

National Injury Insurance Scheme – Workplace Accidents

Consultation Regulation Impact Statement (RIS)

1. Introduction

The Commonwealth is working with the States and Territories to develop a National Injury Insurance Scheme (NIIS) to provide lifetime care and support to people who suffer a catastrophic injury from a motor vehicle accident, workplace accident, medical treatment injury or general accident (occurring in the home or community). The intention of the NIIS is to ensure 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 that another party was at fault for their injuries.

The first stream of the NIIS is motor vehicle accidents. A Consultation RIS with minimum benchmarks is available on the Treasury website. Many jurisdictions have no-fault motor vehicle accident insurance schemes, providing lifetime care and support to all individuals catastrophically injured in a motor vehicle accident. However, some motor vehicle accident insurance schemes are fault-based, meaning that individuals who cannot prove the fault of another party can be ineligible for care and support. The motor vehicle accidents Consultation RIS discusses the magnitude of the effects of amending a fault-based scheme to a no-fault scheme, both in terms of the positive impact for catastrophically injured individuals and the potential increase in compulsory third party premiums.

The second stream of the NIIS is workplace accidents. This Consultation RIS contains a set of minimum benchmarks which are largely consistent with the minimum benchmarks for motor vehicle accidents.

In contrast to some motor vehicle accidents schemes, all existing workers' compensation schemes already provide coverage on a no-fault basis, which means that all individuals who are catastrophically injured at work are able to access care and support. Some workers' compensation schemes fall slightly short of the minimum benchmarks, for example by allowing for a lump sum commutation or capping services such as attendant care. Overall, however, the changes that would be required to existing workplace accident schemes to meet the proposed minimum benchmarks are relatively minor compared to those required for some motor vehicle accident schemes. This Consultation RIS discusses the impacts that these changes would have on workers, governments and the private sector.

2. About this Consultation RIS

2.1 Preparing this Consultation RIS

The NIIS Senior Officials group, comprised of officials from the Commonwealth, State and Territory Treasuries and compensation schemes, meets regularly to progress the NIIS. As Chair, the Commonwealth Treasury has prepared this RIS in consultation with State and Territory Officials. PwC assisted with the quantitative analysis.

2.2 Purpose of this Consultation RIS

The purpose of a consultation RIS is to canvass the regulatory options under consideration in order to determine the relative costs and benefits of those options. This RIS: establishes the problem that governments are seeking to address; identifies policy options to address the problem; assesses the costs and benefits of these options in addressing the problem; and establishes a preferred option.

This RIS focuses on identifying the best way of providing lifetime care and support for workers who are catastrophically injured as a result of a workplace accident. Workers' compensation insurance and accident compensation schemes are the responsibility of Commonwealth, State and Territory Governments. As such, this consultation RIS contributes to Commonwealth, State and Territory consideration of the options to address the problem.

2.3 Previous consultation

2.3.1 Productivity Commission

The Productivity Commission released its inquiry report on 10 August 2011 into *Disability Care and Support*. The report recommended the establishment of a NIIS as a no-fault lifetime care and support scheme for all catastrophic injuries, of which workplace accidents would be one stream.

Initial public hearings were held in June and July 2010, and the Productivity Commission released a draft report on 28 February 2011. The draft report was distributed widely and made available on the inquiry website for downloading in whole or in part. Most participants were sent an 80-page report that contained the terms of reference, key points, an extended overview that summarised the Commission's findings and analysis, and all draft recommendations and requests for information. A smaller number of participants, mainly governments, major disability organisations, academics and research centres, were also sent several hundred pages of supporting chapters and appendices. All of this material could be read on the inquiry website, and printed copies were available to anyone on request.

Public hearings were held in April 2011 to discuss the draft report. In total, the Commission held 23 days of public hearings, at which 237 presentations were made, and received over 1000 public submissions, of which more than 400 were received in response to the draft report.

2.3.2 NIIS Senior Officials

The NIIS Senior Officials group, comprised largely of officials from Commonwealth, State and Territory Treasuries and compensation schemes, was established following the release of the 2011 Productivity Commission report to progress the consideration of the NIIS in line with the recommendations in this report.

NIIS Senior Officials meet regularly to discuss issues with the establishment of the NIIS, including the workplace accident stream. The group has identified a draft set of minimum benchmarks for public consultation (see **Appendix A**).

2.3.3 Safe Work Australia

The Safe Work Australia Strategic Issues Group for Workers' Compensation established a temporary advisory group to undertake technical work and make recommendations on a NIIS for workplace accidents. It was chaired by the Commonwealth Department of Employment and comprised representatives of the Commonwealth Treasury, jurisdictional statutory workers' compensation schemes including Comcare, Seacare and the Military Compensation Scheme, unions, employer groups and self-insurers.

2.3.4 Consultation RIS for motor vehicle accidents

In April 2014, the Commonwealth Treasury published a Consultation RIS which sought feedback on the motor vehicle accidents stream of the NIIS. 14 submissions were made to this RIS, largely from medical representative groups, which are publicly available through this link:

<http://treasury.gov.au/ConsultationsandReviews/Consultations/2014/National-Injury-Insurance-Scheme-Motor-Vehicle-Accidents/Submissions>.

The Consultation RIS for workplace accidents considers some of the same issues as the Consultation RIS for motor vehicle accidents because both statements focus on identifying the best way of providing lifetime care and support to catastrophically injured workers.

2.4 Opportunities to comment on this Consultation RIS

The Treasury, as chair of the NIIS Senior Officials group, now seeks input from stakeholders on the proposals outlined in this Consultation RIS.

To the extent possible, all submissions will be made available on the Treasury website – www.treasury.gov.au. All personal details other than your name and the State or Territory in which you reside will be removed before publishing. If any information contained in your submission should be treated as confidential, you should clearly identify the sensitive information and provide your reasons for treating it in-confidence on the submission cover sheet. Submissions received by post will be available in PDF on the website. The Treasury does not intend to formally reply to each submission.

The closing date for submissions is 12 April 2015.

The consultation RIS is available electronically at www.treasury.gov.au. If you are unable to access the website to obtain a copy of these documents, you can contact Leesa Croke at Niisris@treasury.gov.au.

Responses to the consultation RIS can be provided as follows:

By email (preferred):

Niisris@treasury.gov.au

In writing:

Leesa Croke

The Treasury

Langton Crescent, Parkes ACT 2600

2.5 Further consultation

After the release of this Consultation RIS, some jurisdictions may decide to conduct further public consultation to seek views about the impact that options may specifically have in their jurisdictions.

