MONASH University
Law

10 February 2023

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

Inquiry into Concussions and repeated head trauma in contact sports

Thank you for the opportunity to make this submission to Senate Community Affairs References Committee inquiry into concussions and repeated head trauma in contact sports. This submission addresses paragraph h. of the Terms of Reference – **workers, or other, compensation mechanisms for players affected by long-term impacts of concussions and repeated head trauma**.

I am a Senior Lecturer in the Faculty of Law at Monash University, an Associate with its Centre for Commercial Law and Regulatory Studies and a Fellow of the Australian Centre for Justice Innovation. I research extensively in the area of sports law and, in particular, the application of regulatory theory to the world of professional sport. I also am a former General Counsel and General Manager with the Victorian WorkCover Authority and WorkSafe Victoria, and have researched and published on the application of workers' compensation and work health and safety law to professional sport.

In November 2021, I co-convened with the Australian Athletes Alliance a Roundtable on Sport, Injury Insurance and Workers' Compensation. That Roundtable, in turn, informed an article published in December 2022 in the *Insurance Law Journal* entitled "Workers' compensation and injury insurance in Australian sport: The status may not be quo". This submission draws on the Roundtable and published article.

If you have any questions or require further information about any of the issues canvassed in the submission (following), I would be pleased to answer them. My contact details are below.

Kind regards.

Dr Eric Windholz
Faculty of Law
Monash University
Email:
Phone:

Executive Summary

- Existing insurance arrangements for long-term and long-latency injuries arising from concussions and repeated head trauma in contact sports are inadequate, inequitable and (in some cases) may operate in breach of workers' compensation laws.
- Contractual injury payment schemes compensating for lost income have maximum payment periods, and cease on contract expiry. They are unlikely to cover long-term and long-latency injuries arising from concussions and repeated head trauma.
- Sporting organisations generally require players to take out top level private health insurance, with the league or club paying any excess medical costs (after private health insurance and Medicare) associated with the treatment of injuries incurred training or playing in accordance with the contract. However, sporting organisation contributions to the costs of insurance or any excess generally lapse either on contract expiry or some short period thereafter. As a result, employer supported private health insurance does not adequately support the treatment of long-term and long-latency injuries arising from concussions and repeated head trauma.
- In other professions, workers' compensation plays a key role. Sport is an exception. Exemptions from State and Territory workers' compensation schemes exist for professional players. However, the arguments originally advanced in support of the exemptions are redundant in a world in which sport has been corporatised and commercialised. There is little in the way of rational principle justifying their continued exclusion from coverage.
- The exemption from State and Territory workers' compensation stands in stark contrast to New Zealand where its accident compensation scheme draws no distinction between sport-related and other injuries.
- It also stands in stark contrast to State and Territory work health and safety laws. Professional sports enjoy no special privileges when it comes to work health and safety law. Those laws impose a statutory duty of care upon sporting organisations to reduce so far as is reasonably practicable, the risks associated with concussions and repeated head traumas.
- Moreover, the workers' compensation exemptions are ineffective to exclude professional players in New South Wales and Tasmania whose contracts remunerate them for activities other than participating in, training for, or travelling to, the competitive sporting activity (e.g., for engaging in promotional activities), and in the Northern Territory who earn more than 65% of average weekly earnings. Some sporting organisations in those jurisdictions may be operating in breach of their workers' compensation obligations.
- In the absence of workers' compensation insurance, the primary medical insurance obligation is transferred to Medicare which normally does not cover medical expenses incurred by employees injured undertaking work-related activities. This is inequitable for taxpayers because it shifts the primary medical insurance obligation from the employer sporting organisation (and state governments) to taxpayers (and the federal government).
- An important part of a successful sport injury management program is how players are insured and compensated for injuries they sustain while participating in their chosen sport; yet it attracts little attention. A complete re-think is required.
- Insurance and compensation arrangements for professional players should be no less than that provided to other Australian workers. The starting point should be their inclusion in workers' compensation schemes, with exemptions conditional upon compensation mechanisms that: (a) are no less generous than those applying to other Australian workers; and (b) provide long tail coverage for concussion and other long-term and long-latency injuries.
- The opportunity exists to construct a bespoke insurance and compensation scheme tailored to the unique circumstances of professional sport.

