

ACTU Submission to the National Injury Insurance Scheme – Workplace Accidents

Consultation Regulation Impact Statement (RIS)

17 April 2015

INTRODUCTION

The ACTU is the peak national union body in Australia, representing over 1.2 million workers in every State, Territory and workers compensation jurisdiction. The ACTU believes that working life should be enjoyable. Work should give people the satisfaction of using their skills to the fullest measure, and making a contribution to their workplace, their community and the common good. It should provide fulfilling social interactions, freedom, dignity, economic security and equal opportunity. Australian law must ensure there are healthy and safe workplaces and rehabilitation and compensation systems that mandate that no worker is disadvantaged if they are injured at work. The ACTU supports the development of no-fault National Injury Insurance Scheme – Workplace Accidents, which is consistent with this position.

Q. 1 Response

The ACTU agrees that this chapter is a correct statement of the problem.

Q. 2 Response

The ACTU refers here to research previously released by Safe Work Australia¹ which sets out that, *“In terms of the burden to economic agents, 5 per cent of the total cost is borne by employers, 74 per cent by workers and 21 per cent by the community.”* The ACTU supports an NIIS scheme that is wholly funded by workers compensation bodies, which in turn are funded by employer payments. Neither the injured worker nor the community should bear the cost of lifetime care and support for those suffering catastrophic injury, illness or disease.

Q. 3 Response

The ACTU does not agree with the ‘Base Case’ option, but agrees that the description of this option provided in the Consultation RIS is accurate.

Q. 4 Response

The ACTU supports a ‘minimum benchmarks’ model for the provision of lifetime care and support for people suffering a catastrophic injury – workplace accidents. The CTU does not support the ‘harmonisation’ model discussed, particularly as it would not provide for any jurisdiction to exceed an agreed standard. This would result in the loss of existing statutory and common law rights to compensation.

¹ Safe Work Australia (March 2012) The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008- 09

The ACTU considers that all workers in all jurisdictions who suffer catastrophic injury be provided for by the NIIS – Workplace Accidents. Coverage by the NDIS would not be appropriate in circumstances where a person has suffered a work-related catastrophic injury, disease or illness.

The ACTU supports the principle of Minimum Benchmarks, with some variations to those which are proposed:

The minimum benchmarks should include recognition ‘up front’ of an active workers compensation claim, before any other consideration was made. Those satisfying this threshold need not then satisfy any further threshold text.

Eligibility rules should include those who suffer catastrophic injury as a result of work-related disease. Work-related diseases should be referenced in the list of injury benchmarks and the adequacy of this reference should be part of the 2020 review.

A “work-related catastrophic injury” should include those sustained in the course of all recess breaks, including those occurring on-site and those occurring off-site.

NIIS should provide coverage to all workers who suffer catastrophic injury, even where they may have engaged in what may be deemed serious or wilful misconduct. This is a Scheme with the intention of ensuring that “all individuals who are catastrophically injured in an accident will be entitled to lifetime care and support regardless of whether or not they are able to prove another party was at fault for their injuries.”² It is inconsistent with this intent to seek to exclude a worker by apportioning ‘blame’.

The ACTU supports the inclusion of journeys to and from work in this part of the NIIS Scheme, rather than in the Transport component. The reason for this is that a journey injury, regardless of the degree of injury, is work-related as it is undertaken

² Para one, NIIS- Workplace Accidents Consultation RIS

for the purpose of a worker's employment. It therefore sits most appropriately in this element of the NIIS.

Whilst acknowledging that common law entitlements have been eroded legislatively for many years, and thus not adequate for the purpose of full provision of lifetime care and support, the ACTU nonetheless does not support any proposal, either under this proposed Scheme, or by any existing or future workers compensation Scheme, to extinguish or erode existing common law rights.

The ACTU supports the inclusion of members of the Australian Federal Police International Deployment Group (IDG) in the determination of those who are considered 'workers' for the purpose of the proposed minimum benchmarks. Whilst not specifically excluded, the ACTU understands that members of the IDG working overseas are not covered by any statutory workers compensation legislation³ and thus the ACTU seeks confirmation that IDG members would fall under the scope of this scheme and this set of benchmarks.

Q. 5 Response

The ACTU agrees that there are no feasible non-regulatory options. As the process of workplace health and safety law has shown, voluntary compliance with non-regulatory options has never done much to improve safety and health outcomes for workers and has certainly never delivered on the fundamental right of workers to a safe and health work environment. Tough regulatory options, along with an effective compliance and enforcement model, have been two key elements in improving Australia's health and safety performance.

The ACTU agrees with the comments of the Consultation RIS in relation to discussion of a non-regulatory option:

³ IDG members are covered by an AFP Commissioner's Determination which provides them with equivalent coverage as members of the Australian Defence Force.

