Australian Industry Group

South Australia
Inquiry into the Return to Work Act

Submission to
Parliament of South Australia
Parliamentary Committee on
Occupational Safety, Rehabilitation
and Compensation

SEPTEMBER 2016

INQUIRY INTO THE RETURN TO WORK ACT

SUBMISSION TO PARLIAMENT OF SOUTH AUSTRALIA; PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

Introduction

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We have ongoing contact with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.

An important part of our role is to develop strong relationships with governments and regulators across the county to provide a voice for employers when legislative and policy issues are being considered. Ai Group is a member of Safe Work Australia (SWA) and its related Strategic Issues Group – Workers' Compensation.

In the SA context we are in regular contact with senior staff within Return to Work SA and our Head of South Australia is on the *Return to Work Act 2014 Minister's Advisory Committee*.

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.

Finally, the scheme must operate on a financially viable basis.

It is with these key principles in mind that we make our submission to the Inquiry.

Introduction of the Return to Work Act

The Return to Work Act commenced on 1 July 2015. At the same time Return to Work SA introduced a concept of *Mobile Case Managers*, with Agents visiting workplaces to discuss claims and return to work options with injured workers and employers. A new approach to calculating employer premiums was also introduced with effect from 1 July 2015. The combined intention of these changes was to increase the sustainable return to work rates of workers who have a work-related injury in South Australian.

In anticipation of this outcome, the average premium payable by employers reduced from 2.75% in 2014/15 to 1.95% in 2015/16. The average premium rate for 2016/17 continues to be set at 1.95%.

The RTW Act was the result of significant consultation with stakeholders, throughout which it was emphasised by the government that the final Act would be a total package of provisions that were designed to interact with each other to provide fair compensation whilst increasing return to work outcomes for injured workers. It was also agreed that the Act would include a three year review so that the impact of the Act could be assessed and any unintended consequences could be addressed.

Ai Group was not completely comfortable with all the changes created by the Act. However, we accepted the concept of a "total package" and welcome the opportunity to review the Act three years after commencement.

This Inquiry

Establishment and Terms of Reference

This Inquiry was established following a motion put to the Legislative Council by the Greens member The Hon. T.A. Franks. The terms of reference for the inquiry 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 transitional 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.

The Inquiry is Premature

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."

Commencing on 1 July 2015, the Act has been in operation for a little over 12 months; transitional arrangements have not yet fully expired and no injured worker (including those with existing injuries) would have reached the two year point at which benefits will be ceased if a worker is assessed as having a whole person impairment of less than 30%.

It is important to note that, whilst the government supported the motion in the House, the Hon. T.T. Ngo stated "While the motion by the Hon. Tammy Franks is supported [by the government], the government's view is that the legislation already contains a provision for a review of the Return to Work Act 2014 and the proposal for the inquiry is premature and unnecessary." (Hansard, 6 July 2016, p.4503).

It is unclear why the government supported the motion when they also believe it is premature and unnecessary.

The Terms of Reference are Selective

The Terms of Reference and the manner in which they were introduced into the House (Hansard, 6 July 2016, pp. 4501-4505) indicates a strong focus on areas of the Return to Work (RTW) Act which are perceived as unfair to injured workers, by restricting access to some benefits.

The areas highlighted by the Terms of Reference cannot be considered in isolation. The RTW Act was presented as a *package* designed to enhance early intervention and return to work, and increase the compensation and support for seriously injured workers (those with whole person impairment (WPI) ≥ 30%).

Due to Ai Group's deep experience in workers compensation systems across the country over a long period, we are very aware that reforms and analysis of workers compensation needs to contemplate the *system level* effects of discrete changes in such a complex system. Examining elements or making changes in isolation is very dangerous and risks significant unintended effects to the cost of employers and injured workers.

We emphasis once again that the RTW Act establishes a package of interacting benefits, entitlements and return to work provisions. None of these provisions can be considered in isolation.

If the committee recommends changes to the package, it will give stakeholders who may perceive that they have been disadvantaged, the opportunity to seek counter balancing amendments within the context of the package.

The Terms of Reference do not consider the areas of the RTW Act that created increased entitlements. Key areas where benefits have increased under the Return to Work Act are outlined in the following section of this submission.