1. Introduction

Player health, safety and welfare has many dimensions. Immediate risks to physical health and safety emanating from the sporting contest has been sports' traditional focus. Over the years, however, the focus has broadened to include long-term and long-latency injuries caused by concussions and repeated head trauma.

These developments have been matched by increased interest and research into the causes, prevention and treatment of concussions and head trauma in sport. Comparatively less interest and research has been devoted to the manner with which players are insured and compensated for those injuries. Yet it is an important part of the sports' injury equation. A successful sport injury management program should focus not only prevention and rehabilitation, but also on how we insure and pay for that rehabilitation, and compensate and support injured players.

Insurance and compensation arrangements for professional players vary according the nature of the sport, the financial capacity of its governing bodies, and the player's bargaining power. This submission argues that these arrangements:

- are inadequate for long-term and long-latency injuries;
- are inequitable for players and taxpayers; and
- (in some cases) may operate in breach of workers' compensation legislation.

First though, it begins by explaining the insurance and compensation arrangements that apply to professional players.

2. Sources of insurance and compensation

The main sources of insurance and compensation for sporting injuries are summarised below.

Injury payments for lost income: Players competing in Australia's professional sporting codes who have organised player associations tend to have negotiated collective bargaining agreements (CBAs) that provide for payments for lost income in the event of injury sustained training and playing, and in some cases engaging in club or competition endorsed activities. The provisions governing injury payments can be complex. Generally, the payments cover lost match payments (sometimes subject to a reduction or cap), with retainers continuing to be paid while the player is contracted. The lost opportunity to earn prize money generally is not covered. Some CBAs also cover lost earnings from non-sport activities, which is important for sports where players are not full-time professionals, such as women's sport. Time limits also generally apply to injury payments, for example 104 weeks, and significant excesses can attach to the cover, usually in the form of the initial 14-day period off work not being covered.

Health insurance and excess medical costs: CBAs generally contain a contractual obligation upon the player to effect, maintain and pay for top level private health insurance for the term of their playing contract; and a contractual obligation upon the club or league to pay any excess medical costs (after private health insurance and Medicare) associated with the treatment of an injury incurred training or playing in accordance with the contract. It also is common for contracts to include an obligation upon the club or league to continue to pay the excess medical costs for a period after the termination of the contract. That period can vary from 6 to 18 months.

Medicare: Professional players can access Medicare. This is an exception to the general principle that Medicare does not cover medical expenses arising out of work-related activities (which

expenses normally are compensable under workers' compensation schemes). The inadequacies of Medicare are well documented. There are differences between what is charged for a medical service and what is covered by Medicare (the so-called Medicare Gap), and there can be long waiting lists for treatments at public hospitals.

NDIS and social security: Professional players also can access the National Disability Insurance Scheme and others forms of social security should their injuries mean they cannot support themselves.

Total and permanent disability (TPD) insurance: Some sports provide death and/or TPD insurance. Player superannuation plans also generally provide TPD insurance. The terms of TPD insurance vary from plan to plan. Eligibility for TPD benefits generally depends upon two factors: (1) permanency of employment at the date (or a prescribed period before the date) of disability; and (2) the degree and permanence of impairment. These factors can operate to exclude players on short term contracts (e.g., of less than 12 months), and many debilitating long-term injuries. Most plans also impose waiting periods. These requirements can render many players suffering severe effects (but not total and permanent disability) from concussions and repeated head traumas ineligible to receive TPD payments.

Hardship funds: Some sports have established hardship funds. While this a positive development, hardship funds currently are few and discretionary. Moreover, as their name suggests, they are designed to alleviate hardship, not provide adequate compensation.

Tort / crimes compensation: Compensation also can be sought through actions in tort (most commonly, negligence and battery) and crimes compensation legislation if the player is injured as a result of the criminal act or omission of another person. However, these processes can be slow and cumbersome, and the outcome uncertain. They generally are relied upon only when insurance arrangements are inadequate. As such, they are measures of last resort, and not part of a considered and structured sport injury management program.

