge a claim, where it is reasonable in the circumstances to do so.

14. The ACTU therefore supports the principle of mandated timeframes for claim lodgement, subject to careful consideration of the time periods, including the date

that time starts running for the claimant, and the ability to extend this time period without it being overly burdensome on the claimant.

15. Any mandated timeframes incorporated into the SRC Act must also allow for a similar extension of time. This is appropriate where a claimant for compensation is either not aware of:

    a. The injury itself;

    b. The severity of the injury; or

    c. The nexus to work for that injury.

16. In addition, some injuries which may be perceived to be "new" may in fact be interrelated with existing medical conditions for which claims may have already been made in the past. Moreover, commonly an injury that may not have initially given rise to incapacity may eventually do so over a period of time after the precipitant event.

17. Any amendment to the legislation with respect to the requirement to lodge a claim within mandated time frames must also recognise that some classes of injuries can be of latent onset and accordingly the timeframes must be a certain defined period from the date upon which it was reasonable for the claimant to believe that they had a work-related medical condition that required coverage by a workers' compensation claim.

Requirement of employer to notify Comcare within 3 working days of receipt of the claim

18. We support, in principle, the initiative to mandate time frames for the employer to notify Comcare of receipt of the claim. This must be supplemented with penalties to be imposed on the employer in the event that they fail their obligations under these provisions. The recommended penalty should be a deemed acceptance of the claim.

19. We also submit that the employers should be legislatively obligated to assist the claimant to complete and lodge the claim form, including advice about the impact of questions relating to prior similar symptoms or illnesses, in accordance with section 7(7) of the SRC Act.

Early assessment of the employee's needs – supported, in principle, subject to changes

20. In some matters, the assessment of needs will be plain from the material provided by the claimant's treating medical and allied health practitioners on the lodgement of a claim. In these cases, the relevant authority must not take issue with the needs articulated in those materials and accordingly, claimants ought not to be put to the inconvenience and stress of a mandated needs assessment in such cases.

21. However, we accept in principle, that in some matters a needs assessment is a useful tool for the claimant, the claimant's practitioners and the relevant authority to holistically and proactively prepare for meaningful rehabilitation. This is particularly the case if it aids in expediting the claims process by preventing the claimant from having to lodge separate and additional claims for incapacity, medical expenses, household and attendant care services and/or permanent impairment and non-economic loss claims, similar to the manner in which current needs assessment are carried out under the *Military, Rehabilitation and Compensation Act* 2004.

22. The guiding principles for such a needs assessment must include:

    a. A case management model. Typically, an evaluation by an experienced allied health professional where the multidisciplinary needs of the claimant are holistically evaluated and costed;

    b. The providers involved in the needs assessment hold suitable professional qualifications; and

c. That there must be meaningful independence of the persons undertaking the needs assessment. It will be imperative to avoid a situation where the relevant authorities have a 'captive' and compliant panel of needs assessors where the true independence of such providers is questionable.

23. In some other workers' compensation jurisdictions it is common for the insurers to be legislatively required to provide a panel (usually choosing between three) providers from which the claimant can make a choice. We submit this is appropriate, however any proposed panel must be chosen in consultation with appropriate stakeholders, including employee organisations and representatives.

24. Any such needs assessment must be undertaken within the period provided for the employer to make a determination on liability. It is also important not to allow for delays in the claims evaluation (acceptance or rejection) process whilst waiting on the receipt of such a needs assessment report.

25. It will also be important to share such needs assessment reports promptly with the claimant and their representatives on receipt of the report, unless special circumstances (for example, a serious risk of self-harm) may exist.

26. It will be necessary to legislatively enshrine the proposition that unreasonable and unnecessarily repetitious needs assessments must not occur. There must be a reverse onus imposed on the employer that they must not cause further injury or an exacerbation of the injury through the needs assessment process.

27. A needs assessment may contain unreasonable recommendations or omissions which ought to be remedied. There must be an ability to dispute such needs assessments by reconsideration request and present an alternative needs assessment for consideration by the relevant authority and if necessary, the Administrative Appeals Tribunal (AAT). Any alternative needs assessments obtained by the claimant throughout the reconsideration process must be capable

of being reimbursed by the relevant authority in the event the alternative needs assessment is adopted in part or full.

Early access to medical treatment – supported, in principle, subject to changes

28. We accept that an injured employee having to wait until a liability decision is made before medical treatment is paid or reimbursed, is deficient.

