

Fact Sheet on on Government Response to the Clayton Report

Clayton Report recommendation	Government's response
1. That the <i>Workers Rehabilitation and Compensation Act 1988</i> (WRCA) be amended to include a statement of scheme goals.	Supported.
2. That the Return to Work and Injury Management Model (RTWIMM) be endorsed as the guiding framework for injury, case and claims management, and the achievement of optimal return to work outcomes, in the Tasmanian workers compensation scheme.	Supported.
3. That the WorkCover Tasmania Board, in association with scheme stakeholders, develop initiatives that foster and reinforce a return to work culture.	Supported.
4. That, in order to encourage early reporting, there be a rebate of the employer excess to employers who report claims to their insurer within 48 hours of the receipt of the claim by the employer.	<p>Alternative option proposed.</p> <p>The need to encourage early reporting of workplace injury and claims is strongly supported. However, actuarial advice estimates that Clayton Report recommendation no. 4 could increase total claims costs by up to 3.2%.</p> <p>An alternative option is proposed to avoid imposing this additional cost on the scheme. Under this alternative option, an employer who reports a claim after 48 hours of receiving it will be responsible for claims costs until the claim is reported. Effectively, this is an extension of the employer excess for employers who report claims late.</p>
5. That medical practitioners be encouraged to make workplace visits and familiarise themselves with the opportunities for alternative suitable duties and employment and that this be accommodated in the fee schedules for medical and like services. Where such workplace visits are not possible, that alternative methods for familiarising a treating doctor with the nature of the workplace environment be adopted such as video evidence provided by rehabilitation providers or appropriate allied health professionals.	Supported in principle.
6. That the Quality Management of Workplace Injuries in General Practice	Supported.

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<p>project review the operation of the current process and forms for medical certification in the Tasmanian workers' compensation scheme, particularly in respect of the Medical Certificate Form 2.</p>	
<p>7. That the WorkCover Tasmania Board, under its mandate under the RTW&IMM, investigate appropriate arrangements for providing support for injured workers who have some form of work capacity, including appropriate, targeted, skill enhancement, training and retraining, as well as the introduction of an alternative employer incentive scheme.</p>	<p>Supported.</p>
<p>8. That payment of a lump sum made in redemption or settlement of a worker's entitlement to compensation and/or in settlement of a worker's entitlement to damages in respect of any civil liability in the employer shall not be made unless the Tribunal has approved the payment/ settlement. The Tribunal may approve a lump sum settlement if it is satisfied that all reasonable return to work, rehabilitation and retraining options have been exhausted. Details of such options need to be set out in the application to the Tribunal. Such an application shall also require the furnishing of evidence:</p> <ul style="list-style-type: none"> • that the worker has been advised in writing as to what Centrelink preclusion periods may apply and whether there are any Medicare Australia obligations; • that the worker has received independent financial advice as to the financial implications of the settlement; • that any section 71 entitlement has been taken; and setting out the component elements of the settlement. 	<p>Supported with variation proposed.</p> <p>The main variation proposed to Clayton Report recommendation no 8 is to limit the requirement for Tribunal approval of settlements to those settlements made within 2 years of the date of claim. This is in line with the requirement in the Return to Work and Injury Management Model.</p> <p>Requiring all settlements to be approved by the Tribunal (as proposed in Clayton Report recommendation no 8) is considered unnecessary.</p>
<p>9. That the WorkCover Tasmania Board, in association with the Heads of Workers Compensation Authorities,(HWCA) engage with the Commonwealth Government, and Commonwealth agencies such as the Australian Taxation Office, to seek extension of the current arrangements relating to structured settlements to workers compensation payments That such an engagement also examines issues such as the thresholds to structured settlements under current arrangements.</p>	<p>Supported in principle. However, it is suggested that this should be progressed through the relevant Ministerial Council rather than by the WorkCover Tasmania Board.</p>