3. Nature of the problem

3.1 Number of catastrophic workplace accidents

The Productivity Commission suggests that gains from occupational health and safety measures means that catastrophic workplace accidents are reducing. Analysis from 2005 estimated that there were approximately 60 cases of catastrophic injury arising from workplace accidents across Australia each year.¹ Accounting for growth in the working population (and assuming there has been no change in the risk of accidents), PwC has calculated that this would translate into approximately 70 catastrophic workplace injuries in 2014.² However, accounting for recent trends in the reduction of long term (compensation of 12 weeks or more) workplace accident claims, there could be as few as 60 catastrophic workplace injuries in 2014.³

3.2 Workers' compensation schemes

There are 11 main workers' compensation schemes in Australia. All eight States and Territories have their own schemes and the Commonwealth has three schemes. All schemes provide coverage on a

¹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 890, citing Walsh et al. 2005.

² Using total persons employed from ABS cat no 6202.0 *Labour Force, Australia, August 2014*

³ Projecting trends from Safe Work Australia (2014) *Australian Workers' Compensation Statistics 2011-12*, table 9 and assuming catastrophic injuries remain the same proportion of serious claims. Even as employment has grown, the total level of serious claims has decreased, at a rate of approximately 1 per cent a year over the last decade.

no-fault basis; that is, coverage is provided regardless of whether or not the injured workers can prove that their workplace was at fault for the accident. The result is that every worker who is catastrophically injured in a workplace accident is currently entitled to support through their workers' compensation scheme.

In contrast (as described in the consultation RIS on a NIIS for motor vehicle accidents) some motor vehicle accidents insurance schemes are fault-based, meaning that individuals are unable to receive support if they cannot prove the fault of another driver.

Given the complete no-fault coverage for workers' compensation schemes in Australia, all individuals will receive some form of compensation if they are injured in a workplace accident. However, lifetime care and support is not always available in every jurisdiction and the extent of available entitlements can depend on the jurisdiction in which the accident occurred.

Workers who are catastrophically injured as a result of a workplace accident require particularly high and sustained levels of care and support across their lifetime. The Productivity Commission noted that the low prevalence of catastrophic workplace injuries means that workers' compensation schemes are generally not adequately equipped to support these lifelong needs.⁴ More specifically, some workers' compensation schemes cap the amount of services that can be provided (particularly attendant care); others allow workers to commute existing and future rights into a lump sum payment by the insurer.

Victoria transfers catastrophic cases to their no-fault motor vehicle accident scheme (in effect, the management of catastrophic claims is contracted out to a different scheme, with funding attached). This arrangement exists between Victoria's Workcover and the Transport Accident Commission. The Productivity Commission proposes that other governments consider adopting this type of arrangement. Importantly, claims would be financed from workcover premiums, maintaining efficient incentives for injury prevention in workplaces and, where possible, vocational rehabilitation.

3.3 NDIS and interaction with accident injuries

The NDIS is being trialled in Tasmania (for 15-24 year olds), South Australia (for children up to 14 years of age), Victoria (in the Barwon region), New South Wales (in the Hunter region), the Australian Capital Territory (all age groups and areas), the Northern Territory (in the Barkly region) and Western Australia (in the Perth Hills region). All States and Territories are preparing for the roll out of the NDIS in full across Australia and governments are working towards the goal of having full national coverage by July 2019.

The NDIS funds reasonable and necessary support for individuals with permanent and significant disability. If a worker is catastrophically injured in a workplace accident, they are likely to fulfil NDIS eligibility criteria if they live within a trial site and are of eligible age.

⁴ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 890.

The NDIS could be expected to provide top-up care and support to individuals catastrophically injured in a workplace accident when there are shortfalls in the entitlements provided by the relevant workers' compensation scheme. However, on such occasions, individuals eligible for the NDIS would be required to navigate two schemes. Furthermore, individuals aged 65 and over at the time of their accident will not be eligible for the NDIS and may consequently receive reduced entitlements in comparison to individuals aged under 65.

3.4 National Minimum Benchmarks for Motor Vehicle Accidents Compensation Schemes

Minimum benchmarks for motor vehicle accidents have been agreed by seven jurisdictions (<http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>). These benchmarks aim to ensure that workers who suffer a catastrophic accident in a motor vehicle accident are able to receive a minimum standard of lifetime care and support, no matter the circumstances or location of their accident. By contrast, workers who are catastrophically injured in workplace accidents are not entitled to a minimum level of coverage because jurisdictions have not agreed to minimum benchmarks for the provision of lifetime care and support.

Consultation questions

Question 1: Is this chapter a correct statement of the problem?

Question 2: Do you have any data of the quantum of these problems, i.e. existing costs?

4. Options

4.1 Base case

Under this option, jurisdictions do not make changes to their workers' compensation schemes. The schemes continue to provide cover on a no-fault basis for workers catastrophically injured in workplace accidents. However, there are occasions where these schemes fall short of the minimum benchmarks for the provision of lifetime care and support (a draft set of minimum benchmarks is at **Appendix A**). Chapter 3.2 discusses in more detail how some existing workers' compensation schemes fall short of these minimum benchmarks, mainly around lump sum payments and caps on services. Under this base case option, workers that are not fully supported by their workers' compensation scheme are able to 'top up' their support from the NDIS (for those who are eligible and living in areas where the NDIS has rolled out). In such situations, under bilateral Heads of Agreements all jurisdictions other than Western Australia⁵ are required to reimburse the NDIS for the cost of topping up support from 1 July 2016.

⁵ Western Australia has not yet committed to the NDIS or NIIS.

4.2 Minimum benchmarks

Under this option, jurisdictions agree minimum benchmarks and then make any necessary changes to ensure that their schemes align with the minimum benchmarks. Jurisdictions then implement the minimum benchmarks by eliminating any gaps where their existing schemes fall short of the minimum benchmarks. This represents the introduction of a federated model of the NIIS for workplace accidents, where existing jurisdictional workers' compensation schemes are reformed so that a minimum agreed level of support is offered by each scheme on a no-fault basis. Jurisdictions have the ability to implement the minimum benchmarks in a way that best suits their jurisdiction and are able to exceed the minimum benchmarks.

NIIS Senior Officials have identified draft minimum benchmarks for consultation (at **Appendix A**). To ensure that their scheme aligns with the minimum benchmarks, under this option some jurisdictions would need to eliminate the ability to convert future benefits into lump sum payments and remove restrictive time limits and caps on services. Under this option, New South Wales, Victoria and the Northern Territory meet the minimum benchmarks. However, Western Australia, Tasmania, the Australian Capital Territory, Queensland and the Commonwealth would need to amend their schemes because at the moment they fall short of the minimum benchmarks, as discussed below. South Australia has recently passed legislation which is expected to commence on 1 July 2015. This legislation has been designed to comply with the NIIS for lifetime care and support for catastrophically injured workers. For the purposes of this RIS, all comments about the South Australian scheme will be based on the new scheme.