“the problem that these options aim to address is twofold; to provide the social good of lifetime care and support for those injured catastrophically and to fix the inequity of the different supports across jurisdictions.

Problems also arise given the implementation of the NDIS has been agreed which in effect becomes the minimum regulatory approach.

Regardless of what approach is taken, the catastrophically injured person always needs care.

These problems are caused by a regulatory failure; the different jurisdictions’ regulatory inconsistencies have led to unequal support dependent on arbitrary factors such as which jurisdiction’s workers’ compensation scheme the catastrophically injured worker is eligible for.

As such it is not appropriate to suggest a non-regulatory option to solve a regulatory problem and no non-regulatory options have been further analysed in this RIS.”⁴

Q. 6 Response

The ACTU agrees with the summary provided of the identified impact of the base case on workers. Clearly, there are a number of aspects of the base case where the impact on workers would be counter to the guiding principle and purpose of the NIIS, being to provide for lifetime care and support.

⁴ Page 11 & 12, NIIS – Workplace Accidents Consultation RIS

The ACTU is emphatic that age should not extinguish a right to care and support (either as a basis for ceasing care and support that has been provided in the past or as a basis for failing to provide it in circumstances where a worker is over the age of 65 at the time the injury occurs or becomes apparent).

Q. 7 Response

With regard to data on the impacts on workers, the ACTU again references Safe Work Australia research which highlights a current trend of cost-shifting workers compensation costs to the worker and the community. This trend should not be replicated in the NIIS.

Q. 8 Response

The ACTU does not support the base case model. It is the responsibility of governments to ensure that the NIIS – Workplace Accidents is funded through employer premium payments.

Q. 9 Response

The ACTU leaves this question relating to data on the costs to governments intentionally blank

Q. 10 Response

The base case would appear to allow employers to abrogate responsibility for payment of compensation to the government. ACTU does not support a scheme which would be funded by the tax system instead of by the workers compensation

scheme. The ACTU supports a scheme wholly funded by workers compensation agencies which are, in turn, funded by insurance purchased with employer payments.

Q. 11 Response

The ACTU leaves this question relating to data on the impacts on the private sector intentionally blank.

Q. 12 Response

The ACTU agrees with the identified impact of the minimum benchmarks on workers, but does not support an impact that may be felt by employers in the long run in a potential decrease in wage rates paid to workers.

Q. 13 Response

The ACTU refers again to previously cited research by Safe Work Australia, wherein it is estimated that workers and the community bear 97% of the total cost of workers compensation injury and disease, with employers currently bearing only 3% of total costs.

Q. 14 Response

The ACTU agrees with many elements of the impact of the minimum benchmarks on governments would be, including particularly the identified aspect that governments would not be responsible for any additional funding (above that which they may incur in their capacity as liable employers) and also in regard to possible increased administrative costs. The ACTU does not consider that additional administrative or management costs would be unmanageable for any jurisdiction.

The ACTU notes the view stated in the Consultation RIS that there may be some “risk” of private insurers moving away from workers compensation. This is a mis-statement and should be reworded to simply observe that private insurers may move away from workers compensation. Such a move should not be mis-characterised as a ‘risk’. It is not.

Q. 15 Response

The ACTU leaves this question relating to data on the impacts on the minimum benchmarks on governments intentionally blank.

Q. 16 Response

The ACTU agrees that there would be some changes to compensation premiums to meet minimum benchmarks which would most likely be felt in some industries and some employers.

The ACTU notes the implementation options for each jurisdiction set out by the Consultation RIS. However, the ACTU does not support one option over another at this point, other than to state that the ACTU does not support an option which would require an injured person to take legal action to enforce entitlements. However, the ACTU may support an option that would provide for the right to take legal action to enforce entitlements.

Q. 17 Response

The ACTU leaves this question relating to data on the costs of the minimum benchmarks on the private sector intentionally blank, noting that response to similar questions have been provided earlier in this submission.

Q. 18 Response

The ACTU leaves this question relating to options for private insurers intentionally blank.

Q. 19 Response

The ACTU makes no comment on whether the implementation of the minimum benchmarks is unlikely to act as a disincentive to consumers in purchasing private insurance products.

Q. 20 Response

The ACTU does not support the 'harmonisation' model proposed for workers catastrophically injured in a workplace accident. A fundamental flaw in 'harmonisation, as practiced in Australia, is that it allows for the diminution of rights and entitlements. This, in the area of work health and safety, was shown to be a loss to workers. In the future, where a model for 'harmonisation' to be revised, wherein all provisions were 'harmonised up' to the highest standard, then the ACTU would revisit its view in relation to the 'harmonisation' approach to worker rights and entitlements.

ADDRESS

ACTU
365 Queen Street
Melbourne VIC 3000

PHONE

1300 486 466

WEB

actu.org.au

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