Increased entitlements under the RTW Act

Weekly payments as a percentage of normal weekly earnings:

Under the previous Act weekly payment percentages were as follows:

- 100% from commencement to end of week 13
- 90% from week 14 to end of week 26
- 80% from week 26

Under the previous Act, entitlement to ongoing benefits after 130 weeks were determined based on whether there was a *current work capacity* or *no current work capacity.*

Under the RTW Act weekly payment percentages are 100% for the first 52 weeks and 80% thereafter.

Hence, an injured worker who is in receipt of weekly payments beyond 13 weeks will, up to the expiry of two years, be financially better off overall under the new scheme.

It is also important to understand that, under the RTW Act and its predecessor, an injured worker who is in receipt of compensation at the rate of 80% has the capacity to increase their earnings by returning to work (section 39 of the RTW Act).

Further, it should be noted that the RTW Act introduces an entitlement to supplementary benefits if the worker has a later incapacity due to surgery (section 40).

Finally, it is important to recognise that section 42 of the RTW Act establishes a minimum payment of weekly compensation, ensuring that those in low paid work have an additional level of protection:

> (1) Despite the preceding sections in this Subdivision, if the combined amount that a worker would receive in respect of any incapacity for work in any week applying under any such section would result in the worker receiving less than the Federal minimum wage (adjusted, in the case of a worker who was working at the relevant date on a part-time basis so as to provide a pro-rata payment), the amount of compensation payable under this Subdivision will be increased so that the combined amount equals the Federal minimum wage (or, if relevant, the Federal minimum wage as so adjusted).

Permanent Impairment for Economic Loss

This is a new entitlement established under the RTW Act (section 56) which seems to be completely overlooked by those criticising the scheme for terminating weekly compensation after two years, for workers who are not seriously injured.

The entitlement applies to all physical injuries other than hearing loss, which result in a WPI ≥5%, and takes into account: a prescribed sum; the age at injury; and the hours worked at the time of injury. The RTW Act set a maximum amount payable under this provision is $350,000; this would apply to a worker who is 25 or less, has a 29% WPI, and was working full time at the time of the injury.

The following table illustrates some examples of how this would apply.

Level of Impairment	**Age at time of Injury**	**Payment if working full time at time of injury**
29%	50	$238,000.00
29%	30	$332,500.00
10%	50	$28,112.56
10%	30	$39,274.90
* If part time work at time of injury: Multiply by *hours worked factor* expressed as % of full time work		

Access to Common Law Actions

The RTW Act introduces an entitlement to initiate common law actions, which did not exist in the previous legislation. This is a significant potential increase in entitlement for seriously injured workers, subject to the worker establishing a case that the employer was negligent.

It is acknowledged that it is only workers with a WPI ≥ 30% who have access; but this is an entitlement that did not exist for anyone under the previous act. As such, it should be recognised as an increased entitlement, rather than being criticised for having a 30% threshold for access.

This so called *restriction* also needs to be considered in light of the new entitlement to payment for economic loss that has been created by the RTW Act, for those with a WPI below 30%, as outlined above. In short, those with less than 30% incapacity can now get an additional lump sum without the need to pursue a claim of negligence.

This is important as there is considerable evidence of the poor cost-benefit equation of common law as a remedy for lower level injuries, including the effects of litigation process on the likelihood of a sustainable return to work.

Lifetime Care and Support

The Return to Work Act introduced entitlements to lifetime care and support for workers who are seriously injured (WPI ≥ 30%). This has the effect of ensuring that seriously injured workers will receive medical expenses indefinitely. The terminology of *lifetime care and support* is consistent with the requirements of the National Injury Insurance Scheme (NIIS).

In the introduction to the Consultation Regulation Impact Statement (RIS) for the NIIS for workplace accidents, released by Federal Treasury in 2015, it is stated that:

> The intention of the NIIS is to ensure that all individuals who are catastrophically injured in an accident will be entitled to lifetime care and support regardless of whether or not they are able to prove that another party was at fault for their injuries.

Appendix A to the RIS lists the types of injuries that fit the definition of *catastrophic:*

> At a minimum, jurisdictions should have eligibility rules which include people who suffer the following work-related catastrophic traumatic injuries:
>
> 1. Spinal cord injury — based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
>
> 2. Traumatic brain injury — based on evidence of a significant brain injury which results in permanent impairments of cognitive, physical and/or psychosocial functions. A defined period of post traumatic amnesia plus a Functional Independence Measure (FIM) at five or less, or two points less than the age appropriate norm (or equivalent where other assessment tools are used), would be required.
>
> 3. Multiple amputations of the upper and/or lower extremities or single amputations involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or "short" transfemoral amputation involving the loss of 65% or more of the length of the femur.
>
> 4. Burns — full thickness burns greater than 40 per cent of the total body surface area (or greater than 30 per cent in children under 16 years) or full thickness burns to the hands face or genital area, or inhalation burns causing long-term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used).
>
> 5. Permanent traumatic blindness, based on the legal definition of blindness.