Commonwealth

In all three Commonwealth schemes, there is a weekly cap for the provision of attendant care and domestic assistance.⁶ As a weekly cap, it is less restrictive than a total cap, as it ensures that support is offered every week and cannot leave the worker without care. However, it is assessed that this cap only provided about half of a reasonable level of care for those with a catastrophic injury.

- The cap is \$421.50 per week as at 1 July 2014.⁷
- However, in the case of long term catastrophic injury and disability, attendant care is often the major cost and is likely to require significant weekly spend for catastrophically injured workers.⁸ The Pricing Joint Working Group for the NDIS has recently suggested that an efficient price for one hour of high intensity assistance with self-care is around \$40 (in July 2014 terms,

⁶ While both military compensation schemes (Seacare and DVA) do not meet the minimum benchmarks, they will be discussed only qualitatively in this report and will not be included in cost estimates. These schemes are very small compared to the others. In number of workers covered, the two together represent less than 0.1 per cent of all workers in Australia.⁶ This, combined with the fact that the schemes only deviate from the minimum benchmarks in one area, would mean that any cost estimate should be negligible in the total. Given the very different risk profile and sample size of the military schemes, it would be difficult to provide defensible estimates from State and Territory scheme costings.

⁷ Safe Work Australia (2014) *Comparison of workers' compensation arrangement in Australia and New Zealand*, table 4.2

⁸ For example in the underlying assumptions in John Walsh, Anna Dayton, Chris Cuff and Peter Martin (2005) *Actuarial Analysis on Long-Term Care for the Catastrophically Injured* and also reflected in the fact that of total expenditure on NDIS payment in the first year of implementation, 73 per cent was spent on the third support categories of assistance with personal activities, participation in the community and daily task (NDIS (2014) *Quarterly Report to COAG Disability Reform Council*).

depending on level of care and profit assumptions).⁹ This would imply only approximately ten or 11 hours of attendant care a week under the cap.

- Although each worker's attendant care requirements will vary greatly according to their level of need, there is correlation between level of impairment (such as FIM which the minimum benchmarks are based on) and hours of care required.¹⁰ Based on a FIM of five and the observed relationship between FIM and requirement of care, an estimated average of 20 to 25 hours of attendant care per week would be required for a catastrophically injured worker. This means that on average, the Comcare cap for attendant care is covering, on average, 40 to 50 per cent of a reasonable level. As such, the scheme does not meet the minimum benchmarks in this area.

Australian Capital Territory (ACT)

The ACT private sector scheme allows workers to commute existing and future rights into a lump sum payment by the insurer, including for medical costs.¹¹ Access to a lump sum, even at the election of the worker, does not meet the minimum benchmarks.

Public sector employees in the ACT are covered by the Commonwealth's Comcare scheme. The ACT's ability to meet any minimum benchmarks in respect of the public sector depends on change to the Commonwealth scheme.

Queensland

Queensland has a short tail workers' compensation scheme where entitlement to weekly benefits stops when the first of the following happens:

- the incapacity because of the work related injury stops;
- the worker has received weekly payments for the incapacity for five years;
- the weekly benefits received reach the maximum amount (\$307,385 as at 1 July 2014); or:
 - the worker's injury has been assessed as stable and stationary and not likely to improve with further medical or surgical treatment; and
 - an assessment of the degree of permanent impairment has been made; and
 - a notice of assessment and offer of lump sum compensation has been made to the worker; and
 - the worker has accepted, rejected or deferred a decision about the offer of lump sum compensation; or
 - 20 business days have passed since the worker received the offer.

The short tail nature of statutory compensation in Queensland is offset by the ability of injured workers to seek damages at common law for loss of future earnings, if their degree of permanent impairment is greater than five per cent.

⁹ National Disability Insurance Agency and National Disability Services (2014) *Final Report of Pricing Joint Working Group*

¹⁰ Disler, P.B., Roy, C.W. and Smith B.P. 1993, 'Predicting hours of care needed', *Archives of Physical Medicine and Rehabilitation*, February, vol. 74, no. 2, pp. 139-43

¹¹ *Workers Compensation Act 1951 (ACT)*, section 137

Queensland is the only jurisdiction with a centrally funded short tail scheme.

In Queensland, injured workers whose assessed degree of permanent impairment is greater than five per cent retain the right to seek damages under the common law for care and support. This allows workers to be paid a lump sum, rather than lifetime care and support and is why Queensland does not meet the minimum benchmarks. Gaining common law compensation will generally influence the availability of statutory compensation. In Queensland a worker with a work related impairment of less than 20 per cent must elect between accepting the statutory lump sum payment or pursuing common law.

Tasmania

Tasmania has an 'agreement to settle' provision which allows the worker to convert future benefits into a current lump sum payment. This extinguishes all future rights (both common law and statutory benefits), essentially buying the injured person out of the scheme.¹² The choice to exercise this mechanism to convert payments to a lump sum is left to the worker. The Workers Rehabilitation and Compensation Tribunal needs to be satisfied of a number of factors to accept a settlement, namely:

- all reasonable steps have been taken for rehabilitation, retraining or RTW;
- advice has been received about the implications of accepting a settlement; and
- no duress or other inducements have been applied in settling the agreement.

Common law claims do occur in Tasmania (albeit only a small number of claims). Any compensation paid under the *Workers, Rehabilitation and Compensation Act 1988* will be accounted for, and any judgement will be reduced accordingly. However, this is only to the extent of the compensation that is paid under the Act, and the court is not restricted in the amount that can be awarded for the various heads of damage. It is conceivable that a court could award a significantly greater amount than would be available under this Act, so it is possible that lifetime care and support payments could be affected.

Additionally, care and support is linked to the provision of income replacement payments. Therefore, when an injured person passes the retirement age, their income replacement ceases, but so does their care and support payments.

