

Submission

Proposed Workplace Legislation Reforms Consultation Paper June 2025

Prepared for: ACT Government

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Industrial Relations Advisory Team



1. Introduction

Master Builders ACT (MBACT) welcomes the opportunity to provide feedback on the ACT Government's Consultation Paper regarding the Proposed Workplace Legislation Reforms – June 2025. As the peak industry body representing the building and construction sector in the ACT and Canberra region, MBACT is committed to supporting legislative improvements that enhance safety, promote workforce wellbeing, sustainable and fair employer benefits and ensure regulatory clarity and efficiency.

We commend the ACT Government's proactive approach to reviewing and modernising workplace legislation, particularly in areas that directly impact the health, safety and economic stability of workers and employers.

2. Our Position

Master Builders ACT supports in-principle the reforms to the six (6) topics identified in the Consultation Paper. These reforms present a valuable opportunity to strengthen safety outcomes, improve support for injured workers and their families and enhance the efficiency and clarity of regulatory processes. As the peak industry body representing employers, MBACT is particularly focused on ensuring that the proposed changes also deliver practical and reasonable benefits for the employers supporting fair, sustainable and cost-effective workplace practices.

The following key positions outline MBACT's response to the consultation paper, with consideration given to both worker wellbeing and employer responsibilities.

3. Detailed responses to the technical and administrative reforms

3a. Topic One: Provisional Workplace Fatality Emergency Payment

Introducing provisional liability provisions would allow insurers and self-insurers to provide a worker's dependants with streamlined financial assistance and early support. To facilitate timely payments, access would need to be based on the minimum set of evidentiary requirements needed to support the making of provisional emergency payments.

Proposed scope: applying the concept of provisional liability, whereby a payment can be made immediately on receipt of a claim for the death of a worker caused by a workplace injury (including journey claims) – the payment would:

- i. not be offset against other payments made after liability is determined, and
- ii. not be recovered, even if liability is not ultimately accepted.

Coverage: the proposal would allow for immediate payment to be made to:

- i. the spouse or domestic partner of the deceased worker, where the person was residing with the spouse or domestic partner at the date of the injury; and
- ii. the parent of a deceased worker, if the worker was residing at their parent's residence at the date of injury

Payment: proposed payments would be indexed with initial amounts set at:

- i. spouse or domestic partner: \$10,000 plus an additional \$5,000 for each dependent child of the spouse, payable to the spouse/domestic partner.
- ii. parent: \$5,000 (per parent)
- iii. where there is an eligible spouse and parent/s, payments would be

cumulative.

Time for making payment: payment would be required to be made by the insurer or self-insurer as soon as possible and no later than seven days of receipt of a properly made claim.

Commencement: there would be a transitional period, such that the payments would be applicable to claims where the date of injury is on or after 1 January 2026.

Consultation question 1:

- *Do stakeholders have any issues or concerns to raise about the proposed provisional emergency payment to dependants when a workplace death occurs?*
- *Specifically, do stakeholders have views on:*
 - *definitional matters – such as determining who a dependant is*
 - *minimum documentation requirements that support an easy and quick process for accessing payments balanced with the need for insurers to verify matters stated in a claim any timing or transitional matters.*

MBACT Response to Topic 1:

With regards to the *Proposed Scope* items (i) and (ii) emergency payments should bear no impact on the employer's premiums.

Consideration should be given to means testing the Provisional Workplace Fatality Emergency Payment.

Coverage and eligibility should be determined separately for each payment type so payment for family counselling services, burial or cremation expenses, and travelling or accommodation expenses should be provided to parents (if Proposed scope point (i) is not applicable) regardless of whether the deceased lived with the deceased or not.

Definition under *Coverage* needs to be expanded to include where the deceased was a single parent and allow for payments to be made to eligible children (dependent or not) where they are sole beneficiaries.

3b. Topic Two: Remove barriers to WC Provisions for HIV/AIDS

Retaining this restriction on permanent impairment payments under the ACT Scheme appears to be out of step with the majority of Australian jurisdictions and creates inconsistency in the treatment of injured workers in accessing permanent impairment statutory benefits, particularly those in higher risk industries.

Only the ACT and NSW restrict access to permanent impairment benefits for HIV/AIDS injuries resulting from voluntary sexual activity or illicit drug use.

Consultation question 2:

- Should the ACT retain the exclusion from permanent impairment payments under section 60 of the WC Act?
 - If you consider that the exclusion in section 60 can be removed, do you have any views on whether the ACT should align closer with the Western Australian approach or remove entirely as is the case in the majority of other jurisdictions? Please provide supporting reasons for your views.
- If you consider the ACT should retain section 60 in the Act, do you have any

concerns about how section 60 operates in practice?