Also important is what is not available to most professional players. Currently, most professional sporting codes in Australia do not insure their players under **State and Territory workers' compensation schemes**. This is based on the understanding that State and Territory workers' compensation legislation excludes professional players (with a few notable exceptions, most notably jockeys, and in some jurisdictions boxers and wrestlers). The basis for the exemption is discussed in Section 4.1, and its effectiveness in Section 5.

3. Inadequacy of insurance arrangements

As noted above, insurance and compensation arrangements for professional players vary according the nature of the sport, the financial capacity of its governing bodies, and the player's bargaining power. As one moves down the hierarchy of sports from Australia's elite sporting codes to those with less revenue and less well organised and funded player associations, the adequacy of insurance arrangements also is less. And when one gets to the part-time professional player for whom the greater risk from injury is to their non-sport income (which is the case with many women players), private insurance arrangements can be expensive and with significant excesses.

Moreover, private health insurance is tied to the length of the playing contract. Numerous examples exist of players struggling with injury long after their (comparatively) short careers – and any insurance payments - have ceased. This has been especially acute for players suffering long-

term chronic injuries to joints such as knees and backs, or depressive conditions associated with those injuries and the end of their careers. For example, research into retired elite AFL footballers reveals that 76% report having experienced a serious injury in their career, of which 60% report a continuing impact of that injury on their current daily lives, often requiring ongoing treatment years and sometimes decades later. Yet only 53% of past players report that private health insurance contributed to the costs of this treatment (and then only about half) with 39% reporting they self-fund their treatment and only 6% recovering the majority of the treatment costs from their previous club or player association.[1] This will only exacerbate with the increasing prevalence of long-term and long-latency injuries associated with concussions and repeated brain trauma.

4. Inequitable for players and taxpayers

Not only are current insurance arrangements for players inadequate; they also are inequitable for both players and taxpayers.

4.1 Inequitable for players

The insurance arrangements for professional players are inequitable for a number of reasons. First, in most situations the player pays for the insurance. And even in those cases where the club may pay for it, the value of the insurance often is seen by the league and club as a player benefit to be set-off against other forms of remuneration in wage negotiations.[2] This contrasts unfairly with workers' compensation premiums that are paid for by the employer and generally are seen as a cost of doing business (like payroll tax) rather than a form of worker remuneration.

More fundamentally, however, it is inequitable because it denies players the statutory insurance and compensation safety net provided to other workers in this country. That persons injured at work should be appropriately compensated and supported is today considered an essential tenet of a modern society. In other professions, workers' compensation plays a prominent role. Sport is the exception. This is inequitable. And it is all the more inequitable because the arguments originally advanced in support of the exemption are redundant in a world in which sport has been corporatised and commercialised.[3]

Outdated notions that professional sport is not work and professional players are not workers no longer provide justification for their exclusion from workers' compensation. Today, professional sports are businesses, sporting organisations are incorporated, and professional players are recognised as workers and employees.

And nor does sports' high rates of injury constitute valid grounds for exclusion. High rates of injury reinforce (rather than diminish) the importance and need for workers' compensation. Workers' compensation schemes originally were designed to cover (and continue to cover) workers in inherently dangerous industries and occupations. The exclusion of players on this ground runs counter to the raison d'etre of workers' compensation schemes. High rates of injury is more a compelling reason for inclusion than exclusion.

[1] Tyler King et al., 'Life after the game – Injury profile of past elite Australian Football players' (2013) 16 *Journal of Science and Medicine in Sport* 302, 303. The authors note their findings are consistent with studies of other sports. See the studies cited therein.
[2] An example of this is Netball Australia including a health insurance allowance of $2,667 in its calculation of the overall minimum payment to players (Netball Australia, *Top netballers agree to updated deal* (Web Page, 14 February 2020) <https://supernetball.com.au/news/2020-2021-cpa>.
[3] These arguments and their present day (ir)relevance are discussed in detail in Eric Windholz, 'Workers' compensation and injury insurance in Australian sport: The status may not be quo" (2022) 32 *Insurance Law Journal* 106.

