

18th Legislative Assembly of the Northwest Territories

Standing Committee on Economic Development and Environment

*Report on the Review of Bill 25: An Act to
Amend the Workers' Compensation Act*

Chair: Mr. Cory Vanthuyne

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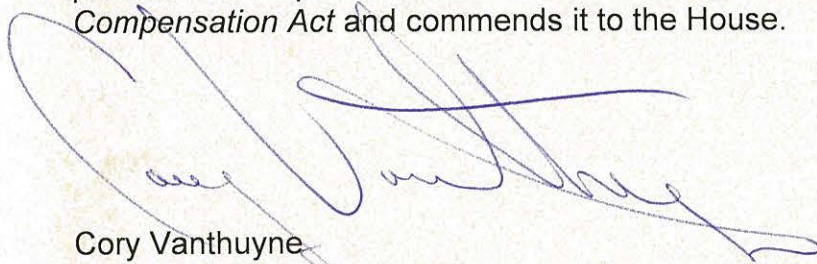
April Taylor
Committee Advisor

AUG 15 2019

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its *Report on the Review of Bill 25: An Act to Amend the Workers' Compensation Act* and commends it to the House.



Cory Vanthuyne
Chair, Standing Committee on
Economic Development and Environment

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

**REPORT ON THE REVIEW OF BILL 25: *AN ACT TO AMEND THE
WORKERS' COMPENSATION ACT***

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
THE PUBLIC REVIEW OF BILL 25	3
PUBLIC INPUT AND COMMITTEE RECOMMENDATIONS	3
CLAUSE-BY-CLAUSE REVIEW OF THE BILL	11
CONCLUSION	12
CLAUSE-BY-CLAUSE REVIEW	APPENDIX A
SUBMISSIONS	APPENDIX B

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

**REPORT ON THE REVIEW OF BILL 25: AN ACT TO AMEND THE
WORKERS' COMPENSATION ACT**

INTRODUCTION

The Standing Committee on Economic Development and Environment ("the Committee") is pleased to report on its review of *Bill 25: An Act to Amend the Workers' Compensation Act*.

Bill 25: An Act to Amend the Workers' Compensation Act, sponsored by the Honourable Alfred Moses, Minister Responsible for the Workers' Safety and Compensation Commission (WSCC), was given second reading in the Legislative Assembly and referred to the Standing Committee on Economic Development and Environment for review on October 26, 2018. For reasons that will be addressed, Committee requested an extension to the 120 day review period provided for in the *Rules of the Legislative Assembly*. Committee thanks the Legislative Assembly for approving this extension, which was granted on February 26, 2019.

Bill 25 proposes to amend the *Workers' Compensation Act* to:

- Clarify the usage of the terms "impairment" and "disability;"
- Add detail respecting who is considered an "employer" within the scope of the Act;
- Remove the requirement for a primary health care provider;
- Add unemployment benefits as a category of remuneration;
- Authorize the provision of workers' records by health care provider to WSCC;
- Authorize information sharing and disclosure for the purpose of improving administration of the Act;
- Enable an inspector to inspect health care providers' records to verify services received;

- Reduce the time period for filing a review of a Commission decision to the Review Committee or to file a request for an appeal to the Appeals Tribunal; and
- Correct inconsistencies and errors identified in the Act.

BACKGROUND

The Workers' Compensation and Safety Commission is a single corporation providing services to workers in both Nunavut and the Northwest Territories. The multi-jurisdictional nature of the WSCC arises because it predates the division of the Northwest Territories in 1999, when Nunavut was created. At that time, the territorial legislation in place governing the entire Northwest Territories was duplicated, or mirrored, in the new Nunavut legislature in much the same fashion that federal legislation was later duplicated in the Northwest Territories legislature when devolution of responsibility for Crown lands and resources from the federal government to the took place in 2014. This approach has resulted in the WSCC, a single corporate body conducting business in both jurisdictions, being governed by two distinct statutes in two separate jurisdictions.

This situation poses unique challenges with respect to the development and review of Bill 25. In order to ensure that the WSCC can operate in an efficient and effective manner, it is necessary for the two sovereign legislatures to simultaneously consider amendments to two separate, but virtually identical, pieces of legislation. At the same time that the Standing Committee on Economic Development and Environment has been considering Bill 25, the Standing Committee on Legislation of the Legislative Assembly of Nunavut has, therefore, been considering Bill 1. This has necessitated a high degree of collaboration between both legislatures, and both Ministers Responsible, to ensure that the initial draft of the bill, and any subsequent amendments made at the Committee stage, are coordinated.

