



STATEMENT OF CONSISTENCY

Bill 21: *An Act to Amend the Workers' Compensation Act*

Sponsoring Minister: Vince McKay

Explanatory Note

Subsection 6(1) of the *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, SNWT 2023, c. 36 ("*UNDRIP Implementation Act*") requires the Government of the Northwest Territories ("GNWT"), in collaboration and cooperation with Indigenous peoples, to take all reasonable measures to ensure the laws of the Northwest Territories ("NWT") are consistent with the Declaration set out in the Schedule of the *UNDRIP Implementation Act*.

Subsection 8(1) of the *UNDRIP Implementation Act* requires the Attorney General to prepare a Statement of Consistency on behalf of the sponsoring Minister of a bill, indicating whether or not the bill is consistent with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. The sponsoring Minister must table the Statement of Consistency before the second reading of the bill in the Legislative Assembly.

A Statement of Consistency is not required if an exception under subsection 8(3) of the *UNDRIP Implementation Act* applies.

A Statement of Consistency provides legal information to the Legislative Assembly about the bill's potential impacts on rights of Indigenous peoples set out in the Declaration and the potential impacts on rights recognized and affirmed under section 35 of the *Constitution Act, 1982*. It is not intended to be a comprehensive overview of all conceivable inconsistencies with Indigenous and Aboriginal rights. A bill may see several amendments between second reading and its ultimate passage through the Legislative Assembly. Additional considerations relevant to the consistency of a bill with the Declaration and the rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may arise through that process. A Statement of Consistency will not reflect an analysis of those changes.

Background

Bill 21 will amend the *Workers' Compensation Act* to reform the compensation regime.

Key Changes to Workers' Compensation

The Bill makes the following key changes to the *Workers' Compensation Act*:



- Amends the definitions of “disability”, “impairment” and “net monthly remuneration”;
- Introduces new definitions for “maximum medical recovery”, “partial disability” and “total disability”;
- Creates a one-time non-economic loss benefit for workers with an impairment;
- Repeals the existing pension compensation for workers with an impairment;
- Establishes a periodic economic loss benefit for workers with an impairment based on the worker’s loss of earning capacity;
- Introduces a retirement benefit for workers who received an economic loss benefit; and
- Amends the approach for compensating workers who experience a recurrence of an injury or disease, or who suffer multiple injuries or diseases.

The current compensation regime will remain in force for injuries, diseases or deaths that predate the coming into force of these amendments.

Current Pension System for Impairment

The *Workers' Compensation Act* provides impaired workers with a pension – that is, a recurring periodic payment – that continues for the duration of the worker’s life. A worker with a total impairment is entitled to a monthly pension equal to 90% of their net monthly remuneration.¹ A worker with a partial impairment is entitled to a monthly pension calculated as 90% of their net monthly remuneration multiplied by their Permanent Medical Impairment (PMI) rating, which is expressed as a percentage.²

Key Changes to Workers' Compensation Explained

1. Definitions

The Bill amends the definitions of “disability”, “impairment” and “net monthly remuneration”. It also introduces new definitions of “maximum medical recovery”, “partial disability” and “total disability”.

The terms "disability" and "impairment" are no longer defined as being "temporary" or "permanent", respectively. Instead, a disability is defined as existing while the worker is not at maximum medical recovery for an injury or disease. An impairment is defined as persisting after the worker has reached maximum medical recovery.

A worker’s “net monthly remuneration” was defined as remuneration for the year in which the injury, disease or death occurred. Under the amended Act, the applicable year of

¹ *Workers' Compensation Act*, SNWT 2007,c.21 at subsection 41(1).

² *Workers' Compensation Act*, SNWT 2007,c.21 at subsection 42(1).



remuneration that is calculated as net monthly remuneration will be specified within the relevant provision.

The Bill also introduces new defined terms. “Maximum medical recovery” is defined as “a point at which there is a plateau in recovery in respect of a personal injury or disease and any further improvement of function is expected to be negligible.”³ “Partial disability” and “total disability” are terms that are used in the current Act but were undefined. A “partial disability” is now defined as existing when a worker experiences a disability loss of earning capacity that is greater than 0% but less than 100%, and a “total disability” exists where their loss of earning capacity is equal to 100%.