Western Australia

Western Australia has a cap on the total amount of medical benefits and vocational rehabilitation available. Additionally, attendant care, domestic assistance, home modifications and vehicle modifications are all usually provided, but are not legislatively guaranteed. More specifically:

¹² *Workers Rehabilitation and Compensation Act 1988* (Tas) section 132A

- Medical expenses are capped at 30 per cent of a legislatively prescribed amount. Effective from 1 July 2014, the prescribed amount was \$212,980, which would mean the cap for medical expenses would be \$63,894.¹³
- Expenses for repair and replacements of equipment and aids sits outside that cap (including artificial limbs and a wheelchair) and has a reasonableness limit.¹⁴
- Vocational rehabilitation is capped at seven per cent of the prescribed amount, or \$14,908.¹⁵

Western Australia allows for redemption agreements where a worker agrees to receive a lump sum rather than the ongoing payment of expenses, including medical expenses.¹⁶ Accepting this lump sum extinguishes future rights, essentially buying the worker out of the scheme. The choice to exercise this mechanism to convert payments to a lump sum is left to the worker. Even though this is the choice of the worker, they are left to bear the risk of the adequacy of that lump sum payment, which does not meet the minimum benchmarks.

Table 1 (below) provides a summary of where jurisdictions fall short of the proposed minimum benchmarks.

Table 1: Summary of assessment of schemes against minimum benchmarks

	VIC	NSW	QLD	WA	SA	TAS	NT	ACT	Comcare	Seacare	DVA
Benefit											
Medical	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Pharmaceutical	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Dental	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Rehabilitation	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Ambulance	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Respite care	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓
Attendant care	✓	✓	✓	*	✓	✓	✓	✓	*	*	*
Domestic assistance	✓	✓	✓	*	✓	✓	✓	✓	*	*	*
Aids and appliances	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Artificial members etc	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Education/training	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

¹³ WorkCover WA (2014) *Variations in Prescribed Amount and other Workers' Compensation Payments*, available at http://www.workcover.wa.gov.au/NR/rdonlyres/561D95E3-70C6-4912-965C-78CC63FF6F6D/0/Prescribed_Amount_Schedule_20142015.pdf

¹⁴ *Workers' Compensation and Injury Management Act 1981* (WA), schedule 1, clause 17(3) and 17(4)

¹⁵ *Workers' Compensation and Injury Management Act 1981* (WA), schedule 1, clause 17(1a)

¹⁶ WorkCover WA (2013) *Settlements*, available at <http://www.workcover.wa.gov.au/Workers/Settlements/Default.htm>

Benefit		VIC	NSW	QLD	WA	SA	TAS	NT	ACT	Comcare	Seacare	DVA
		Home modification	✓	✓	✓	*	✓	✓	✓	✓	✓	✓
Vehicle modification	✓	✓	✓	*	✓	✓	✓	✓	✓	✓	✓	✓
Workplace modification	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Guarantee of benefit	No time limit	✓	✓	✗	✓	✓	✗	✓	✓	✓	✓	✓
	No common law access	✓	✓	✗	✓	✓	✗	✓	✗	✓	✓	✓
	No lump sum conversion	✓	✓	✓	✗	✓	✗	✓	✗	✓	✓	✓

Notes: (1) * means partial coverage, coverage under a cap or not guaranteed coverage. (2) Training and workplace modification assumed to be included in workplace rehabilitations, unless express information to the contrary. (3) If no limits are put on 'nursing care' respite is assumed to be included. (4) When South Australia's legislative reforms come into effect, a lump sum conversion will not be available. (5) The ACT private sector scheme provides for attendant care, domestic assistance, workplace modifications and prosthesis. These are paid for under the general medical services provisions rather than being explicitly listed.

4.3 Harmonisation

Under this option, rather than minimum benchmarks, jurisdictions would negotiate and agree a fully harmonised model of lifetime care and support to be provided in the event of a catastrophic workplace accident. Jurisdictions would not be able to exceed any agreed standard, because this would be inconsistent with harmonisation. Eligibility and entitlements would be identical under each jurisdiction's scheme.

4.4 Non-regulatory option – not discussed further

It is required under the Best Practice Guidelines that a RIS have a non-regulatory option, or explain why a non-regulatory approach is not feasible.¹⁷

As established above, 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.

¹⁷ COAG (2007), Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies, Canberra.

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.

Consultation questions

Question 3: Do you agree with the description of the base case?

Question 4: Are the minimum benchmarks and harmonisation options reasonable and appropriate? Are there further options that should be considered?

Question 5: Do you agree that there are no feasible non-regulatory options?

5. Impact analysis

5.1 Base case

5.1.1 Workers

Under this option, the location of the accident may determine the level of care and support that the worker is entitled to. If they are eligible for the Victorian, New South Wales, South Australian or Northern Territory scheme, they will be provided with lifetime care and support from their workers' compensation scheme. However, if they are eligible for schemes in other jurisdictions, they may not always be entitled to lifetime care and support. In Western Australia, Tasmania, the Australian Capital Territory and Queensland, there is the possibility of a lump sum payment.

Provision of a lump sum effectively transfers risk from the workers' compensation scheme to the injured person. A key risk that the worker is forced to confront is longevity risk – that is, if the worker lives longer than expected, they will not have adequate funding to meet their care needs. (Conversely, those who do not live as long as expected will leave unspent funds to their estate). In addition to longevity risk, workers accessing lump sums must also take on the risk in managing their funds.

Further, in Western Australia and the Commonwealth schemes, there are some caps on the amount of services that can be provided, particularly attendant care, which the New South Wales Lifetime Care and Support's experience suggests is the major cost of catastrophic injuries. Thus, before the NDIS is fully rolled out, some individuals in some jurisdictions will be unable to receive lifetime care and support under the base case.

As the NDIS progressively rolls out, catastrophically injured workers will continue to access their workers' compensation scheme to the greatest extent possible. However, if their scheme cannot provide them with full lifetime care and support, they may be eligible to approach the NDIS to 'top

up' their care. The catastrophically injured workers who may use the NDIS for this purpose are likely to be:

- workers in Queensland who elected to take a common law payment that is not sufficient or runs out before they reach 65 years of age;
- workers in Western Australia who do not get sufficient attendant care since this is not guaranteed;
- workers in Tasmania who take a lump sum conversion that is insufficient or runs out before they reach 65 years of age;
- workers in the ACT who elected to take a common law payment or a lump sum conversion that are insufficient or run out before they reach 65 years of age; and
- workers in the Commonwealth schemes, if they are being provided with an inadequate amount of attendant care.

While all these workers accessing the NDIS will be receiving full support up to the level of the minimum benchmarks, they will be accessing this through two separate schemes (their local workers' compensation and the NDIS). As both the schemes will require assessments and at least a minimal level of administration on the part of the worker to prove need, being in two schemes may increase the administrative burden on the workers in demonstrating their need for services and applying for compensation of those services. This may be exacerbated for workers who need to access different schemes for the same services, such as workers in the Commonwealth schemes who can get a certain amount of attendant care from their workers' compensation but additional hours through the NDIS.

