Australian Industry Group

South Australia Return to Work Act 2014

Submission to

Independent Review of the Administration and Operation of the RTW Act

MARCH 2018

SOUTH AUSTRALIA RETURN TO WORK ACT 2014

SUBMISSION TO INDEPENDENT REVIEW OF THE ADMINISTRATION AND OPERATION OF THE ACT

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 one 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. Nationally, Ai Group is a member of Safe Work Australia (**SWA**) and its related Strategic Issues Group – Workers' Compensation.

In the South Australian context, we are regarded as a key stakeholder by Return to Work SA (**RTWSA**) and our Head of South Australia is on the *Return to Work Act 2014 Minister's Advisory Committee*.

In addition to our ongoing contact with members, we have engaged with them specifically in relation to the terms of reference for this Review. These discussions were greatly assisted by the early information provided by RTWSA in response to the terms of reference.

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, or the, significant contributing factor, as the case may be.

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.

THE ACT AND THIS REVIEW

Ai Group actively participated in the initial development of the *Return to Work Act 2014* (SA) (**RTW Act**).

As a negotiated package, it was the case that none of the stakeholders achieved entirely what they wanted; rather there was a range of measures which, at the end of the day, the Government accepted as providing a balance between the needs of employers and employees.

In his second reading speech, Minister John Rau stated "*the proposed Scheme is a balance between the interests of workers and employers*".

As such, if this Review recommends any changes to the RTW Act, a key consideration is that the balance between the needs of employers and employees is maintained. Therefore, if there are recommendations put forward which perhaps improve the position of injured workers then, in our view, we need to ensure that is not at an additional cost to employers.

The other critical issue out of the second reading speech by Minister Rau was that *"the new Scheme is designed, if everything is implemented, understood and decided as expected, to have a break even premium rate of less than 2%.*

Currently, South Australia has an average premium of 1.8% which, whilst less than 2%, is still the highest average premium of any of the major workers' compensation schemes in the country.

Ai Group welcomes this legislated review, which was agreed to during the development of the RTW Act. We note that the terms of reference provide some specific areas of focus, but also allow for "*any other recommendations consistent with the objects of the RTW Act*".

The 2016 Parliamentary Inquiry into the Act (**the Inquiry**), whilst premature, has provided insights into areas of consideration that may be raised by other stakeholders. For this reason, our submission will also provide our views on the recommendations from that Inquiry.

GENERAL CONSIDERATIONS

As outlined above, the RTW Act established a new package of benefits; it did not just tweak existing arrangements. This is often forgotten in the debate, and was barely touched on in the Report of the Inquiry.

The focus of much discussion is the termination of weekly benefits at 104 weeks unless a worker is assessed as having a whole person impairment (**WPI**) of ≥30% (whole person impairment).

The previous Act also had a "qualifying" assessment made after a worker had been on weekly compensation for 130 weeks – it was previously a work capacity test – and a number of workers ceased to be entitled to compensation due to that test.

In both Acts, injured workers receive 100% of their pre-injury average weekly earnings when they first become entitled to weekly benefits. The previous Act had a step down

in benefits after 13 weeks (to 90%) and after 26 weeks (to 80%); under the RTW Act, the only step down, to 80%, does not occur until 52 weeks after injury.

The previous Act did not have lump sum payments for economic loss; the RTW Act establishes an entitlement for a lump sum payment for "possible" economic loss for any claimant who has a WPI>5%.

The previous Act did not have access to common law damages claims; the RTW Act establishes an entitlement to initiate such claims if a claimant is assessed as having a WPI≥30%.

Accordingly, the RTW Act did not introduce a scheme which significantly reduced benefits to all workers; instead the scheme was restructured, and many workers receive improved benefits under this scheme than they would have been under the previous Act.

If there are any significant changes to the way in which weekly benefits are calculated, or the manner in which ongoing entitlement is established at two years, in the interests of balance, those changes would need to be offset by changes elsewhere.

RESPONSE TO SPECIFIC TERMS OF REFERENCE

The extent to which there has been achieved a reduction in the number of disputed matters and a decrease in time taken to resolve disputes.

In its submission, RTWSA (pp. 3-7) advised that there has been a significant reduction in the number of disputes and the time taken to resolve them.

We have not been able to identify any information which indicates the distribution of disputes, i.e. how many disputes are initiated by workers and how many are initiated by employers.