29. We believe that mandating time frames for liability decisions will significantly ameliorate that problem. However additionally, we support in principle the suggestion that a 'without prejudice/without admission of liability' payment for medical expenses be paid. However, we submit that the amount of the provisional medical expenses should not be capped at $5,000.00 and should extend to payment of incapacity payments to ensure that claimant's aren't put to financial detriment whilst waiting for a liability decision.

30. We further support that it not be recoverable by the relevant authority at a later date, except in circumstances of fraud. However, fraud must be carefully defined in the legislation and must not include mere inadvertence or reasonable mistake.

31. There must be a mechanism of review via reconsideration request to the relevant authority by the claimant in the event that the employer fails to pay the claimant under these provisions. In addition, there must be penalties imposed in the event the employer fails to pay the claimant under these provisions.

Aim of rehabilitation – opposed

32. We do not support this proposal due to the limited detail provided in relation to the nature and extent of the objective. Plainly, some people injured at work will

never return to work or never return to that particular workplace or enterprise. Sometimes the reasons behind this are complex and fraught.

33. A person who by reason of medical or other circumstances is unable to return to their pre-injury or other suitable employment ought not to be penalised. However, we accept that as a statement of principle, that one key objective of rehabilitation is to maintain an injured employee in meaningful employment or return an employee to meaningful employment.

34. We support the imposition of objectives into the SRC Act however it must extend beyond rehabilitation and provide an obligation on the employer to benefit the injured claimant. Any objectives must be considered in detail and refer to the beneficial nature of the legislation on the part of the claimant.

35. Any reference to rehabilitation must be aided by the inclusion of a definition of rehabilitation which focused on maximising the claimant's independent functioning in the event they are unable to return to pre-injury duties. We would support applying the definition contained in section 40 of the *Workers' Compensation and Rehabilitation Act 2003* (QLD):

Meaning of rehabilitation:

(1) Rehabilitation, of a worker, is a process designed to—

(a) ensure the worker's earliest possible return to work; or

(b) maximise the worker's independent functioning.

(2) Rehabilitation includes—

(a) necessary and reasonable—

(i) suitable duties programs; or

(ii) services provided by a registered person; or

(iii) services approved by an insurer; or

(b) the provision of necessary and reasonable aids or equipment to the worker.

(3) The purpose of rehabilitation is—

(a) to return the worker to the worker's pre-injury duties; or

(b) if it is not feasible to return the worker to the worker's pre-injury duties—to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer; or

(c) if paragraph (b) is not feasible—to return the worker, either temporarily or permanently, to other suitable duties with another employer; or

(d) if paragraphs (a), (b) and (c) are not feasible—to maximise the worker's independent functioning.

Clarification of rehabilitation responsibilities - supported, in principle, subject to changes

36. The commencement statement of principle to the effect that employers have the primary responsibility for the efficacy of rehabilitation is generally supported, however further detail is required.

37. The practical reality has long been that one or more of the following can occur:

    a. The employing entity has no real capacity to implement and oversee effective rehabilitation, and thus mere lip service is paid to the concept of rehabilitation;

    b. The relationship between the injured claimant and the employee is so fractured that rehabilitation stewarded by the employer may not be effective or in some cases, counter-productive to the objectives of a return to meaningful work and improvement in health outcomes; and

    c. Medical advice may be to the effect that any involvement of the employing entity is disadvantageous to health.

38. Accordingly, Comcare should not abdicate its responsibility to play a key role in ensuring that rehabilitation is implemented in a timely, empathetic, holistic and meaningful way.

39. Comcare taking over the role of rehabilitation responsibilities should only be considered in exceptional circumstances, as set out above. Comcare cannot purport to have a thorough and necessary understanding of the range of employment circumstances across 34 licensee employers. As such, we seek clarification in relation to whether Comcare intends on outsourcing this to third party providers.

Vocational rehabilitation - opposed

40. We do not support narrowing the definition of 'rehabilitation program' and limiting a rehabilitation program to provision of services which support vocational rehabilitation.

41. We do, however, support alignment of vocational supports into the rehabilitation matrix. Rehabilitation is a holistic exercise and must be relative to the physical, psycho-social, intellectual and psychological needs of the claimant on a case by case basis, including medical and other treatments. The aim of rehabilitation should be maximising the claimant's independent functioning in the event they are unable to return to pre-injury duties.