However, even if the NDIS does act as a 'safety net' to the differences in jurisdictional workplace injury compensation schemes, it will not cover people aged 65 or over at the time of their injury. While the overall number of serious accidents has reduced over recent years, the number of serious accidents involving workers aged 65 and over is actually increasing. This reflects overall demographics in Australia of an ageing population and people staying in work longer. PwC estimates that in the 2016-17 year, approximately two of the 60 catastrophically injured workers will be aged over 65, as demonstrated in Table 2 below. These workers will not be able to use the NDIS to 'top up' their care because they will not be eligible for the NDIS.

Table 2: Estimated number of catastrophic workplace injuries (2016-17)

Location	Workers aged under 65	Workers aged 65 and over	Total (all ages)
NSW	18.9	0.6	19.5
VIC	11.8	0.4	12.1
QLD	11.4	0.3	11.7
SA	5.2	0.2	5.4
WA	7.5	0.2	7.8
TAS	1.4	0.0	1.4
NT	1.0	0.0	1.0
ACT	1.4	0.0	1.4
Total	58.5	1.8	60.3

Sources: John Walsh, Anna Dayton, Chris Cuff and Peter Martin (2005) *Actuarial Analysis on Long-Term Care for the Catastrophically Injured*, Safe Work Australia (2014) *Comparative Performance Monitoring Report 16th edition* and PwC calculations.

Note: due to the very small amounts, rounding may mean that totals do not sum and accidents may not be observable in some jurisdictions.

Furthermore, not only would the treatment of workers catastrophically injured in workplace accidents be inconsistent between jurisdictions, but it would also be inconsistent with the treatment of individuals catastrophically injured in a motor vehicle accident, given the agreed minimum benchmarks for a NIIS for motor vehicle accidents. Under the base case, workers catastrophically injured in workplace accidents can be entitled to different levels of care and support than individuals catastrophically injured in motor vehicle accidents. An important aim of the NIIS and of disability reform more broadly is to ensure a consistent and adequate system of care, so this discrepancy would be counter to this goal.

Consultation questions

Question 6: Do you agree with the identified impact of the base case on workers?

Question 7: Do you have any data on the impacts on workers?

5.1.2 Governments

If jurisdictions do not make changes to their workers' compensation schemes to meet the benchmarks, the extra costs will be shifted to State, Territory and Commonwealth governments from 1 July 2016 rather than employers via premiums. Heads of Agreements generally commit jurisdictions to reimburse the NDIS for 100 per cent of the cost of NDIS participants who are in the NDIS because their insurance scheme does not meet the agreed minimum benchmarks.

As shown in Table 3, it is estimated that the additional cost to the NDIS of supporting these injured workers to the level of the minimum benchmarks is \$102.78 million net present value over 10 years (in 2016-17 terms).

Table 3: Costs to governments of reimbursing the NDIS (\$ millions, 2016-17)

	Net annual cost	10 year NPV net cost
Queensland	7.19	54.00
Western Australia	4.31	32.42
Tasmania	0.07	0.51
Australian Capital Territory	1.44	10.83
Comcare	0.67	5.01
Total	13.68	102.78

Source: Productivity Commission and PwC calculations. Note: This report has used the Productivity Commission estimates for other jurisdictions to base a high level estimate of Comcare on.

As a result of affected governments having to make higher contributions to the NDIS, they will run smaller budget surpluses (or larger deficits), reduce spending elsewhere, or increase taxes (or some combination thereof) to meet their share of the costs.

In addition, when the worker's lump sum compensation runs out before they reach the age of 65, they may still be able to access NDIS support, meaning that they could effectively be double-compensated.¹⁸ The NDIS will effectively be paying for services for care and support which may have theoretically already been provisioned for through the lump sum payment, and then charging the State, Territory or Commonwealth Government. Given the possibility of double compensation for the injured if a lump sum is provided by the workers' compensation scheme but then exhausted by the worker, the payments from the State and Territory Governments to the NDIS could be higher than is reasonable.

The advantage, however, of the base case is that jurisdictions do not have to persuade stakeholders to change entitlements. There would therefore be less legislative change and less time spent in political processes.

Consultation questions

Question 8: Do you agree with the identified impact of the base case on governments?

Question 9:: Do you have any data on the costs to governments?

5.1.3 Private sector

Workers' compensation schemes allow the full external cost of injuries occurring in the workplace to be priced into the cost of operation borne by the employers. General experience rating (employers face higher premiums in the future if they fall into a higher risk-rated category) and risk rating has

¹⁸It should be noted that the NDIA has capacity to recover some common law compensation amounts received after NDIS support was provided (see *NDIS Operational Guideline – Compensation – Recovery of NDIS Amounts – Compensation Received by a Participant from a Judgement or Settlement*) but it is unlikely that a judgement or settlement will exclude NDIS payments being made in the future.

the potential to have a significant impact on excessive risk-taking behaviour, regardless of whether a common law or no fault system is present. Under this option, workers who are catastrophically injured in a workplace accident have their support topped up by the NDIS, so there would be no change to the price signals for employers to provide incentives for safety through premiums linked to risky activity.

Some employers may view this option favourably because they would not have to pay increased premiums to workers' compensation schemes. Workers using the NDIS to 'top up' compensation will result in no change to premiums paid by employers. Private insurers would also not be affected, because if the NDIS needed to be reimbursed, this would be done by governments instead.

Consultation questions

Question 10 Do you agree with the identified impact of the base case on the private sector?

Question 11: Do you have any data on the impacts on the private sector?

5.2 Minimum benchmarks

5.2.1 Workers

All workers who are catastrophically injured in a workplace accident will be entitled to receive lifetime care and support under a set of minimum benchmarks which Commonwealth, State and Territory governments agree to. The location and exact circumstances of the accident will not preclude such a worker from receiving this lifetime care and support. Insurers will no longer be entitled to make commutation offers to workers and caps on services will be removed.

The minimum benchmarks will benefit the workers who would have had to approach the NDIS for top up support under the base case. They would not be required to navigate two schemes because all their support would be provided under the NIIS.

This option will also benefit those who were excluded from accessing the NDIS for top up support under the first option: workers aged 65 and over at the time of their accident, workers in Western Australia who would otherwise be limited in their access to medical treatment, and workers in Tasmania who would otherwise lose their benefits after turning 65. Under the minimum benchmarks option, these workers would also be entitled to lifetime care and support under their workers' compensation scheme.