During our direct consultation with members, some employers were of the perceived view that the reduction in disputation has occurred because claims that had previously

been questioned, were being more readily accepted by claims agents. There was a level of exasperation about this perceived development.

RTWSA indicated that a significant number of disputes are occurring in relation to the assessment of WPI for the purposes of determining whether a person is *seriously injured* (WPI ≥ 30%).

A member has advised us of a dispute which it has recently initiated in which it is challenging the decision of the impairment assessor which has resulted in a worker being classified as seriously injured. As the issue is still under consideration, it is not appropriate for us to provide further detail.

The major frustration for this employer is that the Agent advised that they were unable to seek a second opinion in relation to the assessment due to the restrictions applied by section 22(10) of the Act, which stipulates that only one assessment can be undertaken. Subsequently, the only way the decision could be challenged was for the employer to initiate a dispute with the South Australian Employment Tribunal (**SAET**); this is both expensive and time consuming for the employer.

Members have also reported a lack of urgency in matters at the SAET where they are directly involved. Administrative errors seem to be leading to attendance at meetings at the SAET, which are subsequently cancelled and rescheduled.

In the RTWSA submission (p.6), it was indicated that there was an increasing cost associated with disputes. It is our view that there needs to be further investigation of the processes which appear to underpin this blowout in appeal costs and, in particular, obtain SAET's view as recommended by RTWSA.

Whether the jurisdiction of the South Australian Employment Tribunal under the Act should be transferred to the South Australian Civil and Administrative Tribunal.

It is Ai Group's view that it is too soon to consider whether the jurisdiction should be transferred.

The extent to which there has been an improvement in the determination of resolution of medical questions arising

In its submission (p.9), RTWSA advises that:

"In relation to Permanent Impairment Assessments and WPI, RTWSA has observed there is sometimes significant variation in WPI percentages allocated by different assessors for similar injuries depending upon which assessor is chosen (the worker can choose their assessor under the Impairment Assessment Guidelines (clause 17.3)"

The determination of the level of WPI is an important factor in the administration of the scheme. It determines: whether a person is required to participate in return to work; access to benefits after two years; entitlement to statutory lump sum payments for economic and non-economic loss; and the ability to initiate a common law action.

When considering the information raised by RTWSA, we believe that it is worth considering the allowance of a second assessment where a significant variation to what might be expected has occurred.

Furthermore, perhaps consideration should be given to whether it would be appropriate for there to be a fully independent assessment for WPI, rather than allowing for the claimant to select the assessor.

Finally, a further issue raised by members was that the WPI assessment could be inflated due to a worker not participating in rehabilitation and/or refusing to have surgery which would most likely significantly improve their impairment level and increase their chances of a successful return to work. It is not clear whether the test of mutuality utilised to determine ongoing weekly benefits, as established by 48(2)(f) of the RTW Act, could be applied in these circumstances.

The performance of Return to Work SA in managing claims, including outcomes in reducing instances of work injury.

During our consultation, employers expressed satisfaction with the new telephone reporting system.

Our members agree with RTWSA that reimbursements are being received more quickly. However, it was highlighted that the reimbursement advice is still being forwarded via Australia Post, which leads to difficulties for employers who are trying to reconcile amounts deposited via EFT with statements that do not arrive until much later. It is recommended that a streamlined system of electronic notification would assist employers in this regard.

We have received mixed feedback about the claims management capabilities of the Agents. We acknowledge that we are generally only contacted by members when things "go wrong" and, in these circumstances, across Australia, we receive negative feedback in relation to the performance of Agents and Insurers within all workers' compensation schemes.

It is acknowledged by employers that the high level of turnover amongst front line staff within the Agents leads to areas of inexperience, and that this contributes to variations in service that employers (and workers) experience.

In our targeted discussions with members, for the purposes of this submission, we received mostly positive feedback about the role of the Mobile Claims Management model. A particular feature that was highlighted was the ability of the Claims Manager to make decisions and take action immediately.

However, it was observed that "*it depended on which Claims Manager you were allocated*". It was also highlighted by one member that it was often difficult to access these services due to being located outside metropolitan Adelaide.

Workers' compensation can be a complex issue, and employers want to know that they will have consistent access to someone who understands their situation and the circumstances of the claim that they are discussing. We were advised by members that this is not always the case.