MBACT Response to Topic 2:

Section 60 should be retained with an expansion of definition to exclude infection incurred through activities not associated with the worker's normal line of work and duties. For example: 'voluntary recreational'.

The exclusion should be removed for industries where the contraction of HIV/Aids is a high risk due to the worker's authorised position's duties for the performance of work, for example: healthcare workers, sex industry, emergency services.

To proceed with this topic a review of the worker's definition would be required.

Furthermore, compensation for any injury/illness should be restricted to the predominant cause being associated directly with the worker conducting their position's duties while at work under the responsibility of the employer. This could be defined under Part 4.8 of the WC Act. With amendment to section 82 and additional sections to this Part of the WC Act.

Careful consideration should be given to what is 'reasonable responsibility' of the employer and the employers ability to 'reasonably control'.

3c. Topic Three: Medical Referees

It is proposed that amendments be made to the provisions that apply to determine whether an injured worker will continue to receive weekly compensation payments while overseas.

Amendments are being proposed that would contemporise the provisions for medical referees and streamline the process for workers, removing the need for additional doctor's appointments as well as associated administrative burdens.

The proposal would:

- remove the requirement for a medical referee to certify permanent incapacity status of an injured worker for weekly compensation to continue while living overseas
- allow the insurer to determine permanent impairment status
- acknowledges that dispute mechanisms would step in to resolve a dispute about permanent impairment status of an injured worker.

Consultation question 3:

- Stakeholder views are sought on whether the requirement for medical referees to determine permanent incapacity status under section 44 of the WC Act for an injured worker to retain weekly compensation entitlements while living overseas remains appropriate and contemporary?
- Do you have any concerns or issues should section 44 of the WC Act be amended as proposed? Please provide supporting reasons for your views.
- Do you have any other issues/concerns on the role of RTWCs under the ACT Scheme you wish to share with Work Safety Group?

MBACT Response to Topic 3:

- Agree with the proposal to:
 - remove the requirement for a medical referee to certify permanent incapacity status of an injured worker for weekly compensation to continue while living overseas
 - No differences in the process for permanent incapacity status reviews whether the incapacitated worker is onshore or offshore
 - allow the insurer to determine permanent impairment status, but determinations must be against a clearly defined legislative guideline
 - acknowledges that dispute mechanisms would step in to resolve a dispute about permanent impairment status of an injured worker.
- WS ACT continue to manage the register of approved insurers to ensure that insurers decisions are consistent. Insurers provide a 'subscribed' level of detail and evidence in support of their decision to minimise dispute resolution proceedings. Section 45 would still apply.
- It is anticipated that by having a single determination process it would decrease costs for managing such cases.

3d. Topic Four: Return to Work Coordinators

The WC Act requires all self-insurers and employers with an annual workers' compensation premium of \$200,000 or more to appoint a return-to-work coordinator (RTWC). In the ACT the legislation is silent on whether the RTWC must be an employee of the employer.

In the ACT 2023-24 FY employers requiring RTWC in only 14.75%.

Claims for this cohort make up less than 50% (less than 40% serious claims) of WC claims requiring RTW.

Consultation question 4:

- Is it the view of stakeholders that an employer appointed role of a RTWC remains appropriate? If not, please provide details and/or evidence demonstrating your views and any alternative supports available that assist in promoting effective and sustainable return to work for injured workers.
- The legislation is silent on preventing the role of RTWCs from being outsourced from a third-party, do you have views on whether this remains appropriate, should they be required to be employees of the employer, or do you have alternative suggestions?
- Do you have any other issues/concerns on the operation of return-to-work coordinators under the ACT Scheme you wish to share with Work Safety Group?

MBACT Response to Topic 4:

Data provided in this consultation indicates that 60+% of all serious injury Return to Work (RTW) claims are associated with Small to Medium Enterprise (SME). SME generally would not meet the current threshold required to provide access to a Return-to-Work Co-Ordinator (RTWC).

RTWC should be required for all RTW claims to ensure a fair and transparent process to

protect both employee and employer.

Requirement should be threshold based on premium and number of employees.

For SME the option to appoint a third-party RTWC should be a reimbursable cost under their insurance policy.

Availability of RTWC training is limited in the ACT, this should be made more accessible as it is a mandatory requirement for a RTWC.

3e. Topic Five: Approval of Rehabilitation Providers

ACT and Victoria are the only jurisdictions to apply the *Guide – Nationally Consistent Approval Framework for Workplace Rehabilitation Providers* (the Framework) to the approval criteria for Rehabilitation providers. WA, NT, Qld and Tasmania apply the *Principles of Practice for Workplace Rehabilitation Providers* (the Principles) endorsed by HWCA. QLD apply the Principles through contractual arrangements rather than regulatory documents.