This option also allows jurisdictions to provide services above and beyond what is required as a minimum under the benchmarks. For instance, even though the draft minimum benchmarks have a list of exclusions to the definition of a worker, many jurisdictions will not have all of these exclusions, meaning that more workers will actually be eligible for the scheme than what is strictly required under the benchmarks.

Chapter 4.2.3 provides a full discussion of the impact of the minimum benchmarks on workers' compensation premiums in Queensland, Western Australia, Tasmania, the Australian Capital

Territory and the Commonwealth. It should be acknowledge here though that although the effect of increased premiums would likely be immediately felt by employers, in the long run, the impact may be felt by employees if changes are reflected in a decrease in wage rates paid to workers.

Consultation questions

Question 12: Do you agree with the identified impact of the minimum benchmarks on workers?

Question 13: Do you have any data on the impacts on workers?

5.2.2 Governments

If the minimum benchmarks are implemented by jurisdictions, governments will not be responsible for any additional funding (other than in their role as employers, where they may face higher workers' compensation premiums). Workers' compensation schemes will factor the increased entitlements into employer premiums, allowing them to have the funds to provide lifetime care and support to catastrophically injured workers. If a jurisdiction meets, or makes changes to their workers' compensation scheme to adopt the minimum benchmarks, then any worker who should be eligible for the NIIS, will in fact be eligible for the NIIS, and will not access the NDIS. Therefore, under the minimum benchmarks option, jurisdictions will not need to raise revenue to reimburse the NDIS for the costs of individuals who are in the NDIS by reason of their jurisdiction failing to meet the minimum benchmarks.

However, depending on how jurisdictions choose to implement the minimum benchmarks, government may incur some administration costs. For example, if catastrophic claims in privately underwritten schemes are chosen to be quarantined and transferred to a government body (whether a new body, a motor vehicle injury scheme or a WorkCover body that currently only has policy duties and not claims management duties) then this will come with some management costs.

There will also be a burden on governments in jurisdictions that are required to amend their legislation to adopt the minimum benchmarks in full, through means such as removing provisions that allow for commutation or removing statutory caps on attendant care. Furthermore, the Australian Capital Territory, Western Australia and Tasmania have privately underwritten workers' compensation schemes, meaning that they would need to negotiate with private insurers about how the minimum benchmarks could be adopted in a way where they would still be prepared to operate in the market. There is a potential risk that private insurers could move away from the workers' compensation market if the demands placed on them by these governments are too great. There is some private underwriting and self-insurance in New South Wales.

Consultation questions

Question 14: Do you agree with the identified impact of the minimum benchmarks on governments?

Question 15: Do you have any data on the impact on governments?

5.2.3 Private sector

The main impact felt by employers in jurisdictions other than Victoria, New South Wales and the Northern Territory will be an increase in workers' compensation premiums. If implementing the minimum benchmarks results in an increase in workers' compensation costs (both in jurisdictions privately and publicly underwritten), it is likely that insurers will pass on this cost to employers. Table 4 shows that this option is estimated to cost \$104.84 million net present value over ten years – slightly more than the cost to jurisdictions of reimbursing the NDIS for to cost of individuals whose care is topped up. This is because the minimum benchmarks cover slightly more workers largely due to the inclusion of workers catastrophically injured when 65 or older.

Table 4: Net costs (\$ millions, 2016-17)

	Net annual cost	10 year NPV net cost
Queensland	7.33	55.08
Western Australia	4.40	33.07
Tasmania	0.07	0.52
Australian Capital Territory	1.47	11.05
Comcare	0.68	5.11
Total	13.95	104.84

Source: Productivity Commission and PwC calculations. Note: This report has used the Productivity Commission estimates for other jurisdictions to base a high level estimate of Comcare on.

This would result in estimated changes in average annual premiums for employers as shown in Table 5.

Table 5: Expected premium changes (% of eligible wages, 2016-17)

	Current average premium ⁽¹⁾	New average premium	Change ⁽²⁾ (% eligible wages)	Change ⁽²⁾ (% of current premium)
Queensland	1.20	1.22	0.0157	1.31%
Western Australia	1.56	1.56	0.0046	0.29%
Tasmania	2.30	2.30	0.0008	0.03%
ACT	2.46	2.48	0.0152	0.62%
Comcare	2.12	2.12	0.0013	0.06%

Sources: (1) Finity Consulting (July 2014) *d'finitive Workers' Compensation* (2) Based on current premiums, annual reports from each scheme, treasury projections for growth in wage bills and above Productivity Commission estimates for additional costs.

At a basic level, this is the total premium required as a percentage of total wage bill for relevant workers. However, this will not be the premium that most employers pay. This is because workers' compensation premiums can include an element of risk rating (arguably more so than other forms of injury insurance such as compulsory third party motor vehicle insurance). Hence it is possible that

changes to meet the minimum benchmarks will be felt more in some industries or by some employers.

There are two main ways to target risk — through industry premiums and through experience ratings (most jurisdictions use a combination of the two). Industries premium rates are based on relative riskiness comparing individual industry experience to overall scheme experience. Experience premiums based on the employer's own claims experience. For example, a history of more expensive claims than the industry average may mean that a business faces higher premiums.

However, even with the above methods of risk rating, it is unlikely that schemes will have completely risk rated premiums. This is because schemes (especially those with some form of government oversight to premiums) will not want to make insurance so prohibitively expensive that inherently risky but valuable or necessary industries do not operate in their jurisdiction. Additionally, some schemes may limit experience rating for small businesses as to not allow one large claim in the recent past to price them out of the market. Hence there may be some level of cross subsidisation.

Furthermore, there will be a specific impact on private insurers in the Australian Capital Territory, Western Australia and Tasmania because in these jurisdictions the schemes are privately underwritten. The impact will depend on how each jurisdiction chooses to implement the minimum benchmarks. There are a number of options which could be taken, each of which would have different impacts on insurers, the workers' compensation authority, motor accident authority, nominal insurers, and/or specialist providers. Options include:

- Require insurers and self-insurers to ensure that lifetime care and support is provided to a catastrophically injured person over that person's lifetime and set out the entitlements in law, and allow that person, or another person (which may be the Crown), to take legal action to enforce the entitlements.
- Require insurers and self-insurers to contract with an approved lifetime care and support provider, with an independent authority responsible for determining the level of care and support required (which may change over time) and possibly the weekly costs, to be paid by the insurer to the provider over the lifetime of the injured person. If no regulatory oversight of the weekly costs is established, some dispute resolution mechanism will be required.
- Require insurers and self-insurers to pay the State motor accident compensation scheme (e.g. Tasmania's Motor Accidents Insurance Board (MAIB)) for the costs of lifetime care and support, over the lifetime of the injured worker, with either the MAIB or an independent authority to determine the level of care and support required and the independent authority responsible for determining the weekly costs.
- Require insurers and self-insurers to pay for lifetime care and support costs to the State motor accident compensation scheme or another approved provider for up to a specified period, such as under 2 or 3, (say 5 years) and then require a lump sum payment to be paid to the relevant scheme to administer, with the amount to be determined by an independent authority.
- As above, but an actuarial review is undertaken periodically of the solvency of this part of the statutory insurer. If funds are insufficient, the Nominal Insurer is able to impose a surcharge

on all insurers (and self-insurers) and forward the revenue to the statutory insurer (e.g. Tasmania's MAIB) to ensure its solvency.