2. Non-Economic Loss Benefit

The Bill establishes a non-economic loss benefit for workers with an impairment.⁴ The non-economic loss benefit is a one-time lump sum payment, calculated by multiplying the worker’s Permanent Medical Impairment (PMI) Rating – expressed as a percentage – by the Year’s Maximum Insurable Remuneration (YMIR) for the year of injury or disease.⁵

A worker may request the WSCC to review the amount of their non-economic loss benefit payment if they believe their PMI has increased.⁶ However, subsection 41(5) imposes time limits on how frequently such reviews can be requested.

3. Economic Loss Benefit

The Bill repeals the pension system which provided impaired workers with a periodic payment that continued for the duration of the worker’s life. Instead, the Bill introduces an economic loss benefit for workers who experience a loss of earning capacity due to impairment, provided they comply with the mitigation and vocational rehabilitation requirements outlined in section 35.⁷

The economic loss benefit entitles eligible workers to a monthly payment equal to 90% of their loss of earning capacity,⁸ reduced by 50% of any net Canada Pension Plan or Quebec Pension Plan disability benefits to which the worker is entitled.⁹

The Bill outlines three distinct review processes for the economic loss benefit:

³ *An Act to Amend the Workers’ Compensation Act* at clause 2.

⁴ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsection 41(1).

⁵ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsection 41(2).

⁶ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsections 41(5) and (6).

⁷ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsection 41.1(1).

⁸ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsection 41.1(2).

⁹ *An Act to Amend the Workers’ Compensation Act* at clause 12, amending subsection 41.1(3).



1. The WSCC will automatically review the benefit at two years and again at five years after the worker first began receiving the benefit.¹⁰
2. The worker may request the WSCC review the benefit if the worker believes a material change in their loss of earning capacity has occurred.¹¹
3. The WSCC may review the benefit on its own initiative at any time.¹²

In each of these review processes, the WSCC may confirm, vary the amount of, or terminate the worker's economic loss benefit.

The benefit continues until the worker no longer experiences a loss of earnings due to the impairment, reaches the age of eligibility for federal Old Age Security (OAS), or in certain cases, for 24 months following the injury or disease, regardless of whether the worker reaches the eligibility age during those 24 months.¹³ The benefit may be extended for up to an additional 24 months after the worker reaches eligibility age for OAS if the WSCC is satisfied that the worker would have retired at a later date.¹⁴

4. Retirement Benefit

Under the current Act, pensions are paid for the life of the worker. The Bill now establishes that a worker who receives an economic loss benefit is entitled to a retirement benefit. The retirement benefit is equal to 10% of each economic loss benefit payment made to the worker, accumulated over the life of the claim, multiplied by the cost-of-living increases established under subsection 53(1) for each year the worker received the economic loss benefit.¹⁵

If the retirement benefit is valued at less than YMIR in the year of payment, it will be paid to the worker as a lump sum. If the amount exceeds YMIR, the WSCC will pay the amount to an external investment organization of the worker's choice, which will provide an annuity to the worker.¹⁶

5. Overlapping Benefit Entitlements

The Bill revises the approach for compensating workers who experience a recurrence of an injury or disease, or who suffer multiple injuries or diseases.

a. Recurrence or Deterioration

¹⁰ *An Act to Amend the Workers' Compensation Act* at clause 12, amending section 41.2.

¹¹ *An Act to Amend the Workers' Compensation Act* at clause 12, amending section 41.3.

¹² *An Act to Amend the Workers' Compensation Act* at clause 12, amending section 41.4.

¹³ *An Act to Amend the Workers' Compensation Act* at clause 12, amending subsection 41.1(5).

¹⁴ *An Act to Amend the Workers' Compensation Act* at clause 12, amending subsection 41.1(6).

¹⁵ *An Act to Amend the Workers' Compensation Act* at clause 12, amending subsection 42(2).

¹⁶ *An Act to Amend the Workers' Compensation Act* at clause 12, amending subsection 42(4).