The lifetime and care and support provided under the South Australian RTW Act, applicable to all injuries resulting in WPI ≥ 30%, is far more generous than what was envisaged by the Federal Government, and the members of Safe Work Australia that contributed to that work.

Redemptions

The previous Act had tight restrictions around an injured workers ability to seek a redemption for future entitlements; a person had to be at least 55 and the maximum weekly amount that could be redeemed was $30 per week. The RTW Act has relaxed these restrictions in most circumstances; the exclusion is in relation to medical expenses for seriously injured workers where the lifetime care and support concept applies.

Recovery and Return to Work Plans

Requirements for the development of recovery and return to work plans have been strengthened. Under the previous legislation it was stated that the Corporation may establish a rehabilitation and return to work plan if the worker is receiving compensation and likely to be off work for 13 weeks. The RTW Act creates a requirement that the Corporation must ensure a recovery / return to work plan is established if a worker is likely to be incapacitated for four weeks.

This approach to earlier intervention has been further supported by the role of the Mobile Case Managers. The RTWSA website provides the following information about Mobile Case Managers:

> Under the new Return to Work scheme, mobile case managers will provide face-to-face support and will be the primary contact for a person's work injury claim. The insurance case manager will no longer be behind their desk in the CBD. Instead the mobile case manager will work collaboratively with the worker, employer and treating doctor to provide timely and on the spot decisions and approvals for the engagement of other specialist support services they may need, including:
>
> - medical and allied health services
> - job analysis and worksite modifications
> - job preparation and 'fit for work' services
> - vocational guidance and assessment
> - retraining either on-the-job or away from work
> - job placement services to help the worker find new employment if they are unable to return to work with their pre-injury employer.

> By visiting the workplace, the mobile case manager will assist with risk management by helping to identify how the injury happened, and what can be done to prevent the injury from happening again. Where this cannot be easily identified they can promptly approve the appointment of specialist resources. This will help to create safer South Australian workplaces where we can minimise the chances of the same injuries occurring in the future.

Further, section 25(10) of the RTW Act establishes:

> (10) Without limiting subsections (8) and (9) [requirements to review the plan], if—
>
> (a) a worker who has been incapacitated for work in consequence of a work injury has not, at the expiration of the period of 6 months from the date on which the incapacity for work first occurred, returned to work in employment that is the same as, or equivalent to, the employment in which the worker was employed immediately before the incapacity; and
>
> (b) the worker is not working to his or her full capacity (after taking into account the nature and effect of the worker's work injury and any other relevant factor), new or other employment options for the worker need to be taken into account in order to assist the worker to return to work in suitable employment.

These provisions should ensure that workers who are expected to have difficulties returning to their previous employment are provided with early opportunities to access training and support to transition to alternative employment.

Addressing the Terms of Reference

(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.*

Workers' Compensation schemes are designed to provide compensation and support for workers who suffer a work related injury. These schemes are funded by premiums paid by employers; and individual employers bear the cost of workers' compensation claims through increased premiums.

As such it is appropriate, and fair, to establish criteria that illustrates the connection between work and the injury that a person has suffered.

The current eligibility criteria within the legislation outlines that work must be *a significant contributing cause* for physical injuries and *the significant contributing cause* for psychological injuries. These definitions are largely consistent with other Australian jurisdictions.

They create a fair access to workers' compensation when a work-related injury occurs, whilst ensuring that employers and the scheme are not bearing the cost for injuries which have little or no connection to work.

As yet, there is no case law to assist us to understand whether these definitions achieve the intended outcome.

(b) Alternatives to the overly restrictive 30% WPI [whole person impairment] threshold for ongoing entitlement to weekly payments [after 2 years].

We do not agree that the whole person impairment threshold of 30% is overly restrictive.

It is Ai Group's view the scheme must be designed in a way that encourages all participants in the scheme to focus on sustainable return to work as the best possible outcome following injury – work-related or otherwise.