While these circumstances are unusual, they are not without precedent. In fact, Nunavut and the Northwest Territories each previously considered coordinated amendments to its own *Workers' Compensation Act* 2007. In 2015, each jurisdiction passed a *Northern Employees Benefits Services Pension Plan Act* to govern the Northern Employee Benefits Services, a single, member owned, not-for-profit corporation sponsoring an insurance and health care benefits plan, and a pension plan, for certain public sector employees in both Nunavut and the

Northwest Territories. More recently, as this Assembly passed Bill 7, *Chartered Professional Accountants Act*, Nunavut passed Bill 2. These near-identical statutes provide for a newly-merged body, the Chartered Professional Accountants of Northwest Territories/Nunavut, to regulate the accounting industry in both territories.

The challenges presented by amending mirrored legislation are not the only challenges presented by this review. In 2014, this Legislative Assembly passed the *Health Information Act*, governing the collection, retention and disclosure of health information belonging to NWT residents. Bill 25 deals with the handling of workers' medical information, yet Nunavut does not have legislation similar to our *Health Information Act*. This need to craft amendments that give consideration to the different protections for medical data and records in each jurisdiction has also been a feature of Committee's review.

The general complexity of the *Workers' Compensation Act*, an unusually busy legislative workload and the high degree of collaboration required between Nunavut and the Northwest Territories, to facilitate concurrent reviews of Bills 8 and 25, are the reasons Committee sought an extension to the time period allowed for the review of this bill.

Committee would like to take this opportunity to thank Mr. John Main, Chair of the Standing Committee on Legislation of the Nunavut Legislative Assembly, his colleagues, and staff for their collaborative spirit and forthright communication, which made this review possible.

Committee thanks Minister Moses and his staff for their collaboration and for their prompt responses to Committee's questions. Committee also thanks the Minister for his concurrence with amendments to the bill that were proposed by Committee.

THE PUBLIC REVIEW OF BILL 25

As always, Committee commenced its review by inviting input from stakeholders across the Northwest Territories, including municipal and Indigenous governments, and a number of non-governmental organizations. Committee held a public hearing on Bill 25 in Yellowknife on February 12, 2019.

Committee received written submissions from: the Information and Privacy Commissioner for the Northwest Territories (IPC); Thomas ADR, a small business operating in the Northwest Territories; and the NWT and Nunavut Chamber of Mines. These written submissions are appended to this report.

Committee thanks everyone who provided submissions on Bill 25.

PUBLIC INPUT AND COMMITTEE RECOMMENDATIONS

As noted in the introduction, Bill 25 proposes to amend the *Workers' Compensation Act* to achieve a number of objectives. The key objectives will be addressed in turn, identifying any public input received, and outlining the nature of Committee's deliberations and proposed motions to amend the bill.

Clarify the usage of the terms "impairment" and "disability"

Under the *Workers' Compensation Act*, temporary compensation is paid based on the effect of a worker's injury on their ability to work, whereas permanent compensation is paid based on a permanent loss of function. The definition of "disability" under the Act does not account for the differences between a temporary reduction of function versus a permanent one, leading to confusion for workers and employers, and challenges with interpretation of the Act.

Bill 25 proposes to amend the definition of "disability" to mean "the condition of having temporarily reduced physical, functional, mental or psychological abilities" causing a loss of earning capacity for a period of time. It also proposes to introduce a definition for the term "impairment" which is defined as "the condition of having a permanent physical, functional, mental or psychological abnormality or loss" causing a permanent loss of earning capacity.

Committee found the WSCC's definitions to be somewhat counterintuitive, in that the word "impairment" is commonly viewed as being a temporary condition, such as in the case of alcohol impairment, while "disability" is commonly viewed as a lifelong condition. Nonetheless, Committee was satisfied not to recommend a change to these proposed definitions, because they are used consistently throughout the Act and do help to simplify the meaning of provisions in the Act by deleting terms such as "permanent disability," as amended by clause 2(5).

Add detail respecting who is considered an "employer" within the scope of the Act

It is important that the *Workers' Compensation Act* contain a clear definition as to who is considered an employer under the Act, as this determines an employer's eligibility and obligations under the Act and, hence, an employee's coverage. Clause 4 of Bill 25 amends section 8 of the act by providing a list of exemptions setting out who is not considered an employer for the purposes of the Act, including: employers whose chief place of business is in another jurisdiction; employers who do not employ NWT residents; employers carrying out business in the NWT for fewer than ten days per year and; employers having workers' compensation coverage in another jurisdiction.