A further impact on the private sector could occur if there was a change in the demand for, or cost of providing, total and permanent disability insurance (TPD). TPD insurance involves consumers paying premiums in return for a lump sum payment in the event that they become disabled in the future.

It seems unlikely that implementation of the minimum benchmarks for workplace accidents would deter individuals from purchasing these private insurance products. This is because the NIIS will focus on covering the disability and medical costs of a catastrophically injured worker whereas the TPD benefit is more focused on wage replacement. A worker who has TPD insurance and is catastrophically injured in a workplace accident will be eligible for both — they will receive the TPD lump sum *in addition* to lifetime care and support under the NIIS scheme.

Further, TPD insurance can offer protection to consumers in a significantly broader range of circumstances than a catastrophic workplace accident, including accidents occurring outside the workplace that are not necessarily catastrophic as well as where they acquire a health condition that is not covered under the NDIS.

Consultation questions

Question 16: Do you agree with the identified impact of the minimum benchmarks on the private sector?

Question 17: Do you have any data on the costs of the minimum benchmarks on the private sector? There is likely a range of costs given the number of different options.

Question 18: Do you agree that these are the options for private insurers? If not, please outline other options that you would like considered.

Question 19? Do you agree that the implementation of the minimum benchmarks is unlikely to act as a disincentive to consumers purchasing private insurance products?

5.3 Harmonisation

5.3.1 Workers

The impact on workers would depend on the exact way in which the legislation is harmonised for the provision of lifetime care and support for workers catastrophically injured in a workplace accident. Negotiation between jurisdictions can be difficult so it is possible that a jurisdiction may strongly object to removing one of its eligibility exclusions, even if no other jurisdiction had this exclusion. In such a situation, to harmonise the schemes, all jurisdictions would then need to adopt this exclusion and would not be entitled to exceed the standards. In such a situation, workers may find themselves excluded from their scheme when they were previously included. A similar problem could arise for entitlements, meaning that individuals may actually receive a lower standard of care and support than before the schemes were harmonised, and would then need to approach the NDIS to top up their care.

In the event that jurisdictions could agree to harmonise schemes to cater for the most generous aspects of each jurisdiction's scheme, workers currently in jurisdictions with restrictive eligibility criteria and limited services could receive a higher level of care and support.

5.3.2 Governments

To agree the generous level of harmonisation, governments would need to negotiate some potentially significant changes through parliament and costs would likely materially increase for most jurisdictions. Therefore, the more likely result is a lengthy negotiation process on key aspects of the schemes. This process could necessitate a watered-down scheme in order to obtain the agreement of all jurisdictions. There would probably be significant stakeholder concern about such an approach because it may reduce eligibility and entitlements for people who are catastrophically injured in workplace accidents, which could reflect negatively on governments. Reducing service entitlements to catastrophically injured workers through their workers' compensation scheme would be wholly inconsistent with the disability reform agenda.

5.3.3 Private sector

The cost to private insurers in the Australian Capital Territory, Western Australia and Tasmania would depend substantially on the agreement jurisdictions reach on eligibility and entitlements. If generous harmonisation is agreed, private insurers may need to increase their premiums to reflect increased eligibility and services. Employers would in turn need to pay higher premiums. If a lower level of harmonisation is agreed, insurers may reduce premiums, meaning that employers may only need to pay lower premiums. However, this could reduce their appetite to implement measures to protect health and safety in the workplace.

Consultation questions

Question 20: Do you agree with the identified impact of harmonisation on workers, governments and the private sector?

6. Conclusion

Attempts to harmonise workers' compensation insurance scheme would be extremely difficult. To the extent that jurisdictions are able to reach agreement it would likely result in a watered down scheme where fewer workers are eligible and where eligible workers are entitled to lower service levels than occur under some existing schemes. This outcome contradicts the principles of disability reform.

Therefore, the substantive choice in moving forward to a NIIS for workplace injuries is whether jurisdictions:

- amend their workers' compensation schemes to adopt the minimum benchmarks; or

- retain existing workers' compensation schemes, but from 1 July 2016, reimburse the NDIS for workers who receive 'top up' services from the NDIS by reason of their scheme failing to meet the minimum benchmarks.

Most workers are supported to at least the minimum benchmarks in both cases. Under the minimum benchmarks all workers will be entitled to lifetime care and support regardless of their age, and workers will not need to navigate two schemes. The costs of the increased entitlements would be paid by employers through increased premiums under the minimum benchmarks. Per workplace, the increase in premiums would be modest and would reflect the increased funding necessary to provide lifetime care and support.

If existing workers' compensation schemes are retained, there would be no change to workers' compensation premiums and as a result, the incentive for employers to address workplace safety is arguably reduced. Governments would fund the costs of topping up the care and support levels for those who are eligible for the NDIS. Workers aged 65 and over at the time of their accident would be unable to have their gaps in coverage provided by the NDIS.

These conclusions will be reassessed and quantified to evaluate comparative size of benefits after consultation has occurred on this RIS.

APPENDIX A. Draft minimum benchmarks

Who is covered by a NIIS for workplace accidents?

At a minimum, jurisdictions should have eligibility rules which include people who suffer the following work-related catastrophic traumatic injuries:

1. Spinal cord injury — based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
2. Traumatic brain injury — based on evidence of a significant brain injury which results in permanent impairments of cognitive, physical and/or psychosocial functions. A defined period of post traumatic amnesia plus a Functional Independence Measure (FIM)¹⁹ at five or less, or two points less than the age appropriate norm (or equivalent where other assessment tools are used), would be required.
3. Multiple amputations of the upper and/or lower extremities or single amputations involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or “short” transfemoral amputation involving the loss of 65% or more of the length of the femur.
4. Burns — full thickness burns greater than 40 per cent of the total body surface area (or greater than 30 per cent in children under 16 years) or full thickness burns to the hands face or genital area, or inhalation burns causing long-term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used).
5. Permanent traumatic blindness, based on the legal definition of blindness.