Another situation that was making employers uncomfortable was the transfer of claim oversight to a “medical only” team once a worker had returned to full-time duties. In many cases, when the full-time duties are still highly modified, the worker and employer still need more specialised support than that provided in this model.

In summary, the utilisation of the Mobile Claims Management Model has provided some improvements. However, as is the case in all jurisdictions, the skills of individual Claims Officers vary and further training may assist in the development of improved skills. In all cases, employers would prefer to have one Claims Officer allocated to deal with all their claims, on a continuing basis.

Another view held by many employers is that they are the ones driving action in relation to claims, rather than proactive engagement by Agents. This may be true, or it may be a perception that could arise due to lack of communication and delays in responding to employer communications.

Ai Group believes that this could be improved by embedding the Service Standards within the Agents and providing high level feedback on how the Agents are performing against those standards. This could be enhanced by translating the principles into measurable Key Performance Indicators (**KPIs**), addressing things such as: the provision of clear feedback to employers about why decisions are made and action are taken, or not taken; agent follow up with doctors a key claim points, and responding to employer communication within predetermined timeframes. Ai Group would be happy to participate in discussions aimed at determining the best KPIs that could be implemented.

The performance of self-insured employers, including outcomes in reducing instances of work injury.

We have not identified any issues to comment on during our consultations and considerations in relation to this term of reference.

Changes in return to work rates at key milestones outlining factors influencing any improvement or deterioration.

The data presented in the RTWSA submission (p.17) indicates a significant improvement in return to work rates, as at November 2017. See RTWSA's table reproduced below:

Return to work rates at key milestones

	4 weeks	13 weeks	26 weeks	52 weeks
Nov 2017	79%	88%	89%	92%
2016-2017	75%	83%	87%	88%
2015-2016	75%	83%	86%	88%
2014-2015	75%	83%	86%	88%
2013-2014	73%	81%	86%	88%

This data is promising. However, the RTW Act has been operative since 1 July 2015 and Mobile Claims Management commenced before that time. The major improvements have occurred since the completion of 2016/17. Accordingly, it is unclear what has driven this recent, apparent, improvement in return to work performance.

Ai Group would like to see performance sustained at this level for at least a further two years before we would accept that it is anything other than a timing issue, which may have been associated with a heightened awareness of transitional claimants leaving the scheme in recent times.

During our consultation, our members noted that the step down in payments after 52 weeks, rather than the old system whereby it was after 13 weeks, is, in their view, having a negative impact on return to work. When the step down occurred at 13 weeks, there was some sense of urgency about early interventions and return to work, at a time when this could be more easily influenced. By the time a claim has reached 52 weeks, it is extremely difficult to achieve a successful return to work, meaning that

the financial incentive for workers to return to work provided by a step down is likely to be much less influential

There is also a suspicion that the application of calendar weeks, rather than aggregate weeks may lead to an increase in time away from work early in the claim. The reason for this is that for every week a person stays at work with an injury, they are forfeiting the opportunity to take time off work at a later stage. With aggregated weeks a worker knows that if their return to work is not sustainable, they have been "saving" weeks for the future. Whilst this may not have eventuated to date, as people become more aware of the details of the scheme, this behaviour may develop.

It is Ai Group's view that the first step down should be introduced at 13 weeks, rather than 52 weeks; and that this change should be accompanied by a reversion to counting aggregate weeks for the purpose of step downs. The two-year review should continue to be measured by calendar weeks.

Factors contributing to non-seriously injured workers failing to achieve a return to work within two years.

The cause of long term absence for non-seriously injured workers will be multi-factorial and complex. The directly involved employers and injured workers will probably have different perspectives on the underlying cause of this absence.

In its submission (p.21), RTWSA reports that, each year, 1,000 of the 12,600 claimants have more than three months off work, and half of these (500) will need to find employment with another employer. It can be assumed that some of these 500 are ultimately classified as seriously injured.

Hence, it would appear that there is a relatively small annual cohort in South Australia who will not be classified as seriously injured and, in spite of knowing weekly compensation will cease at two years, will fail to return to work.

There may be value in undertaking some qualitative research which attempts to obtain and compare the views of the workers and employers as to why this has occurred.

The outcome of such research could then be used to identify more appropriate early interventions with a view to achieving better outcomes.