Development of workplace rehabilitation plans - opposed

42. This proposal is lacking in sufficient detail and on this basis, is opposed. The single process must be set out clearly in order for us to respond. The basis of the proposed changes is not clear.

43. We reiterate, however, that where a dispute arises with respect to some aspect of a rehabilitation plan through this process, it must be capable of request for reconsideration and appealable to the AAT.

Consultation about workplace rehabilitation plans - supported, in principle, subject to changes

44. We agree that it is inappropriate that an employer with rehabilitation obligations is not currently required to consult with current treating practitioner(s) or the current employer. We generally support the principle that this should be mandated.

45. However, any rehabilitation matrix connecting the employer with the treating practitioner(s) must be respectful of confidentiality and not extend to unrelated medical matters. In principle, we support any increase reliance on the employee's current treating practitioners (which may be more than a medical doctor) by the employer. The choice of treating practitioner must always be made by the claimant.

46. We hold concerns in relation to the privacy of the claimant and that this provision may be open to abuse without proper regulation. Misuse of information or the attainment of irrelevant information by the employer must be penalised and this must be enshrined in the legislation. All exchanges between employer and treating practitioner must be disclosed to the claimant and subject to an implied undertaking to not be used in other matters or injuries.

47. We reiterate that where a dispute arises with respect to some aspect of a plan through this process, it must be capable of request for reconsideration and appealable to the AAT.

Employee's responsibilities under a workplace rehabilitation plan – opposed

48. This proposal is strenuously opposed. This provision is open for abuse and may conceivably be used to force people to participate in a rehabilitation program not suitable to their needs. Rehabilitation must be appropriate to education, skills and training of the claimant and most focus on maximising the claimant's independent functioning in the event they are unable to return to pre-injury duties.

49. Any threat to suspend payments would be counterproductive to the cooperation required and the reciprocal goodwill required to inform good rehabilitation. Any actual suspension of payments is likely to lead to significant financial hardship and be counterproductive to the objectives of rehabilitation.

50. If this provision is enacted, against our recommendation, it must be capable of request for reconsideration and appealable to the AAT in the ordinary course. If a decision is made in relation to the suspension of payments, there must be provision for a stay order to prevent the actual suspension until such time as the decision has been decided on by the AAT.

Work readiness assessment - opposed

51. We do not support the inclusion of a work readiness assessment as set out in the Summary of Proposals, which purports to be included *in addition* to the proposed initial needs assessment and existing power to require examinations under section 57 of the SRC Act. This is an unnecessary additional layer to the examination and assessments that can be carried out by the relevant authority, and is likely to be unduly repetitious. The initial needs assessment of the employee's needs (above) is almost certainly going to include some observations with respect to work readiness. Any further additional layers of assessment may permit the relevant authority to go doctor shopping.

52. We support the notion that a properly prepared needs assessment, which may contain references to work readiness, can be used as part of the material on which a workplace rehabilitation plan be developed.

IMPROVING THE EFFECTIVENESS OF CLAIMS MANAGEMENT AND DISPUTE RESOLUTION

Improved claim processing - supported, in principle, subject to changes

53. We support, in principle, the need to introduce mandatory timeframes for claims determination. However, the initiatives proposed require careful and further consideration. There must be clarity around when these time periods start running and these time periods must be clearly set out to a claimant in a notice of rights at the time of lodging the claim, and must be clearly identifiable on the Comcare and licensee websites. Without this, and coupled with a lack of provision of legal costs for the applicant to obtain advice on their claim pre-lodgement, it would create confusion and prejudice to the claimant.

54. The requirement for different timeframes for injuries and ailments is fraught. Whether a condition is an injury or ailment is complex (and often the primary issue in appeals to the higher courts) and often not known by the claimant and/or the treating provider at the outset. The practical consequence of having separate time frames for injury and ailment may result in higher disputation rates as the interpretation of injury or disease is blurred. It is advisable to avoid the unnecessary complexity that may occur from differing time frames for ailment and injury.

55. We support the initiative that a claim ought to be deemed accepted if not made within the timeframes.

56. We do not support the initiative that an original determination will be affirmed after 60 days if a reviewable decision is not made; this is more likely to disadvantage the claimant and will result in an increase in disputation rates. We submit that the original determination must be deemed in favour of the claimant if the reviewable decision is not made within 60 days.

57. Further, in the event of any subsequent revocation of a deemed accepted claim, any benefits received by the claimant must not be recoverable by the relevant authority.