Committee received a submission from Thomas ADR raising a concern that the proposed amendment would expand the Commission's jurisdiction to include sole proprietors. The proprietor's concern was heightened by a statement on the WSCC's website which reads: "If you operate a business in the Northwest Territories and/or Nunavut for more than 10 days within a calendar year, you must register with the WSCC."

Committee's Law Clerk advised that clause 4 of Bill 25 was not intended to include sole proprietors. Nonetheless, Committee, exercising an abundance of caution, also wrote to the Minister to ensure government's interpretation was consistent with that of Committee's Law Clerk and to advise the Minister of the concern raised about the statement on the WSCC's website.

The Minister replied, confirming the understanding of Committee's Law Clerk but also noting that the concern raised about the website is valid and advising that the WSCC would be amending this information to provide clarification on the requirements for employer registration.

Remove the requirement for a primary health care provider

With respect to the development of a treatment plan for an injured or ill worker, subsection 33(2) of the Act requires the worker to have a primary health care provider to take responsibility for diagnosing the worker's condition and developing a treatment plan. Bill 25 proposes to repeal this requirement, out of a recognition that the realities of territorial medical services are such that many patients do not have a primary health care physician.

The submission received from the NWT & Nunavut Chamber of Mines supports this proposal, noting that *“this requirement was longstanding issue for workers as often it is difficult in the north to see the same doctor on a consistent basis, let alone have a “primary health care provider.” This amendment will make life easier for injured workers to have their claims adjudicated.”*

Committee agrees that this requirement is unduly onerous and may be difficult for an injured worker in the Northwest Territories to meet, and therefore supports its removal from the Act.

Add unemployment benefits as a category of remuneration

Section 57 of the Act sets out what must be included when determining the amount of a worker's remuneration which, in turn, forms the basis for assessing the amount of compensation an injured or ill worker may receive. Clause 30 proposes to amend this provision in the Act to include employment insurance benefits in the calculation of a worker's remuneration. Committee was advised that, by excluding employment insurance benefits in determining the amount of a worker's remuneration, the Northwest Territories Human Rights Commission found this provision to be discriminatory, particularly for seasonal workers whose social conditions require intermittent work. This decision was later affirmed by the Northwest Territories Court of Appeal, which prompted this proposed amendment.

Committee notes the submission from the NWT & Nunavut Chamber of Mines indicating that this is a potentially controversial proposal because it will result in *“more compensation for workers, but higher costs paid by employers.”* Nonetheless, Committee acknowledges the findings of the Northwest Territories Human Right Commission and Court of Appeal and has no concerns with this proposal.

Authorize the provision of workers' records by health care provider to WSCC (Clause 14)

Section 25 of the Act requires a health care provider to submit a report to the WSCC, within three days after treatment, providing the information required by the WSCC. Clause 14 of Bill 25 amends section 25 of the Act by adding a new subsection 25(1.1) requiring any health care provider who examines or treats worker under the Act to “submit records to the Commission in relation to medical

aid received by the worker sufficient to enable the Commission to comply with its obligations under subsection 34(3)" of the Act.¹

In her submission to the Committee, the Information and Privacy Commissioner pointed out that *"this would require health care providers to make a worker's actual treatment records available to the Commission, as opposed to providing reports about treatment, resulting in the Commission possessing more, and more detailed, health care information of individual workers."*

Committee observed that this amendment does not include any requirements relating to consent by the worker whose health records are being shared.

Committee also noted that, while section 161 of the *Workers' Compensation Act* imposes a duty of confidentiality on the WSCC, section 162 of the Act provides that *"[t]he provisions of [the Workers' Compensation] Act respecting the provision of information by or to the Commission have effect notwithstanding the Access to Information and Protection of Privacy (ATIPP) Act and the Health Information Act."* This makes the *Workers' Compensation Act* paramount over ATIPP and the *Health Information Act*, rendering the protections provided by those statutes subordinate to the requirements of the *Workers' Compensation Act*.

Committee shares the IPC's concerns, particularly in light of this paramountcy provision. Furthermore, Committee does not accept the WSCC's position that the scope of the amendment is not overly broad and that it would not jeopardize the confidentiality of claimants' personal health records. Some Committee Members also sit on the Standing Committee on Government Operations, which meets annually with the IPC. From these meetings, Members are aware that any time a record is handled or transmitted there is an increased likelihood of privacy breaches. Committee is also concerned that the impact of this provision, in concert with the proposal to allow the WSCC to share information with other agencies under clause 33, could further broaden the potential for privacy breaches.

Committee determined that it does not support the inclusion of Clause 14 in the bill.