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<p>10. That there be a costing of three alternative weekly benefit extension options. First, an extension of weekly payments to age of retirement. Secondly, a model that involves an extension of the benefit duration limit to 12 years for workers with a whole person impairment (WPI) of between 15 percent and 19 percent; to 20 years for workers with a WPI of between 21 percent and 29 percent and until age of retirement for workers with a WPI of 30 percent or greater. Thirdly, vesting a discretion in the Workers Rehabilitation and Compensation Tribunal to extend payments beyond the existing circumstances for persons with a WPI of 15 percent or greater in cases of demonstrated need.</p>	<p>The second option put forward in Clayton Report recommendation no.10 is supported on the basis that it extends the duration of weekly payments to seriously injured workers at a lower cost to the scheme than the other two options.</p> <p>Under this option, the duration of weekly payments is extended from 9 years to 12 years for workers with a whole person impairment (WPI) between 15% and 19%; to 20 years for workers with a WPI of between 20% and 29% and until the age of retirement for workers with a WPI of 30% or more.</p>
<p>11. That the range of services encompassed under 'medical and other services' in section 74 of the WRCA include the recognition of 'counselling services' to the family members of a worker who suffers a work-related fatality. As with the recognition of such a service in Victoria it should be for the reasonable costs entailed up to a prescribed (indexed) amount.</p>	<p>Supported.</p>
<p>12. That a discretion be vested in the Workers Rehabilitation and Compensation tribunal to extend payments beyond 10 years for persons with a WPI of 15 percent or greater in cases of demonstrated need.</p>	<p>Alternative option proposed.</p> <p>Clayton Report recommendation no.12 limits an extension of the payment of medical and other expenses to workers with a WPI of 15%. There is uncertainty as to future medical costs as the Tribunal determines how long to extend payments.</p> <p>An alternative option is proposed whereby medical and other expenses are payable for 12 months after entitlement to weekly payments ceases, with the possibility of extension on application to the Tribunal. This option will provide more certainty to employers and insurers on future costs whilst addressing the needs of workers who require further surgery or treatment to remain in the workforce (regardless of their level of impairment).</p>

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13. That the lump sum death benefit (now \$223,824.33) be increased to \$250,000.	Supported.
14. That the weekly benefit for dependent children (now 10% of the Basic Salary - \$60.66 per week) be increased to 15% of the Basic Salary (\$90.98 per week)	Supported.
15. That the maximum impairment benefit lump sum (which is linked to the death benefit lump sum) be raised to \$250,000.	<p>Supported.</p> <p>Tasmania's lump sum impairment payments are currently below the national average. The increase proposed in Clayton Report recommendation no 15 will put these benefits on a par with the national average.</p>
16. That the WorkCover Tasmania Board undertake a review as to whether there should be a move from the current 4 th edition of the AMA Guides to the Evaluation of Permanent Impairment to a later edition of these Guides. Also, and more urgently, that the WorkCover Tasmania Board review the Tasmanian Workers Compensation Guidelines for the Assessment of Permanent Impairment with a consideration to updating these Guidelines in line with changes made by the NSW Motor Accidents Authority.	<p><u>AMA Guides:</u></p> <p>The HWCA is conducting a national review on the AMA Guides. It is recommended that Tasmania should await the outcome of this review before undertaking any review of the AMA Guides.</p> <p><u>WorkCover Guidelines:</u></p> <p>The recommendation that the WorkCover Guidelines for the Assessment of Permanent Impairment be reviewed is supported.</p>

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<p>17. That consideration be given to the introduction of a narrative test of 'serious injury' to facilitate alternative access to common law damages for seriously injured and ill workers. That the regime for 'serious injury' set out in section 134AB of the Accident Compensation Act 1985 (Vic) be considered as the model for this purpose.</p>	<p>Alternative option proposed.</p> <p>The introduction of a narrative test is not supported at this time. Experience in Victoria suggests that the narrative test could result in additional legal complexities and expense. The actuary has estimated that a narrative test will lead to a substantial increase in total claim costs. The introduction of a narrative test was strongly opposed by many stakeholders.</p> <p>An alternative option is proposed whereby the WPI threshold for access to common law is reduced from 30% to 20%. This provides for greater access to common law damages at a more affordable cost to the scheme.</p>
<p>18. That the WorkCover Tasmania Board monitor the quality of the whole person impairment assessments being undertaken for the purposes of section 71 of the WRCA and otherwise and, if necessary, take appropriate remedial measures, including those directed to the accreditation, continuing accreditation and training of medical practitioners authorised to undertake such assessments.</p>	<p>Supported.</p>
<p>19. That provisions relating to the requirement of an election in section 138AB of the WRCA be repealed.</p>	<p>Supported.</p>

Additional recommendations/proposals not included in the Clayton Report.

<p>Amendments to step-downs in weekly payments of compensation to:</p> <ul style="list-style-type: none">• Amend the first step-down from 85% of normal weekly earnings to 90% normal weekly earnings;• Delay the operation of the first step-down so that it comes into effect at 26 weeks of incapacity rather than 13 weeks;• Provide that the step-downs are not to apply where a worker has returned to work for at least 50% of his or her pre-injury hours or duties;• Provide that the step-downs are to be discounted in circumstances where an employer refuses or is unable to provide suitable alternative duties.	<p>Mr Clayton did not consider changes to step-downs as this was the focus of an earlier review (Rutherford 2004).</p> <p>Despite softening step-downs in 2004, unions have maintained a strong objection to the existence of step-downs. However, research suggests step-downs provide an incentive to return to work.</p> <p>The proposed changes reduce the financial impact on workers whilst retaining incentives to return to work.</p>
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