That players assume the risk of injury also is an irrelevant factor. Workers in mining, construction and demolition also assume the high risk of injury inherent in their chosen occupation. Workers' compensation is a no-fault scheme covering injuries sustained undertaking activities arising out of or in the course of employment. In contact sports, collisions are an inherent part of the job description of a professional player's employment.

Excluding professional players from workers' compensation stands in stark contrast to the situation under State and Territory work health and safety laws. Professional sporting competitions and clubs have obligations under work, health and safety laws to ensure, so far as is reasonably practicable, the health and safety of their workers, including the players they engage. Professional sporting competitions and clubs cannot contract out of or otherwise transfer their statutory duties and obligations to the worker.[4]

And while there may be some sporting organisations and clubs that may struggle to pay workers' compensation premiums (e.g., small and country clubs and some female codes; noting that workers' compensation premiums that apply to sports still covered by workers' compensation often are the highest in the scheme), that too is not a reason to deny professional players (workers) in those sports (industries) the statutory safety net provided to other workers in this country. In every industry, there are small to medium sized enterprises that struggle to make ends meet. They are not excused from taking out workers' compensation insurance for their workers.

In summary, the exclusion of professional players from workers' compensation is an exception to the principle of universality that underpins the schemes. It has attracted widespread academic criticism, being variably described as 'manifestly unjust',[5] 'anachronistic',[6] and 'anomalous'.[7] It also stands in stark contrast to New Zealand where its accident compensation scheme draws no distinction between sport-related and other injuries. As Clayton, Johnstone and Sceats conclude '[t]here is little in the way of rational principle for making such exclusion from coverage'.[8] The case for professional players continued exclusion seems to be predicated on their having alternative insurance arrangements in place. However, as has been demonstrated, those arrangements are far from adequate.

4.2 Inequitable for taxpayers

Players' inequitable treatment under workers' compensation legislation transfers the primary medical insurance obligation to Medicare. Medical expenses incurred by employees injured undertaking work-related activities generally are not recoverable under Medicare because those expenses normally are compensable under workers' compensation schemes. Indeed, in 2014, Medicare began rejecting claims from professional players on this basis, a move supported at the time by consumer health advocates and some private health insurers.[9] In response to lobbying

[4] For a discussion of the application of work health and safety laws to professional players, see Eric L Windholz, 'Work health and safety laws and professional sport: New Zealand and Australia compared' (2016) 11 *Australian and New Zealand Sports Law Journal* 1-25.
[5] See e.g.: Eugenie Buckley, 'Player or Employee? Is the different treatment accorded to professional team players under Workers Compensation legislation justified?' (1996) December *Queensland Law Society Journal* 523, 523.
[6] Hayden Opie and Graham F. Smith, 'The Withering of Individualism: Professional Team Sports and Employment Law' (1992) 15 *University of New South Wales Law Journal* 313, 324
[7] Pauline Sadler and Rob Guthrie, 'Sports Injuries and the Right to Compensation' (2001) 3 *Sports Administration* 15, 20.
[8] Alan Clayton, Richard Johnstone and Sonya Sceats, 'The Legal Concept of Wok-Related Injury and Disease in Australian OHS and Workers' Compensation Systems' (2002) 15 *Australian Journal of Labour Law* 1, 14.
[9] See e.g., Nicola Berkovic, 'Players call for compo law revamp' *The Australian* (Sydney, 18 July 2014) 3; John Stensholt, "Sports on back foot over Medicare cuts' *The Australian Financial Review* (Sydney, 19 July 2014) 19; Kellie Lazzaro, 'Calls

from sporting organisations, the Health Minister at the time placed a three-year moratorium on the rejections, a move his successor made permanent.[10] Thus, current insurance arrangements are inequitable for taxpayers because they shift the primary medical insurance obligation from the employer sporting organisation (and state governments) to taxpayers (and the federal government).

5. Illegal (in some cases) for operating in breach of workers' compensation legislation

The legislative provisions excluding or restricting professional players accessing State and Territory workers' compensation schemes are explained in Appendix 1. As can be seen they are complex, with numerous jurisdictional differences, exceptions and qualifications. For present purposes, it suffices to note the following points.