In 2011 the Australian Faculty of Occupational & Environmental Medicine (AFOEM) and the Royal Australasian College of Physicians (RACP) released the Australian and New Zealand Consensus Statement on the Health Benefits of Work. This document has formed the basis of much of the recent work that jurisdictions have been doing with GPs to establish a better understanding of the importance of facilitating a timely return to safe work.

This document, which has a broad range of signatories across Australia and New Zealand, outlines the key message that "for most people work is good for their health and their wellbeing and that loss of work, whether because of impaired health or for other reasons, is generally harmful."

Further it is emphasised that "success … is not attainable via the efforts of health professionals alone. It must be a cooperative enterprise with employers, those who represent the best interests of employees, and government and its agencies. (p.3).

In setting the context for the Consensus statement Professor Sir Mansel Aylward states (pp. 3-4):

> As physicians we see firsthand the personal tragedies that long term work absence, unemployment and work disability wreak on individuals, families and communities. We see marriages end, capable individuals excluded from employment, breadwinners become reliant on pensions, and mental health problems like anxiety and depression develop.
>
> Rubbing salt into the wound, extended time off work often sees a worsening rather than in improvement in symptoms and conditions it is supposed to ameliorate.

For those workers with a serious injury (WPI ≥ 30%) the scheme provides ongoing financial support in the way of weekly benefits, and access to other statutory entitlements, if they are unable to work; as noted earlier this is more generous than what is required under the NIIS.

For those that do not meet this threshold, the scheme should be focused on the establishment of ongoing opportunities for gainful employment.

Where it is not possible for the current employer to provide sustainable alternate duties that are meaningful to both the employer and the worker, opportunities to retrain and reskill for alternative employment may be necessary. This may require an injured worker to commit to new challenges and training and take them outside their comfort zone. An injured worker is more likely to participate in these activities if they do not have an expectation of receiving compensation until retirement age.

In short, the potential termination of weekly payments may be the additional incentive required to move forward and consider other options.

It is important to note that the previous Act also established a test for continuation of weekly compensation, at 130 weeks, based on whether the worker had a *current work capacity*.

There must be some form of test that operates to terminate weekly payments for those whose injury is *less debilitating.* Depending on the individual circumstances of each case, it may be argued that the serious injury test is either more restrictive, or less restrictive, than the previous work capacity test.

(c) The current restrictions on medical entitlements for injured workers.

The current entitlement to medical and like expenses is outlined in section 33 of the Act, and can generally be paraphrased as ceasing:

- after 12 months if there has been no weekly compensation entitlement; or
- 12 months after entitlement to weekly compensation ceases.

However, section 33(21) of the Act identifies circumstances where medical expenses will continue

> Subsection (20)—
>
> (a) does not apply in relation to a seriously injured worker [lifetime care and support for those with WPI ≥ 30%]; and
>
> (b) does not apply—
>
> (i) in relation to any therapeutic appliance required to maintain the worker's capacity; or
>
> (ii) in relation to surgery, any associated medical, nursing or medical rehabilitation services (including the cost of hospitalisation), where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for such surgery to be undertaken at a later time due to the impact (or likely impact) of the work injury on the worker's health and capacity (or future health and capacity); or
>
> (iii) in relation to prescribed classes of injury, where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for the services to be provided after the end of that period (and then, in such a case, the services will be compensable to the extent determined by the Corporation); or
>
> (iv) in any other circumstances prescribed by the regulations.

Further, the Return to Work Regulations 2015 (regulation 23) specifies the following:

> (1) For the purposes of section 33(21)(b)(iii) of the Act, the following classes of injury are prescribed:
>
> (a) multiple myeloma;
> (b) primary leukaemia;
> (c) primary non-hodgkin's lymphoma;
> (d) primary site bladder cancer;
> (e) primary site brain cancer;
> (f) primary site breast cancer;
> (g) primary site colorectal cancer;
> (h) primary site kidney cancer;
> (i) primary site oesophageal cancer;
> (j) primary site prostate cancer;
> (k) primary site testicular cancer;
> (l) primary site ureter cancer.

From these provisions it can be seen that there is not a *blanket* discontinuation of medical expenses at 12 months in all circumstances.

Most workers who have ceased to require weekly compensation will also cease to have a need for medical services, and this may occur well before the expiry of 12 months.