Requests for information about a claim – supported and opposed

58. We support this initiative on the presumption that it will be used *only to aid initial liability determinations* being made within the specified timeframe.

59. We do not support this being applied *after* initial liability is made. We submit that the 28 day period should remain for requests for information made about a claim *after* initial liability has been made.

60. We submit that the 14-day period must commence from receipt of the request by the claimant, noting that there may be mail delivery delays for people living in regional Australia.

61. We also submit that the claimant should not be adversely penalised for failing to respond to a request for information within the time period, if a reasonable excuse is provided. Any decision made by the relevant authority to cease dealing with a claim where there is alleged unreasonable noncompliance with a request for information should be a decision capable of being appealed to the AAT.

62. Further, the power for the relevant authority to request information must be in the possession or control of the claimant and must relate to the claimed injury and must only be used for the purpose for which it was obtained.

63. Section 59 of the SRC Act provides that a relevant authority must provide documents on request to a claimant, the Commonwealth or a licensed corporation. There are no timeframes embedded into this section. Similar timeframes as proposed in this initiative must also apply to the relevant authority under section 59.

Ability to require medical examinations - opposed

64. We do not support this proposal; further information is required. We note that this proposal is inconsistent with the proposed move away from non-legally qualified medical practitioners for the provision of medical treatment. This is a cause for great concern.

65. The touchstone for whether it's reasonable for a person to see a practitioner of a particular discipline is the nature of the medical conditions in respect of which compensation is claimed. Examinations must not be unreasonable or unnecessarily repetitious.

66. In the event that a panel is imposed, there must be consensus agreement from the licensed organisations and employee stakeholders in relation to the proposed panel. There must also be some clarification of the definition of "suitably qualified person".

Definition of suitable employment - opposed

67. We oppose this proposal. The effect of this proposal is that the Commonwealth will use this as a means to terminate employment. Claimants stand to lose considerable employment benefits moving away from Commonwealth employment and this is unfair. The claimant should not be unfairly disadvantaged in any way as a result of their work-related injury.

68. We repeat and rely on our submissions about development of workplace rehabilitation plans. The interpretation of 'suitable employment' must have regard to whether the employment is meaningful, and suited to the employees' level of education, skills and training.

69. We have seen instances where an authority has alleged that a low level role is suitable employment for a highly skilled worker, without regard to their pre-injury position or education, skills and training. This can be demeaning for an employee and more often than not, has a negative effect on the claimant and impedes a successful transition to meaningful employment.

70. Many relevant authorities fall short of implementing successful return to work opportunities in line with a claimant's education, skills and training. Relevant authorities need to be encouraged to plan to develop more suitable options for injured claimants.

71. We require further information in regard to the obligations this will place on the claimant.

Level and duration of income replacement - opposed

72. We do not support the proposal to apply calendar weeks to the level and duration of income replacement. This is a dramatic and unreasonable reduction in incapacity payments for injured claimants. It would significantly prejudice injured claimants who are permanently incapacitated and unable to return to work, despite their best endeavours to rehabilitate and obtain suitable employment. The SRC Act was introduced in 1988 with a view to limiting Common Law benefits in return for attractive weekly benefits. This goes against these aims. In the event that it is enacted, serious consideration should be given to providing unrestricted access to Common Law.

73. Incapacity payments paid to claimants under the SRC Act already fall short of the time off work benefits available in other States and Territory workers' compensation schemes. This disparity must not be widened.

74. The current interpretation of the 45 'weeks' being calculated with reference to the employees pre-injury hours allows part-time and shift claimants to receive an appropriate period of incapacity payments.

Costs of dispute resolution – supported and opposed

75. We support, in principle, the recovery of legal costs in connection with a favourable reconsideration request. This is likely to reduce disputation rates through the AAT.

76. We strongly oppose the establishment of a Schedule of Legal Costs, which limits the amount of legal costs a claimant can recover if they successfully overturn a decision made by the relevant authority.

77. Decision-makers in the Comcare scheme are routinely represented by lawyers with decades of experience. The proposed Schedule of Costs, however, in no way limits the amount of money able to be spent by Government or big business in engaging these specialist solicitors.

78. Our expectation is that presently there is far more being spent on lawyers in AAT proceedings by employers and insurers than there is on that portion of legal costs reimbursed to claimants who are successful in the AAT. It is not appropriate to limit the claimant's costs recovery in such circumstances and we do not support the proposal.