¹ Subsection 34(3) [Determination of related issues] provides that "the Commission shall determine all issues related to the necessity, character, amount, timing, manner and sufficiency of the medical aid provided or paid for by the Commission."

Authorize information sharing and disclosure for the purpose of improving administration of the Act (Clause 33)

Section 95 of the *Workers' Compensation Act* authorizes the WSCC to enter into information-sharing agreements with public bodies responsible for workers' safety and compensation in other jurisdictions for the purpose of ensuring regimes are efficiently administered in all jurisdictions and that eligible claimants are dealt with by the appropriate jurisdiction.

Clause 33 of Bill 25 proposes to repeal and replace this with a broader authority allowing the WSCC to enter into agreements with the Government of Canada, a government of a province or territory of Canada, an Indigenous government, or with a ministry, board, commission or agency of such a government, for the purpose of ensuring the proper administration of this Act and any other legislation administered by the Commission. Clause 33 further provides that the other government, ministry, board, commission or agency may be permitted to access information obtained by the WSCC under this Act and vice versa.

As previously noted, Committee was concerned about the impact of this provision, especially given the proposal under clause 14 requiring health care providers to share actual medical records with the WSCC. Committee also notes the concern raised by the NWT & Nunavut Chamber of Mines indicating that *"in the past such sharing had to be justified using access to information legislation."*

Nunavut was also concerned about this clause, especially given the fact that, unlike the Northwest Territories, they do not have any legislation providing protections for health information. Nunavut's Standing Committee on Legislation therefore asked the Standing Committee on Economic Development and Environment to move a motion to amend Bill 25 to prevent other governments or outside agencies from having direct access to the WSCC's databases.

Committee agreed to move this motion.

Reduce the time period for filing a review of a Commission decision to the Review Committee or for filing a request for an appeal to the Appeals Tribunal (Clause 34)

Committee considered two sections of the Act that Bill 25 proposes to amend to reduce the time for a worker to file an appeal. Section 115 of the *Workers'*

Compensation Act provides that a “request for a review of a decision of the Commission must be made within three years after the day of the decision, unless the Review Committee considers that there is a justifiable reason for the delay and allows an extension.” Subsection 128(2) provides that “[n]o appeal may be taken to the Appeals Tribunal more than three years after the day of the Review Committee’s decision, unless the Appeals Tribunal considers that there is a justifiable reason for the delay and allows an extension.” Clause 34 of Bill 25 proposes to amend each of these provisions to reduce the window for an appeal from three years to two years.

The WSCC’s rationale for this amendment is that two years is the standard civil limitation period under section 2 of the *Limitation of Actions Act*² and that this amendment will help to reduce the overall liability resulting from decision reversals. Even while recognizing that the Review Committee and Appeals Tribunal have the authority to grant extensions for justifiable delays, Committee is not persuaded by this rationale.

Based on numbers provided by the Commission for the period 2016 to 2019, had the limitation been two years rather than three, the number of reviews before the Review Committee that would have been denied doubled from 5 to 10 reviews, and the number of appeals before the Appeal Tribunal that would have been denied doubled from 2 to 4 appeals. In Committee’s view, while this clearly works to the advantage of the WSCC by minimizing the impact of appeals on the Workers’ Protection Fund, it does not evidence any advantage for workers.

Committee holds the view that, in the Northwest Territories, where literacy rates are low, those in smaller communities may have difficulty accessing the supports necessary to launch a review or appeal. As well, a significant component of the population is impacted by social problems and the legacy of residential schools. In this context, it is even more important that careful consideration be given to reducing limitations on the time available to people to exercise their rights.

Committee determined that it does not support the inclusion of Clause 34 in the bill.

² RSNWT, 1988, c. 8 (Supp.)

Enable an inspector to inspect health care providers' records to verify services received (Clause 35)

Lastly, clause 35 of Bill 25 proposes to amend section 134(2) of the *Workers' Compensation Act* to enable the Commission to enter any health care facility to inspect and audit any records, with the intent of verifying that claimants have received services related to their claims.

Committee understands that the purpose of this amendment is to enable the WSCC to undertake site audits to obtain a greater degree of information about the compliance of those providing medical services as compared with the claims made by workers about services obtained. Committee asked for evidence about the incidences of medical fraud that have occurred in the past and the costs incurred by the Commission due to fraud. The WSCC advised that it does not have any such statistics, pointing out that having this information would be useful for compliance and for quality assurance purposes.

Despite the absence of evidence, Committee recognizes that the potential exists for medical fraud to take place, which is a drain on resources for those who legitimately need help. Therefore, Committee is sympathetic to the desire of the WSCC to detect and prevent fraud, thereby protecting the Workers' Protection Fund. However, Committee was also deeply concerned that this amendment, as written in the bill, provides the WSCC with a very broad authority, perhaps broader than is needed, to access actual patient medical records which may contain highly personal details.