Previously, a worker receiving a pension for a partial impairment who suffered a recurrence of partial or total disability from the same injury or disease was entitled to additional disability compensation, reduced by the amount of the pension already being paid for the partial impairment.¹⁷

Under the new provisions, a worker who reaches maximum medical recovery but whose condition deteriorates is entitled to disability compensation for the additional loss of earning capacity, in addition to the same economic loss benefit. If the worker again reaches maximum medical recovery following this deterioration, they are entitled to a non-economic loss benefit for any additional percentage of impairment, as well as a recalculated economic loss benefit based on their loss of earning capacity following maximum medical recovery.¹⁸

b. Multiple Injuries or Diseases

Under the current Act, if a worker receiving a pension for a partial impairment later experiences a different injury or disease and becomes entitled to compensation for the subsequent disability or impairment, the worker was entitled to receive compensation for the subsequent disability or impairment in addition to the pension for the partial impairment.¹⁹

Now, a worker who receives an economic loss benefit and suffers a different injury or disease is entitled to their current economic loss benefit plus disability compensation. If the worker is entitled to compensation under section 38 for a total disability, the compensation for the total disability is reduced by the amount of the worker's economic loss benefit. If the worker reaches maximum medical recovery for the new injury or disease and meets the definition of an impairment, they are entitled to a non-economic loss benefit for the additional PMI, as well as a recalculated economic loss benefit based on their subsequent loss of earning capacity.²⁰

6. Other Miscellaneous Amendments

In determining a worker's loss of earning capacity due to disability or impairment, the Act now specifies that the WSCC must estimate a worker's earning capacity based on the municipality or unincorporated community in which they reside, unless it would be unreasonable to do so in the circumstances.²¹

¹⁷ *Workers' Compensation Act*, SNWT 2007, c.21 at section 44.

¹⁸ *An Act to Amend the Workers' Compensation Act* at clause 12, amending section 44.

¹⁹ *Workers' Compensation Act*, SNWT 2007, c.21 at section 45.

²⁰ *An Act to Amend the Workers' Compensation Act* at clause 12, amending section 45.

²¹ *An Act to Amend the Workers' Compensation Act* at clause 10, amending subsection 39(3) and clause 12, amending subsection 41.1(8).



Moreover, the current Act permitted the WSCC to determine the frequency of pensions or other periodic payments. Now, the Bill permits the WSCC to determine the frequency of payments if:

- (a) the frequency is not specified in the Act, or
- (b) the frequency is specified, and with the claimant's written consent, following an advance payment or during states of emergency.²²

The Bill also repeals the provisions respecting converting a pension into a lump sum payment. Instead, the Bill permits disability compensation, economic loss benefit payments, or periodic compensation on the death of a worker to be converted into advances of up to 12 months, if certain criteria are met.²³

Public Engagement

The WSCC has undertaken two rounds of consultation in relation to the proposed amendments.

The WSCC completed a Discussion Paper outlining the New Pension System Proposal in August 2020, which has been publicly available on the WSCC website. Between August and October of 2020, a wide range of stakeholders were contacted for feedback including territorial and community governments, Indigenous regional and community-based governments, Inuit representative organizations, workers' representatives and employers.

A series of virtual town hall events took place and surveys were distributed. Town halls were scheduled for employers, Indigenous community members, community government leaders and members of the general public from each territory. Representatives of each of these groups were contacted and provided with the opportunity to participate. In total, 40 stakeholders responded to the online survey, 8 stakeholders participated in online discussions, and 1 stakeholder submitted additional written feedback.

In response to stakeholder concerns, the WSCC drafted policy scoping documents. A follow-up round of stakeholder engagement was conducted in November and December of 2021. The Policy Scoping Representatives of the key stakeholder groups identified in the first round of engagement were contacted for further feedback. 24 responses to an online survey were received, 13 participants provided feedback in online public forums and 8 in-depth one-on-one engagements were conducted. The feedback was generally in support of the new proposal.

²² *An Act to Amend the Workers' Compensation Act* at clause 16, amending section 52.

²³ *An Act to Amend the Workers' Compensation Act* at clause 18, amending section 55.



Application

The Bill applies equally to all residents of the NWT. This Bill should be considered legislation of general application as it does not apply specifically to any Indigenous Government or Organization in the NWT, nor any lands, waters or resources identified and set out in a land, resources or self-government agreement based in the NWT.

Impacts on Rights under the Declaration and Section 35 Aboriginal and Treaty Rights

This Bill does not impact rights under the Declaration, such as the right to self-determination and self-government, rights respecting lands, territories or resources, or environmental, economic, health, cultural, religious, language or other rights, nor does it impact aboriginal and treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

UNDRIP Statement of Consistency

The Attorney General has examined the Bill for any inconsistencies pursuant to the obligation under subsection 8(1) of the *UNDRIP Implementation Act*. This review involved consideration of the context in which the Bill was created, as well as the text of the Bill.

In reviewing the Bill, the Attorney General is of the opinion that the Bill is consistent with the Declaration and section 35 of the *Constitution Act, 1982*.