79. Having a cap on legal costs will result in claimants not being able to obtain legal representation with the requisite level of expertise as the relevant authority's lawyers. Having adequate legal representation assists claimants in understanding

the risks, prospects and knowledge of meaningful resolution that are not obvious to a lay person. The absence of this advice will result in claimants simply running matters straight to hearing, which is what largely happens in the Social Security jurisdiction, where legal representation is severely limited. The proposal would exacerbate an already gross inequality of power in the dispute resolution context.

Pre-AAT Costs

80. We support the reimbursement of an injured claimant's pre-AAT costs. We understand that valuable factual and medico-legal investigation presently takes places in the course of an AAT Application, being work done by or on behalf of a claimant by legal professionals. This work enables scheme decision-makers (and if necessary, the AAT at hearing) to arrive at a correct or preferable decision accepting or denying a claimant's claim. It is appropriate that the claimant be afforded legal costs to undertake these investigations and obtain advice in order to prevent unnecessary claims proceeding to the AAT.

AAT Costs

81. Legal costs in the AAT are comprised of two components: *solicitor-client*, and *party-party*. Together, solicitor-client and party-party fees make up a client's total legal costs in the AAT. The party-party component is the amount that is recoverable from the Respondent in the event of a successful outcome under the Federal Court of Australia's Scale of Costs. The solicitor-client component is the balance of the total legal costs payable by the client directly to the solicitor.

82. In the AAT, a successful claimant is limited to recovering party-party costs, calculated at 75% of the Federal Court of Australia's Scale of Costs. By way of example, if a claim before the AAT costs $50,000.00 in total legal costs to run to hearing, the claimant is only able to recover a portion of these costs from the relevant authority as party-party costs. In some cases, this can be as low as 50% of the total costs. As such, the claimant may be required to pay the balance as

solicitor-client costs from their compensation amount, or alternatively, from their pocket if the compensation doesn't result in a lump sum. This paucity in cost recovery has resulted in a shortage of firms offering Commonwealth workers' compensation legal services, or many claimants choosing not to obtain legal representation, or in some cases, not pursue their appeal.

83. To improve access to justice and equality in the process, we make the following proposals:

    a. Full legal costs should be recoverable by the claimant (not limited to party/party) in the event that they successfully overturn a decision by the relevant authority;

    b. Comcare must be given the power to negotiate commercially, to prevent unnecessary costs being incurred by running small value disputes to full day hearings in the AAT. One of the impediments to early resolution of disputed matters in the AAT is the requirement that Comcare act as the model litigant. This impacts Comcare's ability to take an economical approach to resolving a dispute and only serves to unnecessarily inflate the level of disputes and increase legal costs paid to Respondent lawyers. We have seen the effect of the model litigant policy taken to the extreme; for example, disputes with less than $1,000.00 being pursued to a multi-day hearing in the AAT;

    c. The present law preventing the relevant authority from recovering legal costs from the claimant is appropriate and must remain;

    d. The Tribunal process should be streamlined to ensure quick resolution of proceedings to reduce costs; and

e. Claimants should be given an opportunity to commute their future benefits under the Comcare scheme to a lump sum, enabling them to exit the scheme, if they so choose.

84. Unless significant changes in costs recovery are effected, claimants will not be able to afford access to justice.

Disclosure of evidence – supported

85. We support this initiative; however it must also extend to the licensee employers.

IMPROVING THE QUALITY OF TREATMENT AND ATTENDANT CARE

Provision of medical treatment - opposed

86. The requirement for medical treatment to be provided by or under an approved health practitioner is inconsistent with the proposal for an authority to be able to obtain medical examination from a suitably qualified person (other than a medical practitioner). We oppose this proposal. The practical effect is to limit where a claimant can obtain treatment.

87. It is widely accepted that non-medical practitioners, such as physiotherapists, can provide beneficial rehabilitative or maintenance treatment. There is no evidence to substantiate a move away from these providers recommending and providing treatment.

88. The most appropriate measure for the provision of reasonable medical treatment is the rehabilitative and maintenance effects, not simply the curative effective. An injured claimant may be able to return to employment as a result of being aided by weekly physiotherapy services to reduce level of pain and increase mobility.

However, the regular physiotherapy may not necessarily have a curative effect on the injury itself.

89. We oppose the proposal to limit the provider of addictive drugs. This is not practical and does not contemplate situations where a claimant may urgently need a prescription, but their nominated provider is unavailable. Further, no evidence has been provided to substantiate this diminution in the right of the claimant.