Committee was aware that there are provisions in the *Health Information Act* allowing patients to prevent access to their medical records without their consent and investigated whether this power could be invoked by a patient to limit the authority proposed to be granted to the WSCC under clause 35. Committee learned that paragraph 22(2)(b)(i) of the *Health Information Act* states that “[a] condition placed by an individual on his or her consent to the collection, use or disclosure of personal health information...is not effective to the extent that it purports to limit collection, use or disclosure that is required by this or another Act.” Therefore, an individual cannot use their right to withhold consent to the disclosure of their personal medical records as a means for limiting the disclosure of their personal health information to the WSCC.

Committee determined that it does not support clause 35 as drafted in the bill. Committee notes that in several of the other bills it is reviewing right now, the right of inspection is constrained by the requirement to obtain a warrant in many instances. Given that fraud is a criminal matter, Committee felt that if fraud is suspected, then the WSCC should use the tools available under criminal law, including the ability to secure a warrant for medical records in instances where there is just cause to do so.

Committee discussed this matter with the WSCC, in an effort to come to some agreement about an appropriate motion to amend clause 35. The WSCC explained that its need for this power under the Act is solely to enable it to carry out an audit function relating to accounting and transactional records, and that it has no need for access to patients' personal medical records. Committee and the Minister agreed to a motion that would place constraints on the records that may be accessed by an inspector under this section to scheduled appointments for treatments and services and accounting records related to those appointments.

It was further determined, as a result of these discussions, that the motion should specify the difference between audits for the purposes of detecting fraud, and the audits carried out by the WSCC in fulfilling its responsibility to inspect workplaces to assure that an employer, such as a health facility, is providing a safe workplace meeting occupational health and safety standards.

Committee is pleased that agreement could be reached on this additional amendment to clause 35 and feels that its work with the Minister and the WSCC in this instance is an excellent example of how collaboration between Cabinet and Standing Committees can result in better legislation, to the benefit of all.

CLAUSE-BY-CLAUSE REVIEW OF THE BILL

The clause-by-clause review of Bill 25 was held on August 9, 2019. Appendix 1 sets out the amendments that that Committee made to Bill 25.

CONCLUSION

During the clause-by-clause review of Bill 25, Minister Moses noted his need to share the substance of the Committee's deliberations with his counterpart in Nunavut. Committee wishes to assure the Minister and this House that all of the amendments Committee made to Bill 25 were done with the full knowledge of Nunavut's Standing Committee on Legislation. Committee understands that Nunavut will be concluding its review of its Bill 8 when the Nunavut Legislative Assembly reconvenes in October.

Committee again thanks everyone involved in the review of Bill 25. This concludes Committee's review.

APPENDIX A

CLAUSE-BY-CLAUSE REVIEW

During the clause-by-clause review of Bill 25, on August 9, 2019, Committee proposed the following amendments to the bill:

Clause 14: *Authorizing the provision of workers' records by health care provider to WSCC.*

Committee voted against the inclusion of this clause in the bill.

Minister Moses concurred with this decision. As a result, clause 14 is removed from Bill 25.

Clause 33: *Authorizing information sharing and disclosure for the purpose of improving administration of the Act.*

Committee moved the following motion:

"That clause 33 of Bill 25 be amended by

(a) renumbering proposed clause 95 as proposed subclause 95(1); and

(b) adding the following after that proposed renumbered subclause:

(2) Notwithstanding subsection (1), the Commission shall not permit direct access by an entity other than the Commission to databases containing information obtained by the Commission under this Act."

The motion was carried and Minister Moses concurred with the motion. The bill will be amended accordingly.

Clause 34: *Reducing the time period for filing a review of a Commission decision to the Review Committee or for filing a request for an appeal to the Appeals Tribunal.*

Committee voted against the inclusion of this clause in the bill.

Minister Moses concurred with this decision. As a result, clause 34 is removed from Bill 25.

Clause 35: *Enable an inspector to inspect health care providers' records to verify services received.* Committee moved two motions related to this clause. The first makes an inspector's right to conduct an audit subject to the provisions in a new subsection 134.1. The second sets out the requirements under the new subsection:

"That clause 35 of Bill 25 be deleted and the following substituted:

35. Subsection 134(1) is amended by striking out “For the purpose of ensuring compliance with any provision of this Act” and substituting “Subject to section 134.1, for the purpose of ensuring compliance with any provision of this Act”.