1. The exemptions are effective to exclude professional players from the workers compensation schemes in Victoria, Queensland, Western Australia, South Australia and the Australian Capital Territory.

2. In New South Wales and Tasmania, the exemptions are ineffective to exclude professional players whose contracts remunerate them for activities other than participating in their sport (e.g., for engaging in promotional, marketing or community activities, or for their image rights).

3. In the Northern Territory, the exemption is ineffective to exclude professional players who earn more than 65% of average weekly earnings. The intention of this provision is to ensure workers' compensation coverage for professional players who derive a substantial part of their livelihood from sport – the opposite effect to the broad exclusion of other jurisdictions.

Some sporting organisations with operations in New South Wales, Tasmania and the Northern Territory that have not taken out workers' compensation insurance policies covering their players may be operating in breach of their workers' compensation obligations.

That this is the case should not come as a total surprise. As Dabscheck and Opie observe, sporting organisations in the past have overlooked and failed to comply with their statutory employer obligations, citing the experience with workers' compensation as an example (amongst others).[11] Indeed, the introduction of the sportsperson exemption occurred on realisation that some sporting organisations were operating unaware of, and in non-compliance with, their workers compensation obligations. The introduction of the sportsperson exemption may not have corrected for this problem. Indeed, the complexity of the exemptions may have exacerbated the situation. As Professor Luntz observes, 'the whole field is bedevilled with technicalities and distinctions not related in any way to the needs or deserts of the victims.'[12]

6. Professional Players and Injury Insurance: A Better Way

The rationale for the continued exclusion of professional players from workers' compensation laws rests on the assumption that alternative insurance arrangements covering professional players are adequate. However, as this submission has made clear, existing insurance arrangements for long-

for end to government-funded treatment of professional sport injuries' *The World Today* (ABC Radio National, 7 September 2015 <https://www.abc.net.au/worldtoday/content/2015/s4307470.htm>.

[10] Mick Tsikas, 'Medicare reprieve for players' *The Australian* (online, 30 April 2017).

[11] Braham Dabscheck and Hayden Opie, 'Legal Regulation of Sporting Labour Markets' (2003) 16(3) *Australian Journal of Labour Law* 259, 276.

[12] Harold Luntz, 'Compensation for Injuries Due to Sport' (1980) 54 *The Australian Law Journal* 588, 601.

term and long-latency injuries arising from concussions and repeated head trauma in contact sports are inadequate, inequitable and (in some cases) may be in breach of workers' compensation legislation.

The insurance and compensation arrangements for professional players should be no less than that provided to other Australian workers. The starting point should be their inclusion in workers' compensation schemes, with exclusion conditional upon their having in place insurance and compensation mechanisms that:

(a) are no less generous than those applying to other Australian workers; and

(b) provide long tail coverage for concussion and other long-term and long-latency injuries.

Precedents exist around which such a system could be built. For example, State and Territory workers' compensation schemes provide for employers applying for, and the workers' compensation regulator deciding applications for, a licence to self-insure workers' compensation claims. To be eligible for self-insurance, employers generally must meet minimum requirements regarding size, financial strength and claims management and rehabilitation capability, have a satisfactory work health and safety record, and re-insurance cover.

This also could occur at the national level. Self-insurance is available under the national Comcare scheme for corporations that were previously a Commonwealth authority or are carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority. This scheme could be extended to sporting organisations, as could the entire Comcare scheme, providing a national workers' compensation option for national sporting codes.

There also is the potential to link self-insurance to Australian Sports Commission (ASC) recognition thereby integrating and leveraging the role of the ASC as the lead Australian Government agency responsible for supporting sport and building its governance capability.

The opportunity exists to build on these foundations to construct a bespoke insurance and compensation scheme tailored to the unique circumstances of Australian professional sport.

Appendix 1 - State and Territory Workers' Compensation Sportsperson Exemptions

Legislation to exclude or restrict professional players accessing workers' compensation schemes exist in each Australian State and Territory. They are summarised in Table 1, and explained below.