Consultation question 5:

Stakeholder views are sought on whether the ACT should consider adopting the Principles for the approval of workplace rehabilitation providers. If so, please provide supporting reasons.

MBACT Response to Topic 5:

Based on the document, the Principles of Practice for Workplace Rehabilitation Providers appear to be more beneficial for parties in the approval of rehabilitation providers compared to the Framework. Here's why:

- **Alignment with Best Practices:** "The Principles" function as a "best practice" document, endorsed by the National Heads of Workers' Compensation Authorities (HWCA). They provide updated and flexible guidance for workplace rehabilitation providers, reflecting current practices and standards.
- **Broader Adoption:** Most Australian jurisdictions have moved away from the Framework and use "the Principles" or guidelines derived from them. This shift suggests that "the Principles" are more contemporary and more widely accepted.
- **Flexibility:** "The Principles" allow jurisdictions to adapt elements into authoritative guidance and regulatory documents, offering flexibility to meet local needs while maintaining consistency with national best practices.
- **Streamlined Processes:** "The Principles" focus on practical and effective rehabilitation processes, which may reduce administrative burdens and improve outcomes for injured workers and potentially costs.

If the ACT adopts "the Principles", it will align with other jurisdictions and potentially enhance the effectiveness and consistency of workplace rehabilitation provider approvals. Supporting reasons for this shift include improved alignment with national standards and the ability to adapt to evolving rehabilitation practices.

3f. Topic Six: Incident notification – clarification and technical updates

The amendments being proposed for consideration in the ACT relate to technical and

clarifying amendments to the incident notification provisions in line with SWA amendments to the model WHS laws.

Consultation questions:

Stakeholder views are sought on the proposed technical and administrative amendments to incident notification for local implementation in the ACT outlined in the table page 17 of the consultation paper. Please provide supporting reasons for your views.

MBACT Response to Topic 6:

MBACT supports the proposed technical amendments to incident notification provisions, including:

- Clarifying definitions and thresholds for notifiable incidents.
- Expanding coverage to include mobile plant incidents and serious falls
- Enhancing site preservation requirements to include digital evidence at the witness details

In particular, attention is drawn to the following proposed technical clarifications to the incident notification provisions:

- Section 36 (1)(a) and (b) – the application of an objective test is acceptable although definition of what constitutes ‘reasonably warranted’ is now required.
- Section 36(1)(b)(i) and (v) – gender references – ‘person’ should be consistent throughout all legislation
- Section 36(1)(b)(vi) – more clarification is required on what type of spinal injury constitutes a notifiable incident, ‘including a fracture’ is not sufficient
- Section 36(1)(b)(ii) – MBACT believes the requirement for “immediate notification” of a serious head injury is an unreasonable obligation placed on the PCBU. While a PCBU can perform an initial visual assessment and take immediate steps to ensure the injured person receives prompt medical attention, the definitive determination of the injury's seriousness must be made by an appropriate medical practitioner during the course of the claims investigations.
- Section 37 - mobile plant malfunctions – not all malfunctions expose persons to serious risk, this definition requires further consideration

4. Conclusion

Master Builders ACT appreciates the opportunity to contribute to the ACT Government’s consultation on proposed workplace legislation reforms. We acknowledge the intent to improve safety, wellbeing, and administrative efficiency across the Territory’s workplaces, and we support reforms that are practical, evidence-based, and aligned with both worker protection and employer sustainability.

As the peak body representing employers in the building and construction sector, MBA ACT stresses that any legislative changes must deliver **clear, measurable benefits to employers**, including:

- Reduced administrative burden
- Improved clarity and consistency in compliance obligations
- Fair and balanced risk management frameworks
- Support for small and medium enterprises (SMEs) in meeting return-to-work and rehabilitation responsibilities

MBA ACT's **key non-negotiables** in this reform process are:

- **Employer Equity and Practicality**
Reforms must not disproportionately impact SMEs or create obligations that are impractical or financially burdensome without appropriate support mechanisms.
- **Clarity in Definitions and Thresholds**
Legislative language must be unambiguous—particularly in areas such as incident notification, eligibility for compensation, and the scope of employer and worker's responsibilities.
- **Consistency Across Jurisdictions**
ACT legislation should align with national best practices to ensure consistency for employers operating across state borders and to reduce regulatory fragmentation and operating costs.
- **Support for Employer-Led Recovery**
Employers must be empowered—not penalised—in their efforts to support injured workers. This includes access to reimbursable third-party RTWCs, streamlined rehabilitation provider approvals, and practical training pathways.

MBA ACT remains committed to working collaboratively with government and stakeholders to ensure that reforms are not only progressive but also **balanced, fair, and sustainable** for the employers who underpin the Territory's economic and social infrastructure.



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