The motion was carried and Minister Moses concurred with the motion. The bill will be amended accordingly.”

“That Bill 25 be amended by adding the following after clause 35:

35.1. The following is added after section 134:

134.1. (1) Notwithstanding section 134, an inspector may only enter and inspect any health care facility in accordance with this section.

(2) An inspector and any person assisting the inspector may, at any reasonable time,

(a) enter a health care facility where medical aid was provided to a worker; and

(b) inspect and audit any records of the health care facility in respect of

(i) scheduled appointments for treatments or services for a worker, or

(ii) accounting records in respect of treatments or services rendered to a worker.

(3) An inspector and any person assisting the inspector shall not inspect or audit any record under subsection (2) except

(a) for the purpose of enabling the Commission to comply with its obligations under subsection 34(3); and

(b) in accordance with paragraphs 48(a) to (c) of the *Health Information Act*.

(4) Subject to subsection (2), nothing in this section authorizes an inspector or any person assisting the inspector to access any records containing personal health information as defined in the *Health Information Act*.

(5) This section only applies to a health care facility in respect of the provision of treatments or services to a worker, and does not apply to a health care facility in respect of its activities as an employer.

The motion was carried and Minister Moses concurred with the motion. The bill will be amended accordingly.”

APPENDIX B

SUBMISSIONS



**OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER**
NORTHWEST TERRITORIES

P.O. Box 382
Yellowknife, NT
X1A 2N3

February 12, 2019

Legislative Assembly of the Northwest Territories
P.O. Box 1320
Yellowknife, NT
X1A 2L9

Attention: Corey Vanthuynne
Chair, Standing Committee on Economic Development and
Environment

Dear Sir:

Re: Bill 25 - An Act to Amend the Workers' Compensation Act
My file: 18-186-4

Thank you for your letter of January 22nd, 2019 asking for public input with respect to the above noted legislation. There are a number of provisions in the Bill which will impact significantly on the privacy of individuals who are injured on the job. In most of these cases, the individual will have no option but to seek compensation from the WSCC but in order to gain access to the system- a system meant to protect workers - the worker must trade off his/her right to privacy. While the WSCC clearly needs to be able to obtain a worker's medical information for the purpose of administering the program, I have been concerned about the way in which it does so. Much will depend on the way in which the WSCC implements the new powers provided to them and the policies which are implemented (or not) to guide the use of such powers.

Collection of Workers' Medical Records

Section 14(1) of the Bill would amend section 25 of the WCA by adding a new subsection 25(1.1). That new subsection would require any health care provider who examines or treats a worker under the WCA to "submit records to the Commission in relation to medical aid received by the worker sufficient to enable the Commission to comply with its obligations under subsection 34(3)." Subsection 34(3) provides that the Commission is to "determine all issues related to the necessity, character, amount, timing, manner and sufficiency of the medical aid provided or paid for by the Commission." Section 14 of the Bill

February 12, 2019

Page 2

would also change section 25 to refer to "reports or records" provided to the Commission, noting that section 25 now refers only to "reports" provided to the Commission.

The proposed changes would require health care providers to make a worker's actual treatment records available to the Commission, as opposed to providing reports about treatment. This would enable the Commission to use the actual records themselves, not just reports based on medical records, to determine for itself, consistent with section 34(3), issues "related to the necessity, character, amount, timing, manner and sufficiency of the medical aid provided or paid for by the Commission."

This will result in the Commission possessing more, and more detailed, health care information of individual workers. This leads to two observations. First, as a public body covered by the *Access to Information and Protection of Privacy Act* ("ATIPPA") the Commission would be required to use and disclose that personal information only for the purpose for which it was collected, i.e., to enable the Commission to fulfil its section 34(3) role. Second, section 161 of the Act imposes a confidentiality duty on the Commission. It prohibits disclosure of any information acquired under the Act contrary to the Act itself, ATIPPA, the *Health Information Act* or Commission Governance Council policies.

Quite apart from these statutory protections, it is vitally important that the Commission ensure that it implements robust privacy protections for the sensitive personal health information of workers. The Commission should, first, ensure that it only obtains medical records (as opposed to the reports based on those records), where that is clearly necessary. Second, the Commission should ensure that medical records that it does obtain are only made available to Commission staff who have a clear need to know and that the number of staff involved in any one case is restricted to the fewest number possible. Further, Commission employees should only have access to the minimum amount of relevant personal health information that they require in order to fulfil their job duties. Third, the Commission should ensure that this information is stored in a secure manner, to reduce the risk of unauthorized access and disclosure and there should be a clear and robust retention and destruction protocol. Fourth, Commission staff should receive regular privacy training, to ensure that they are aware of their ATIPPA responsibilities and the confidentiality requirements under the WCA. While these suggestions may not be appropriate for inclusion in the Bill itself, it is vital that the privacy implications of the amendments be recognized and dealt with accordingly in practice through either regulation or policy directives.