Table 1 – State and Territory Workers' Compensation Sportsperson Exemptions

	Exemption				**Exceptions from the exemption**		
	Participate as a contestant in a sporting activity	**Training or preparing to so participate**	**Promotional Activities**	**Travel between home and activity**	**Occupation**	**Remuneration prohibition re other activities**	**Income threshold**
NSW	√	√		√	Jockeys, harness riders boxers, wrestlers	√	
Vic	√	√		√	Jockeys, harness riders		
Qld	√	√	√	√			
WA	√	√	√	√	Jockeys	√	
SA	√	√	√	√	Jockeys, harness drivers boxers, wrestlers		
Tas	√	√		√	Jockeys	√	
NT	√	√		√	Jockeys, harness riders		√
ACT	√	√		√			

1. New South Wales

Section 4 of the *Workplace Injury Management and Workers' Compensation Act 1998* (NSW) excludes from the definition of "worker":

> (d) except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while:
> (i) participating in an authorised activity (within the meaning of that Act) of that organisation; or
> (ii) engaged in training or preparing himself or herself with a view to so participating; or

(iii) engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.

Schedule 1 excepts from the exclusion, jockeys, harness riders, boxers and wrestlers.

The exclusion is dependent on two conditions.

1. The exclusion does not apply if under the player's contract, the player is remunerated for doing things other than participating, training, or journeying for the purpose of participating and training. Thus, the exclusion would not apply if the player's contract provided for the player to be remunerated for, say, promotional activities.
2. The exclusion only applies to a "registered participant of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*)". The *Sporting Injuries Insurance Act 1978* established the Sporting Injuries Insurance Scheme – New South Wales' bespoke no-fault compensation scheme available to all professional and amateur sportspersons. To be covered by the Sporting Injuries Insurance Scheme, the sportsperson must be a registered participant of a sporting organisation that has chosen to be declared under section 5(1) of the *Sporting Injuries Insurance Act 1978* (NSW). Sporting organisations within the Scheme also have the choice to opt out – either by having their declaration revoked and returning to the workers' compensation scheme, or being granted an insurance exemption if they can satisfy the Sporting Injuries Compensation Authority that they have adequate private insurance. Coverage only is for death or permanent loss of use of arms, legs, sight, hearing and mental capacity, and benefits only are paid as lump sums in accordance with a 'table of maims'. No provision is made for income support or the payment of medical expenses.

2. Victoria

Clause 17(1) of Schedule 1 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) provides:

> Except as provided in subclause (3), if a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority is liable to pay compensation for an injury received by the person if the injury is received while the person is—
>
> (a) participating as a contestant in a sporting or athletic activity; or
> (b) engaged in training or preparation with a view to so participating; or
> (c) travelling between a place of residence and the place at which the person is so participating or so engaged.

Subclause (3) provides an exception from the exemption for jockeys and riders and drivers in horse, pony or harness races.

Note that there is no qualification to the exemption by reference to the scope of the contract, as in New South Wales.

3. Queensland

Clause 2 of Part 2 of Schedule 2 to the *Workers' Compensation and Rehabilitation Act 2003* (Qld) provides:

> A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is:
> (a) participating in a sporting or athletic activity as a contestant; or
> (b) training or preparing for participation in a sporting or athletic activity as a contestant; or
> (c) performing promotional activities offered to the person because of the person's standing as a sportsperson; or
> (d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.

Note that this exclusion applies to promotional activities. This differs to the Victorian exclusion.

4. Western Australia

Section 11 of the *Workers' Compensation and Injury Management Act 1981* (WA) provides:

> 11 Contracted sporting contestants are not workers
>
> Notwithstanding anything in section 5 and subject to section 11A, a person is deemed not to be a worker within the meaning of this Act while he is, pursuant to a contract:
> (a) participating as a contestant in any sporting or athletic activity; or
> (b) engaged in training or preparing himself with a view to his so participating; or
> (ba) engaged in promotional activities in accordance with the contract pursuant to which he so participates; or
> (c) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged,
> if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

Section 11A excludes jockeys from the exemption.