90. Whilst we support the principle for the relevant authority to approve medical treatment obtained outside Australia, this needs to be provided for outside of the framework of this proposal.

Reasonable medical treatment – clinical framework principles - opposed

91. The practical effect of clinical framework principles is to restrict the nature of the medical treatment available for claimants. We do not support this proposal. It does not have regard to the unique circumstances of the individual. It would only serve to limit treatment available for claimants, which may unduly impact their rehabilitative prospects and impact a return to meaningful employment. The present law is appropriate.

92. The reasonableness of medical treatment must be considered in the context of the individual claimant and their medical circumstances, in line with the rehabilitative and maintenance effect on the claimant. This must be the touchstone of the provision for medical treatment.

Costs of medical treatment - opposed

93. A cap on medical costs must be rejected entirely. This poses a serious threat to the wellbeing of claimants and their rehabilitation prospects.

94. Limits on the costs of medical treatment may also result in a reduced willingness of treating providers to provide reports or assistance, or even the provision of treatment, to injured claimants. We commonly see claimants being refused treatment or care because the provider doesn't want to be involved in the claims process.

95. Any restrictions on the cost of medical treatment will have the potential to increase travel costs being submitted to the relevant authority as the claimant seeks alternative arrangements.

Assessment of need for home help and attendant care services - supported, in principle, subject to changes

96. We support, in principle, the proposal to allow an authority to obtain an independent assessment of an employees' need for home help. The mechanism for this to occur must be considered in more detail. The assessment should only be triggered at the request of a claimant lodging a claim for home help and attendant care services. Clarity needs to be given to the parameters with which the relevant authority must respond to a request.

97. These assessments require an occupational therapist or physiotherapist to enter an injured employees' home. This is an intrusion into the claimant's private life and often results in some embarrassment, particularly in circumstances where the level of care required is significant and has not been previously provided.

98. As such, it is essential that the employee nominate the service provider. If a panel is subsequently introduced, against our recommendation, it must be approved following extensive consultation with employee stakeholders and representatives.

Regulation of service providers – supported and opposed

99. We support, in principle, this initiative where it assists in the service being provided by the *appropriate* provider. However, in some situations, family members are the most appropriate and preferred provider of the service for the claimant.

100. We oppose the removal of family members from being able to provide services for the claimant. This does not take into consideration claimants living in regional or remote areas of Australia, where access to an otherwise appropriate provider is severely limited.

Provision of home help and attendant care services - opposed

101. We strongly oppose this proposal and submit there is no evidential basis for it.

102. We do not support the reduction of home help and attendant care services to no more than three years for non-catastrophic injuries. Whilst ongoing regulation and scrutiny is required over the provision of home help and attendant care services, a blanket cap on services would unfairly prejudice severely injured, albeit not catastrophic injury, claimants.

103. Any provision of home help and attendance care services should be made following an assessment of the reasonable needs of the individual claimant as recommended above.

Recommendations

The ACTU makes the following recommendations:

a. Early notification of injuries and making of claims - supported, in principle, subject to changes
b. Early assessment of the employee's needs – supported, in principle, subject to changes
c. Early access to medical treatment – supported, in principle, subject to changes
d. Aim of rehabilitation - opposed
e. Clarification of rehabilitation responsibilities - supported, in principle, subject to changes
f. Vocational rehabilitation - opposed
g. Development of workplace rehabilitation plans - opposed
h. Consultation about workplace rehabilitation plans - supported, in principle, subject to changes
i. Work readiness assessment – opposed
j. Improved claim processing - supported, in principle, subject to changes
k. Requests for information about a claim – supported and opposed
l. Ability to require medical examinations - opposed
m. Definition of suitable employment - opposed
n. Level and duration of income replacement – opposed
o. Costs of dispute resolution – supported and opposed
p. Disclosure of evidence – supported
q. Provision of medical treatment – opposed
r. Reasonable medical treatment – clinical framework principles - opposed
s. Costs of medical treatment - opposed
t. Assessment of need for home help and attendant care services - supported, in principle, subject to changes
u. Regulation of service providers – supported and opposed
v. Provision of home help and attendant care services - opposed

Thank you for the opportunity to provide a response to the Summary of Proposals.

We look forward to consulting further on these issues further on receipt of the proposed 2017 Bill and a compliant RIS.

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