However, it may be appropriate to broaden the circumstances that can lead to an extension of entitlement. It is suggested that the 12 month cessation is maintained for most workers, with an amendment to allow for continuation if it is assessed as necessary. An example of how this may be achieved can be found in the Victorian Workplace Injury Rehabilitation and Compensation (WIRC) Act 2013:

> VIC WIRC Act
>
> 232 Duration of compensation under this Division
>
> (1) Subject to subsection (4), if weekly payments are payable, compensation under this Division [for medical and like expenses] ceases 52 weeks after the entitlement to weekly payments ceases, unless subsection (5) applies.
>
> (2) Subject to subsection (4), if compensation is payable only under this Division [for medical and like expenses], compensation under this Division ceases 52 weeks after the entitlement arises, unless subsection (5) applies.
>
> ……..
>
> (5) Compensation under this Division does not cease if—
>
> (a) the worker has returned to work but—
>
> (i) could not remain at work if a service under section 224(1) was not provided; or
>
> (ii) surgery is required for the worker; or
>
> (b) the worker requires modification of a prosthesis; or
>
> (c) a service referred to in section 224(1) is essential to ensuring that the worker's health or ability to undertake the necessary activities of daily living does not significantly deteriorate.

However, as outlined above, it is Ai Group's view that it would not be appropriate to make any amendments to the Act at this time, prior to the 3 year review.

(d) Potentially adverse impact of the current two year entitlements to weekly payments

It is important to make clear that the *current two year entitlements* to weekly payments do not apply to injured workers that have a WPI ≥ 30%. Payments cease after two years for workers who have a WPI less than 30%

As outlined by The Hon. J.R. Rau in the second reading of the Bill in the House of Assembly (Hansard, 6 August 2014, p. 1437) "Seriously injured workers will be supported with income maintenance payments until retirement age and lifetime care and support. Non-seriously injured workers will receive income maintenance support for up to two years and medical expenses paid for a further year after their income support ceases."

Further, it is stated that "… on historical experience, out of 15,500 claims made each year, about 1,020 will be affected by the two year time-banding of income support for non-seriously injured workers. This is expected to reduce with improved early intervention, training and support as well as a clear understanding of the time banding." (p. 1439).

As outlined above, the RTW Act has introduced an increased focus on supporting injured worker at the start of their claim, and ensuring that a detailed review is undertaken at 6 months if there has not be a return to work. This should result in less people still requiring weekly payments at 2 years.

In addition, as outlined earlier, any worker who has a WPI between 5% and 30% will have access to a statutory lump sum payment for potential future non-economic loss.

(e) The restriction on accessing common law remedies for injured workers with a less than 30% WPI

As outlined earlier in this submission, access to common law remedies is a new entitlement established under the Return to Work Act 2014. As such it is misleading to focus on the threshold, rather than on the increased entitlement.
In addition, it is not appropriate to consider this threshold without also acknowledging that the RTW Act also introduced an entitlement to a statutory lump sum for economic loss for workers who have a WPI between 5% and 30%; and that for a full time worker this lump sum can be as much as $350,000 depending on the age of the worker.

If the Committee considers making any recommendations to change this threshold, there would also need to be amendments to the provisions that grant a statutory entitlement to a lump sum payment for economic loss.

(f) Matters relating to and the impacts of assessing accumulative injuries

It is unclear what this Term of Reference is intending to address. Neither the words accumulative or cumulative appear in the RTW Act. Without further information we are unable to make any contribution to the consideration of this Term of Reference.

(g) The obligations on employers to provide suitable employment for injured workers

It is not clear what issue this term of reference is intended to address.

South Australia has always had very strict requirements for the provision of suitable duties; the obligation to provide duties is not time limited and employers must seek approval from the Corporation before terminating the employment of a worker who has an entitlement to compensation. This has not changed under the Return to Work Act.

The only change that has occurred under this Act is the granting of an explicit power for the South Australian Employment Tribunal (SAET) to direct an employer to provide duties, if a specific set of circumstances has been met.

Under section 18 of the RTW Act, the provisions apply as follows:

> **[General obligations]**
>
> (1) If a worker who has been incapacitated for work in consequence of a work injury is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer from whose employment the injury arose (the **pre-injury employer**) must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification and this section, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity).
>
> **[Exceptions]**
>
> (2) Subsection (1) does not apply if—
> - (a) it is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies on the employer); or
> - (b) the worker left the employment of that employer before the commencement of the incapacity for work; or
> - (c) the worker terminated the employment after the commencement of the incapacity for work; or
> - (d) new or other employment options have been agreed between the worker, the employer and the Corporation under section 25(10); or
> - (e) the worker has otherwise returned to work with the pre-injury employer or another employer.