Note that like New South Wales, the exemption does not apply if under the player's contract, the player is remunerated for doing things other than those listed by the section, but unlike New South Wales, those things include promotional activities.

5. South Australia

Section 69 of the *Return to Work Act 2014* (SA) provides:

> (1) Despite any other provisions of this Act, but subject to subsection (2), if -
> (a) a worker is employed by an employer solely -
> (i) to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation); or

(ii) to act as a referee or umpire in relation to a sporting or athletic contest (and to engage in training or preparation with a view to so acting); and

(b) remuneration is not payable under the contract of employment except in respect of such employment,

an injury arising out of or in the course of that employment is not compensable under this Act.

(2) This section does not apply to -

(a) a person authorised or permitted by a racing controlling authority within the meaning of the Authorised Betting Operations Act 2000 to ride or drive in a race within the meaning of that Act; or

(b) a boxer, wrestler or referee employed or engaged for a fee to take part in a boxing or wrestling match; or

(c) a person who derives an entire livelihood, or an annual income in excess of the prescribed amount, from employment of a kind referred to in subsection (1)(a).

(3) In this section ---
prescribed amount means $65 600 (indexed).

Section 69 applies both a remuneration condition and an income threshold to its sportsperson exemption – which exemption extends to referees and umpires in addition to contestants. On face value, this would appear to operate similarly to New South Wales to exclude from the exemption players whose contract remunerates them for activities not listed (such as promotional activities). However, section 4(5) of the *Return to Work Act* provides that the 'regulations may exclude (either absolutely or subject to limitations or conditions stated in the regulations) specified classes of workers wholly or partially from the application of this Act'; and regulation 6(2) of the *Return to Work Regulations 2015* (SA) excludes for the purposes of s 4(5) of the Act, "a worker who is employed by an employer to participate as a contestant in a sporting or athletic activity (and to engage in training or preparation with a view to such participation, and other associated activities)". The only exceptions are for jockeys, harness drivers and boxers and wrestlers. This has the effect that the remuneration condition and income threshold apply only to referees and umpires.

6. Tasmania

Section 7 of the *Workers Rehabilitation and Compensation Act 1988 (Tas)* provides:

7. Exclusion of certain persons who are contestants in sporting activities

A person is deemed not to be a worker within the meaning of the Act while he is, pursuant to a contract -

(a) participating as a contestant in any sporting or athletic activity;

(b) engaged in training or preparing himself with a view to his so participating; or

(c) travelling in connection with his so participating or being so engaged -

if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

Section 4DC of the Act provides that notwithstanding section 7, jockeys are workers for the purposes of the Act.

Like New South Wales, the exclusion does not apply if under the player's contract, the player is remunerated for doing things other than participating, training, or travelling for the purpose of participating and training.

7. Northern Territory

Sections 3B(14) and (15) of the *Return to Work Act 1986* (NT) provide:

> (14) Despite anything in this Act but subject to subsection (15), a person is taken not to be a worker while the person is, under a contract:
>
> (a) participating as a contestant in a sporting or athletic activity; or
>
> (b) engaged in training or preparation with a view to participating in such an activity; or
>
> (c) travelling in connection with:
>
> (i) participating in such an activity; or
>
> (Ii) training or preparing for such participation.
>
> (15) Subsection (14) does not apply if, under the contract, the person is entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in the person receiving remuneration of not less than that amount.

Section 17 of the Act further provides that regulations can prescribe a person to be a worker for the purposes of the Act, and regulation 3A of the *Return to Work Regulations 1986* (NT) prescribe persons who are authorised to ride or drive a horse or pony under the *Racing and Betting Act 1983* (NT) to be workers.

Regulation 5 of the *Return to Work Regulations* sets the prescribed amount at 65% of the annual equivalent of average weekly earnings. The effect of these provisions is that any player based in the Northern Territory earning (from their sport) in excess of 65% of average weekly earnings (annualised) is entitled to workers' compensation.

8. Australian Capital Territory

Section 84 of the *Workers Compensation Act 1951* (ACT) provides:

> **84 Compensation for sporting injuries**
>
> A person is not entitled to receive compensation for an injury sustained as a result of the person's engagement in professional sporting activity.