Power to inspect medical records

Section 35 would add sections 134(3) and (4) to the WCA. The former would empower an inspector with the Commission to enter any health care facility where a worker received medical aid and "inspect and audit any records" of the facility "in relation to medical aid

received by a worker." Under section 134(4) an inspector would be permitted to inspect or audit medical records only for the purpose of enabling the Commission to comply with section 34(3), described above and such inspection or audit would have to be conducted subject to sections 48(a) through (c) of the *Health Information Act*. Those provisions allow health information custodians to disclose personal health information for audit, inspection or similar reasons.

Consistent with my above comments about robust privacy protections, the Commission should ensure that its inspectors only inspect or audit medical records where that is clearly necessary for section 34(3) purposes. The Commission should also ensure that medical records are only made available to the inspector or those assisting the inspector, on a clear need-to-know basis and only to the extent the worker's medical records are directly related to the Commission's section 34(3) duties. The Commission should also ensure that any records obtained by an inspector are stored in a secure manner.

Information sharing agreements

Section 33 would replace section 95 of the WCA to permit the Commission to enter into information-sharing agreements with a wide range of other governments and their components. The information-sharing power is limited to the sharing of information for the "proper administration" of the WCA and "any other legislation administered by the Commission". This would enable the Commission to share the personal health information and other personal information of workers.

An individual's personal health information is some of the most sensitive of personal information. In the absence of a clearly compelling public policy case for this amendment, I urge the government to change the amendment so that the Commission cannot share the personal health information of workers under an information-sharing agreement. If the amendment is not changed, the Commission should commit to not enter into any information-sharing agreement involving personal health information unless necessary to prevent fraud and then only subject to proper privacy protections being included in the agreement.

Public disclosure of information by the Commission

Section 36 would add a new section 161.1. Subsection 161.1(2) would authorize the Commission to disclose personal information of injured workers, including details of an accident or incident and its nature. It would also permit the Commission to disclose the name of any worker who suffered a personal injury, disease or death (or who could possibly be expected to suffer in the future). Last, it would permit the Commission to disclose the severity of any injury or disease suffered by the worker.

February 12, 2019

Page 4

I have significant concerns about the extent of the disclosure this provision would permit. It would enable the Commission to publicly share information about a worker's health. There is no clear reason for this power, which could involve significant encroachments on workers' individual privacy. Again, an individual's personal health information is among the most sensitive personal information possible. In the absence of a clearly compelling public policy case for this amendment, I urge the government to remove this provision from the proposed legislation.

I hope this will be of assistance to you and the Committee in reviewing this legislation. If I can be of further assistance, please feel free to contact my office at your convenience.

Yours truly

A handwritten signature in black ink, appearing to read 'Elaine Keenan Bengts', written over a horizontal line.

Elaine Keenan Bengts
Information and Privacy Commissioner
/kb

c.c. Michael Ball
Committee Clerk

THOMAS ADR
P.O Box 11087, Yellowknife, NT, X1A 3X7

February 18, 2019

DELIVERED ELECTRONICALLY

Cory Vanthuyne, Chair
Standing Committee on Economic Development & Environment
Legislative Assembly of the NWT

c/o Michael Ball, Clerk of Committee

RE: Bill 25 – Proposed Amendments to the *Workers' Compensation Act*

As a small business operator in the NWT, I would like to alert you to a concern I have regarding a proposed amendment to the *Workers' Compensation Act* (Bill 25), which would have the effect of expanding the definition of “employer” to any person or entity operating a business in the NWT; whether they have employees or not.

The Act currently applies to all employers and workers in the NWT. An employer is defined as “a person or entity considered to be an employer under section 8”.

Section 8 (1) of the Act states:

8. (1) *The following are considered to be employers for the purposes of this Act:*
- (a) any person or entity that employs one or more other persons under a contract of service;*
 - (b) any person or entity whom the Commission determines is responsible for performing the obligations of an employer under paragraph 6(2)(d).*
- [underlining mine]

The proposed amendment would add the following subsection to section 8:

- (1.1) Notwithstanding subsection (1), a person or entity is not considered to be an employer for the purposes of this Act if all of the following criteria apply:*
- (a) the chief place of business of the person or entity is outside the Northwest Territories;*
 - (b) the person or entity does not employ persons who are ordinarily resident in the Northwest Territories;*
 - (c) the person or entity only employs persons whose usual place of employment is outside the Northwest Territories;*
 - (d) the person or entity carries on business in the Northwest Territories for a total of 10 or fewer days per year;*
 - (e) the person or entity has workers' compensation coverage or other similar coverage under the law of another jurisdiction that extends to events that occur in the Northwest Territories.*

I carry on business in the NWT as a sole proprietorship. I have no employees. I am therefore not an “employer” under section 8.1 of the Act.