What is the scope of the NIIS for workplace accidents?

Work-related catastrophic injury

Each jurisdiction’s NIIS should cover catastrophic injuries which are considered work-related. A work-related injury is an injury arising out of or in the course of employment, including an injury sustained in the course of:

- work-related travel; and
- onsite recess breaks.

For avoidance of doubt the NIIS for workplace accidents need not cover an injury arising out of or in the course of:

- journeys to and from work; or
- offsite recess breaks.

Jurisdictions may provide a broader scope if they desire.

¹⁹ The FIM is a basic indicator of severity of functional limitation that uses a seven point ordinal scale for each of 18 activities of daily living. The scale provides for the classification of individuals by their ability to carry out an activity independently, versus their need for assistance from another person or a device. If help is needed the scale assesses the degree of that need.

Definition of worker

At a minimum, the NIIS for workplace accidents will cover a worker who is an individual working under a contract of service, and in relation to the work, is an employee for the purpose of assessment for pay as you go (PAYG) withholding under the *Taxation Administration Act 1953* (Cth).

The Australian Taxation Office provides guidance on the definition of employee for PAYG purposes.

Which jurisdiction's NIIS should provide cover?

The jurisdiction (state, territory or Commonwealth) in which liability for the workers' compensation claim is accepted or determined will be responsible for ensuring NIIS coverage for catastrophically injured workers.

The Heads of Workers' Compensation Authorities endorsed National Model for Determining the State of Connection of a Worker should be used to provide guidance on the responsible workers' compensation regime.

Should there be any exclusions?

The minimum benchmark is that the NIIS not be required to cover the costs of care and support:

- already funded by common law or statutory compensation; or
- already being provided for by the NDIS or another NIIS stream for an existing injury/disability.

The minimum benchmark will not require the NIIS to provide coverage where a person:

- is catastrophically injured while engaging in serious or wilful misconduct; and/or
- sustained a catastrophic work-injury prior to the date that the Heads of Agreement stipulates the jurisdiction is responsible for 100 per cent of the costs of relevant NDIS participants.

For the purpose of the minimum benchmark, the following are not considered to be workers:

- a person who is engaged as a contractor
- an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year;
- a minister, priest, pastor or related roles, as identified as exclusions in South Australia;
- an officer of The Salvation Army appointed in South Australia under the orders and regulations for officers of The Salvation Army;
- a person who is engaged as a professional sports person;
- a person whose employment is casual and who is employed otherwise than for the purpose of the employer's trade or business;

- a member of the crew of a fishing vessel who is remunerated wholly or mainly by a share in the profits or gross earnings from the working of the vessel;
- a person who performs work under a contract with a corporation of which the person is a director;
- a person who performs work under a contract of service with a trust of which the person is a trustee;
- a person who performs work under a contract of service with a partnership of which the person is a member;
- a person who is employed or engaged by a householder and does not earn more or is paid at a rate that does not exceed 65% of the annual equivalent of average weekly earnings, or a domestic worker who has worked under 48 hours at time of sustaining injury;
- a person who is a member of the employer's family and lives in the employer's home;
- a person (the driver) who is employed or engaged by another (the principal) to transport goods or materials (including money) by motor vehicle in the course of or for the purposes of a trade or business carried on by the principal if —
 - (a) the motor vehicle is a commercial motor vehicle; and
 - (b) the motor vehicle is owned, leased or hired by the driver; and
 - (c) the motor vehicle is not owned by, leased from or hired out by, or otherwise supplied by (directly or indirectly) —
 - (i) the principal; or
 - (ii) a third person who is related to the principal; and
 - (d) the goods or materials are not owned (and have not been previously owned), by the driver or by the principal;

a person who has in effect a personal services business determination under section 87-60 of the *Income Tax Assessment Act 1997* for work performed under a contract. It is envisaged that all schemes will exceed the minimum benchmark for a worker, and where this occurs, a jurisdiction may provide coverage of the NIIS beyond these benchmarks.

What are the entitlements?

A minimum level of entitlement in each jurisdiction's NIIS will include reasonable and necessary needs for eligible persons across their lifetime for the following services to the extent that they arise from a work-related injury:

- medical treatment (including pharmaceutical)
- dental treatment
- rehabilitation
- ambulance transportation
- respite care
- attendant care services
- domestic assistance
- aids and appliances
- artificial members, eyes and teeth

- education and vocational training
- home, transport and workplace modification.

An individual jurisdiction's NIIS may provide a broader range of services, and may also provide capacity for self-managed funding by participants where appropriate.

Entitlements will only be provided within the Commonwealth of Australia.

Reasonable and necessary supports:

- are designed to support the individual to achieve their goals and maximise their independence;
- support the individual's capacity to undertake activities of daily living to enable them to participate in the community and/or employment;
- are effective, and evidence informed;
- are value for money;
- reflect community expectations, including what is realistic to expect from the individual, families and carers; and
- are best provided through a NIIS and are not more appropriately provided through other systems of service delivery and support, including services that are offered by mainstream agencies as a part of its universal service obligation to all citizens.

In determining what is reasonable and necessary the following factors should be considered:

- Benefit to the participant — to progress or maintain the participant's recovery, management and participation.
- Appropriateness — services provided are consistent with the participant's current medical or rehabilitation needs, are consistent with current clinical practices and are congruent with other services provided to the participant.
- Appropriateness of the provider — service providers are qualified, readily accessible and appropriate given the participant's age, ethnicity and other characteristics.
- Cost effectiveness of the services — the benefits and expected outcomes outweigh the costs, the cost is comparable to those of other providers, no other services would achieve comparable outcomes and alternatives to purchasing equipment or undertaking modifications have been considered.
- That the services provided relate to needs arising from a work-related injury.

Consistent reporting standards

Each Scheme agrees to collect information in relation to the following items and report under a consistent definitional framework:

- The number of entrants to each scheme and their characteristics (age/gender/location of service provision — i.e. metro/regional/rural).

2. The classification of injuries of entrants — Spinal injuries (including level of lesion), head injuries (moderate + severe), other severe injuries.
3. The average cost of support of scheme entrants (overall, by the agreed injury classification, care items etc).

Each scheme agrees to add a flag to the National Dataset for Compensation-based Statistics for claims for catastrophic work related injuries which result in entrance to the NIIS scheme.

Further work will need to be conducted to develop standard data items to be collected with the aim of aligning information between jurisdictions and across NIIS streams.