

20<sup>th</sup> June 2011

Richard Grant  
Acting Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**Re: Families, Housing, Community Services and Indigenous Affairs and Other  
Legislation Amendment (Further Election Commitments and Other Measures)  
Bill 2011**

I write in relation to the review of the above Bill by the Economics Legislation Committee. Thank you for the opportunity provided to highlight concerns that TNT have with the notification requirements placed on 'compensation payers' by Schedule 4 – Notice of payments of recompense for personal injuries within the Bill. TNT is a licensee within the Safety, Rehabilitation and Compensation Act 1988, thus would be classified as a 'compensation payer' for the purposes of the above Bill.

Prior to addressing the specific concerns of the Bill, an overarching point should also be highlighted, being the relevance of the information to be provided to the Secretary of Centrelink. Most of TNT's workforce are full-time employees, and if currently in receipt of social security benefits, the benefits would be only paid after income from TNT was considered in any calculations. Any periodic weekly workers compensation payments are limited by the SRC Act 1988 to the employee's normal weekly earnings, and so payments of recompense made to the employees under workers compensation would not be placing the employee in a more favourable financial position than currently assessed by the Department of Social Security. Thus providing the Secretary with this information would not be likely to make an impact in line with the original intention of the Bill. If the Bill was limited to notification of those in receipt of benefits, but no longer employed by TNT or other like entities, the volume of the notifications would not be as onerous (for both the 'compensation payer' and the Secretary) and more worthwhile.

To help communicate the specific concerns with the Bill, the section of the Bill in question has been reproduced in indented italics, and then followed with the point to be made.

To begin, the Bill is not clear as to the expectations of the full range of workers entitlements that must be notified by the compensation payer to the Secretary. This is covered in Section 3, being;

*Schedule 4—Notice of payments of recompense for personal injuries  
Section 3 After subsection 17(6)*

- (7) Recompense for a personal injury means any of the following payments made in respect of the injury:*
- (a) a payment of damages;*
  - (b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme;*
  - (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under such an insurance scheme;*
  - (d) any other compensation or damages payment.*

*It does not matter whether the payment is in a lump sum or a series of periodic payments and whether it is made within or outside Australia.*

Where a valid workers compensation claim is accepted and an employee of TNT is deemed to be entitled to workers compensation benefits, with the provision as it is currently drafted, it appears that notice is required to be provided for the following benefit types;

- I. Weekly benefits payable for any incapacity to work as a result of the claimed injury;
- II. Lump sum payments for Permanent Impairment;
- III. Lump sum payments under s45 of the SRC Act;

Where a valid workers compensation claim is accepted and an employee of TNT is deemed to be entitled to workers compensation benefits, with the provision as it is currently drafted, it appears that notice is **not** required to be provided for the following benefit types;

- I. Lump Sum payment as reimbursement for out of pocket medical expenses;
- II. Lump sum payments as reimbursement for approved travel expenses related to the employee's claim;
- III. Any other lump sum payment for out of pocket expenses approved and related to the employee's claim;

The Bill appears to require notification for payments of weekly benefits (either periodic or lump sum) and for damages (being the s45 election or a permanent impairment) but does not appear to require notification for the 'non-compensation' benefits. To understand the full effect of the notification requirements, this point will need to be clarified.

In relation to Schedule 4, Division 2A, (below)

*Division 2A—Notice of payment of recompense for personal injury*

*1167A Notice by payer*

*Notice of one-off payment or initial periodic payment*

*(1) At least 14 days before a person (other than a person covered by subsection (3A)) makes any of the following payments, the person must give the Secretary notice, in a form approved by the Secretary, of the proposed payment:*

- (a) a payment of a lump sum of recompense for a personal injury;*
- (b) the first payment of a number of periodic payments of recompense for a personal injury;*
- (c) a payment of arrears of periodic recompense for a personal injury.*

*Note: Failure to give notice as required by this subsection may result in the person incurring a debt due to the Commonwealth if an overpayment of a compensation affected payment is made: see section 1184EA.*

The main concern with this part of the Bill is part 1(b) i.e. the requirement to provide the Secretary with 14 days notice prior to making a payment of recompense, where the payment is made under s19 of the SRC 1988 (being a payment to the employee in respect of the injury, for each week that is a maximum rate compensation week during which the employee

is incapacitated). That is, a weekly compensation benefit as opposed to a lump sum type payment.

This 14 day notice requirement could arguably require TNT to withhold a weekly benefit entitlement from an employee for 14 days. In many cases, this will increase the level of financial hardship experienced by an employee attempting to return to work. Many studies in the workplace rehabilitation field cite conflict in the workplace as being the number one barrier to return to work. For an employer to withhold benefits for 14 days, would create an additional barrier to return to work that is not currently experienced. This would most likely contribute to secondary development of psychological factors that may impact the recovery of an employee from a workplace injury.

Parts 1(a) and 1(c) are not of a concern, as the 14 day notice period can be incorporated into any terms of settlement between the parties.

To stay on the same section the Bill being s1167A, but with reference to part 2, being

*Notice of change of periodic payments*

(2) *At least 14 days before a person makes a periodic payment of recompense for a personal injury, the person must give the Secretary notice, in a form approved by the Secretary, of the proposed payment if:*

(a) *it is of an amount different from the amount of the most recent periodic payment of recompense for that injury that has been the subject of notice under this Division; or*

(b) *it is for a period longer or shorter than the period for which the most recent periodic payment of recompense for that injury that has been the subject of notice under this Division was made.*

*Note: Failure to give notice as required by this subsection may result in the person incurring a debt due to the Commonwealth if an overpayment of a compensation affected payment is made: see section 1184EA.*

The concern with this section of the proposed Bill is similar to part 1 in as far as withholding an employee's entitlement for 14 days for the notification period. Typically for workers compensation claims, as an employee's fitness for work improves, the hours that they work each week will most likely vary in line with their functional improvement. If improvement is gradual, then it is quite possible the hours of work may vary each week, meaning that each weekly entitlement for incapacity could vary. Thus it is possible that each periodic payment will be delayed for the employee due to the notification required to the Secretary.

To stay on the same section the Bill being s1167A, but with reference to part 3, being

*Notice of final periodic payment*

(3) *At least 14 days before a person makes a periodic payment of recompense for a personal injury, the person must give the Secretary notice, in a form approved by the Secretary, of the proposed payment if it is reasonable to expect that it will be the last periodic payment by the person of recompense for the injury.*

*Note: Failure to give notice as required by this subsection may result in the person incurring a debt due to the Commonwealth if an overpayment of a compensation affected payment is made: see section 1184EA.*

A final payment of periodic incapacity due to a workplace injury is generally not a known date. The final payment is generally dictated by an employee receiving a final medical clearance by their medical practitioner to return to full, pre-injury duties. In effect, what was originally deemed to be a periodic payment could subsequently turn out to be a final payment once an employee has seen their medical practitioner and supplied a clearing medical certificate.

It would be possible to provide notice to the Secretary once ongoing liability for a claim had been determined as ceasing, but this would in effect be after the fact of the last payment of incapacity to the employee. In other words, the final payment date can only be known retrospectively.

In summary, the main concern that TNT has with the proposed Bill is with the delays in making payments of weekly benefits compensation to our employees. As an employer that looks to engage our workforce, and ensure that the employee is a valued member of our business, withholding benefits that are rightly due to the employee appears to be an injustice to the individual, in particular at a time when they are most in need our support.

In addition, TNT is concerned about the associated administrative burden which these amendments will impose on 'compensation payers'.

Kind regards

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TNT Australia Pty Ltd