

15 August 2016

NAT 017/16

### **South Australia – Parliamentary Inquiry into the Return to Work Act** **Your feedback is essential**

**If your business has had recent experience of workers' compensation in South Australia, Ai Group needs your feedback.**

You can share your views about the Return to Work (RTW) Scheme that introduced major changes on 1 July 2015, in a range of ways:

- Call Tracey Browne (0438 207 799) or the Head of our SA Branch - Steve Myatt (0419 818 048) to discuss your experiences.
- Send an email to: [tracey.browne@aigroup.com.au](mailto:tracey.browne@aigroup.com.au)
- Talk to your Ai Group contact who will make sure your experiences are considered.

#### **Background**

The South Australian Return to Work (RTW) Act 2014 became effective on 1 July 2015.

The Act introduced new thresholds to access the scheme and to continue on weekly compensation beyond two years. For those who meet the relevant tests, benefits can continue until retirement age.

Common law access (claims for lump sum payments if the employer was negligent) was also introduced for those with a whole person impairment (WPI) of 30% or greater.

The South Australian Employment Tribunal was given the power to direct that employers provide duties for injured workers, if requested, unless the employer demonstrated that it was not reasonably practicable to do so. This power has no time limits.

More detail of the key changes introduced by the RTW Act were advised to members in Member Advice [NAT 004/15](#), dated 16 February 2016.

At the same time, Return to Work SA (previously WorkCoverSA) introduced a concept of "Mobile Case Managers", with Agents visiting workplaces to discuss claims and return to work options with injured workers and employers.

The full suite of amendments was expected to achieve improved return to work outcomes.

In anticipation of this result, the average premium payable by employers reduced from 2.75% in 2014/15 to 1.95% in 2015/16.

#### **Scheduled Review of the Act**

Section 203 of the Return to Work Act establishes that: "The Minister must cause a review of this Act and its administration and operation to be conducted on the expiry of 3 years from its commencement".

#### **The Inquiry**

On 6 July 2016, the Legislative Council agreed to establish a Parliamentary Inquiry into the operation of the Act.

Submissions close on 30 September 2016.

The motion to establish the inquiry was put by the Greens member The Hon. T.A. Franks. During her speech to the Legislative Council, she stated “Of course, the scheme is going to look healthy, if injured workers are being thrown off because of unattainable thresholds and tests ... it is absolutely critical that we examine the impacts that the changes themselves have had on injured workers. We need to consider the ramifications of those changes in the context of the effects on those persons who no longer qualify for entry into the scheme, and we need to consider the fairness of such a scheme.”

It is clear from this statement, and the subsequent Terms of Reference (outlined below), that the aim of the inquiry is to seek evidence to support major changes to the entitlement and benefit structures that were introduced in July 2015.

The Terms of Reference are to inquire into:

- (a) The potential impacts on injured workers and their families as a result of changes to the Return to Work Act including tightening of the eligibility criteria for entry into the Return to Work Scheme;
- (b) Alternatives to the overly restrictive 30% WPI [whole person impairment] threshold for ongoing entitlement to weekly payments [after 2 years];
- (c) The current restrictions on medical entitlements for injured workers;
- (d) Potentially adverse impact of the current two year entitlements to weekly payments;
- (e) The restriction on accessing common law remedies for injured workers with a less than 30% WPI;
- (f) Matters relating to and the impacts of assessing accumulative injuries;
- (g) The obligations on employers to provide suitable employment for injured workers;
- (h) The impact of provisions under *the Return to Work Act 2014*;
- (i) Workers compensation in other Australian jurisdictions which may be relevant to the inquiry, including examination of the thresholds imposed in other states;

- (j) The adverse impacts of the injury scale value; and
- (k) Any other relevant matters.

If you wish to make your own submission it can be addressed to:

The Executive Officer  
Parliamentary Committee on Occupational Safety,  
Rehabilitation and Compensation  
House of Assembly  
Parliament House, North Terrace, Adelaide, 5000  
Email: [ochealthcommittee@parliament.sa.gov.au](mailto:ochealthcommittee@parliament.sa.gov.au)

### **Ai Group Response and Submission**

Given that there is an inbuilt review process, designed to consider the impact of the Act, after it has been in operation for three years, it is Ai Group’s view that this inquiry is premature.

However, as the inquiry has now been established, Ai Group will be participating in the inquiry on behalf of members, based on experiences to date.

It is Ai Group’s view that a workers’ compensation scheme should provide fair and just compensation to those who are injured at work.

It must also provide appropriate safeguards to ensure that compensation is not provided to those that have not sustained work related injuries, or where work was not a significant contributing factor.

Systems must be in place to encourage employers and workers to strive towards a sustainable return to work, as soon as possible after injury.

Ai Group will be making a submission on behalf of members, and may also be invited to provide evidence at a committee hearing.

In formulating our views and arguments, it is essential that we hear about the “on the ground” experiences of businesses operating in South Australia.

In addition to the impact of the legislative changes, we would also like to receive feedback on your experiences with the new approach to claims management that involves a

representative from your Agent (EML or Gallagher Bassett) visiting your workplace to discuss the claim, and return to work options, with you and your injured worker.

Some questions we would like you to answer for us are listed below:

- Did the 1 July 2015 changes introduced by the RTW Act change the way your organisation responds to workers' compensation claims?
- Has the claim of any of your workers been rejected under the new scheme? If so, what were the circumstances of that rejection?
- Have you found that injured workers are more, or less, motivated to return to work under the new scheme?
- Has your organisation received written notification from a worker that they are "willing, ready and able" to return to work, and requesting that you provide duties? Has this ultimately led to the worker making an application to the South Australian Employment Tribunal?
- Have you been involved in the "Mobile Claims Manager" service? Has it improved the return to work outcomes for your injured worker and/or your business?
- Can you share any particular experiences that can assist us to bring member views "to life"?

## **Do you require assistance to manage Work Health and Safety or Workers' Compensation issues in your Business?**

For information or assistance, please contact **Ai Group's Workplace Advice Line** on 1300 55 66 77.

For information about our safety and workers' compensation consulting and training services, contact:

### **Consulting Services**

Trinette Jaeschke  
0400 282 477

### **Training and Events**

Seema Khatri  
0428 907 838



### **Tracey Browne**

**Manager – National Safety & Workers' Compensation Policy and Membership Services**