Under the proposed amendment however, I believe I would be considered an “employer” because, “notwithstanding subsection section 8(1)”, I am a person or entity who carries on business in the Northwest Territories for more than 10 days per year (see subsection 8 (1.1) (d)).

Assuming the Legislative Assembly of the Northwest Territories does not wish to expand the Commission’s jurisdiction to sole proprietors, or individuals conducting business, with no employees, I suggest the proposed subsection be amended as follows:

1.1 Notwithstanding subsection (1), a person or entity that employs one or more persons under a contract of service is not considered to be an employer for the purposes of this act....

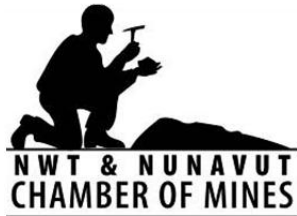
I am aware that the public consultation for this Bill has concluded. I would appreciate it if the Committee considered my concern with the proposed amendment, as the Commission appears to have already expanded its authority beyond “employers” by stating, “*If you operate a business in the NWT or Nunavut, you must register with the WSCC*” (see: <http://www.wscn.nt.ca/employer-services/register-business>). For your information, I contacted the WSCC to inquire about this statement on February 6, 2019. I have not yet received a response.

Thank-you for considering my concerns with this proposed amendment. If I can be of any further assistance, please do not hesitate to contact me.

Yours truly,



Cayley Jane Thomas



February 13, 2019

Mr. Cory Vanthuyne
Chair, Standing Committee on Economic Development and Environment
P.O. Box 1320
Yellowknife, NT X1A 2L9
By email to:

Dear Mr. Vanthuyne,

Re: Mineral industry comments on Bill 25: *An Act to Amend the Workers' Compensation Act*

In regards to the GNWT Standing Committee accepting stakeholder input on Bill 25: *An Act to Amend the Workers' Compensation Act*, we have reached out to members and provide the following thoughts and recommendations:

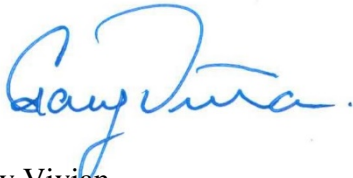
1. Removing the requirement for a worker to have a “primary health care provider”
 - a. This requirement was a longstanding issue for workers as often it is difficult in the north to see the same doctor on a consistent basis, let alone to have a “primary health care provider”. This amendment will make life easier for injured workers to have their claims adjudicated.
2. Adding employment insurance (EI) as a category of remuneration
 - a. This is potentially controversial as it means that a seasonal worker who works for part of the year and receives EI for a part of the year will be paid workers’ compensation benefits on the total of the seasonal pay and the EI. The bottom line is more compensation for workers, but higher costs paid by employers.
3. Information sharing for the purposes of administering safety legislation
 - a. WSCC administers both the Workers’ Compensation Act and OHS legislation. This amendment permits the WSCC in its capacity as adjudicator of claims to share information about an accident or incident with a safety officer responsible to enforce OHS legislation. In the past such sharing had to be justified using access to information legislation.
4. Extending inspection powers
 - a. This amendment will let an inspector access a worker’s health care records in order to enforce compliance with the Act. This may be a best practice and exist in legislation in other jurisdictions, but we recommend you have the Information and Privacy Commissioner review this.

5. Section 42(1) explains how a payout for a partially impaired worker happens but it is based upon an impairment rating schedule designed by the commission. From some members' experience, the WSCC is not motivated or rewarded to pay out compensation to injured workers, and will do their utmost to limit the payout. Members have had first-hand experience in seeing this deal an unfair blow to injured workers. We recommend that changes be made to allow that the evaluator establishing the impairment rating needs to be an independent evaluator, not one from or decided by the commission.

We hope these comments are of help to the Committee as it reviews Bill 25: *An Act to Amend the Workers' Compensation Act*.

Yours truly,

NWT & NUNAVUT CHAMBER OF MINES



Gary Vivian
President

c.c.: Michael Ball, Clerk of the Standing Committee at michael_ball@gov.nt.ca