[Worker seeking to return – written request to employer – "ready, willing and able"]

(3) Furthermore, if—

(a) a worker who has been incapacitated for work in consequence of a work injury seeks employment with the pre-injury employer consistent with the requirements of subsection (1); and

(b) the worker, in seeking the employment—

(i) by written notice to the employer—

(A) confirms that he or she is ready, willing and able to return to work with the employer; and

(B) provides information about the type of employment that the worker considers that he or he is capable of performing; and

(ii) complies with any other requirements prescribed by the regulations; and

(c) the employer fails, within a reasonable time, to provide suitable employment to the worker, the worker may apply to the Tribunal for an order under subsection (5).

[Application to SAET if employer does not provide duties within 1 month of written "request"]

(4) If an employer fails to provide suitable employment under subsection (3) within 1 month after the worker seeks such employment in accordance with that subsection (the **prescribed period**), the application by the worker to the Tribunal may be made within 1 month after the end of the prescribed period unless the Tribunal allows an extension of time.

[SAET must order provision of duties if it is not unreasonable, unless it determines otherwise]

(5) If, on an application under subsection (3), the Tribunal is satisfied that it is not unreasonable for the employer to provide employment to the worker, the Tribunal must order the employer to provide to the worker employment specified by the Tribunal unless the Tribunal, in the exercise of its adjudicative function, determines otherwise.

[Provision of duties to be in line with recovery/return to work plan]

(17) A reference in this section to suitable employment to be provided by a worker's employer includes employment in respect of which—
(a) the number of hours each day or week that the worker performs work; or
(b) the range of duties the worker performs,

is suitably increased in stages (in accordance with a recovery/return to work plan or otherwise).

The RTW Act did not include a time limitation, effectively allowing the tribunal to direct provision of suitable duties at any time in the future, even if all entitlements to compensation have expired without the worker attempting to return to work. This is a major concern for Ai Group and employers in South Australia. In relation to this section of the Act, as a Stakeholder we would have liked to have seen a legislative requirement relating to a time limit on SAET powers.

With such an open-ended entitlement and power, Ai Group is concerned that injured workers may initiate an action with the SAET, purely to obtain a financial settlement from the employer, in lieu of the provision of suitable duties.

To date there has only been one completed case reported by the SAET (Walmsley v Crown Equipment Pty Ltd [2016] SAET 4), so it is not possible to identify the range of circumstances in which the SAET will make such directions. We note that this case included significant debate about the extent of the SAET's powers, and whether they extend to the ability to order reinstatement, rather than just the provision of duties.

It should be noted that Ai Group is highlighting that these provisions are an area of concern that needs to be monitored for consideration at the three year review, and we do not expect the committee to make any recommendations on this issue at present.

(h) The impact of transitional provisions under the Return to Work Act 2014;

Whenever new legislation is introduced it is essential that transitional provisions are introduced to ensure that those affected by change have an opportunity to adapt and plan for that change. The transitional arrangements created an opportunity for all workers who were in receipt of compensation at 1 July 2015 (Schedule 9: section 37) to continue to receive weekly payments for a further two years, as outlined in the following table.

At 30 June 2015	**1 July 2015 to 30 June 2016**	**1 July 2016 to 30 June 2017**
Receiving	May receive	May receive
100%	100%	80%
90%	90%	80%
80%	80%	80%
Must actively participate in recover and return to work plan		

Further section 34 of Schedule 9 allows the scheme to deem those with *existing injuries* as being seriously injured, even if they do not meet the 30% threshold.

It is our understanding that this provision is most likely to be utilised in circumstances where a worker has had a long term claim with an extended absence from work and an expectation of receiving compensation to age 65.

It is Ai Group's view that these combined provisions create an appropriate level of transition with a safety net for those who have become unemployable due to an extended absence under the previous legislation.

(i) Workers compensation in other Australian jurisdictions which may be relevant to the inquiry, including examination of the thresholds imposed in other states.

Each jurisdiction establishes its entitlements as a *complete package*, taking into account the workers' compensation scheme in its entirety and other jurisdictional factors.

Accordingly, it is not possible to look at another scheme and identify individual compensation items that are perceived as being either better or worse than the scheme in which you operate.

(j) The adverse impacts of the injury scale value; and

In relation to this issue, we have read the submission forwarded by SISA and agree with their views.

(k) Any other relevant matters.

Other than to restate our view that this inquiry is premature, there are no other relevant matters that Ai Group has to raise.