Timely identification of workers at risk of not returning to their pre-injury duties and/or their pre-injury employer woudl also assist in achieving better short and long-term outcomes for injured workers.

Section 25 of the RTW Act establishes the following requirements in relation to long term claims:

> *(10) Without limiting subsections (8) and (9), 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.*

It is Ai Group's view that this was an important inclusion in the RTW Act, designed to ensure that the best interests of the worker are considered. It would be informative if RTWSA were able to undertake an analysis as to whether this is occurring and, if so, if it has assisted injured workers and employers to better identify when it is appropriate for the worker to receive assistance to find alternative employment.

If it is not occurring, some form of promotional education program for employers would be valuable, supported by the Mobile Claims Management system and/or occupational rehabilitation providers.

We note RTWSA's data (p.19 of their submission) which states that, among new claimants, 72% of those workers who have not returned to work at two years have had a prior workers' compensation claim. This may indicate: comorbidities which complicate return to work; workers who are fearful of returning to work and experiencing additional injuries; or employers who are reluctant to support return to work due to a perception that the person "will just put in another claim".

Any additional recommendations regarding re-skilling services to assist return to work outcomes.

Ai Group has no comments to make on this issue.

Whether the scheme has yet achieved financial stability and, if not, when the scheme is likely to be mature and stable.

Ai Group congratulates RTWSA for achieving a fully funded scheme, which is reported as having a funding ratio of 119.5% at 30 June 2017.

Ai Group has welcomed the significant reduction in average workers' compensation premium being collected from South Australian employers, since the introduction of the RTW Act and revised premium calculation method. Many individual employers would not be aware of this change, as they focus only on their organisation's premium.

Any increase in average premium that was required in the future would attract significant attention, particularly as reflected in increases to individual employers.

Accordingly, Ai Group is very concerned about the information provided in RTWSA's submission (p.23) which highlights the uncertainty relating to significant decisions of the SAET, such as the *Mitchell* or *Li* decisions, and the potential increase in the premium.

It is Ai Group's view that any implication of these cases needs to be examined closely.

Any other recommendations consistent with the objects of the Act.

Tribunal power to direct provisions of duties, without time limits.

Ai Group is concerned about the operation of section 18 of the Act, which establishes a power for the SAET to direct an employer to provide duties.

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 does not include a time limitation. Effectively, this establishes an obligation on the SAET to direct provision of employment, unless it is unreasonable to do so, or the SAET makes a specific determination not to direct provision of employment.

This could occur at any time in the future, even if: all entitlements to weekly compensation have expired without the worker attempting to return to work; or they have been classified as seriously injured and therefore entitled to compensation to retirement age; and/or they have received statutory lump sum payments for economic and non-economic loss; and or received a payment for common law damages.

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. We are aware of at least one situation (handled by Ai Group) where the employer provided a monetary settlement shortly before the case was to be heard by the SAET.

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.

When an employer has lawfully terminated the employment of a worker, having applied a process that is fair and reasonable, and in line with the accepted procedures and standards established through the Return to Work and Fair Work systems, it does not seem reasonable that the SAET would have the power to order reinstatement (via the application of s18). If this interpretation continues to be applied, we will effectively see a situation where injured workers have greater rights to ongoing employment than a non-injured worker, even if the termination of their employment is for the same reason, e.g. redundancy or poor performance.

It is Ai Group's view that a number of amendments should be made to the provisions relating to this power of the SAET:

- Rewording to give the SAET the *ability* to direct provision of employment if it is reasonable to do so, rather than the current *compulsion* to do so, unless it is unreasonable;
- Clarifying that the provision of duties is not equivalent to directing reinstatement and the duties can be provided as a time limited recovery / return to work plan, as contemplated by s.18(17);
- Limiting the power to the two-year period in which a worker is entitled to compensation without having to demonstrate that they have a serious injury (WPI≥30%).

The role of treating health practitioners

Employers continue to be frustrated by treating health practitioners (**THPs**) completing Work Capacity Certificates without giving due consideration to the workplace. One of members provided an example of a situation where a THP certified a worker's capacity to work, only identifying one physical function that could not be performed, but indicated in the comments that the worker could not return to work with the employer.

This certification was done in spite of the THP answering “no” to both of the questions on the Certificate: “*I have personal knowledge of the worker’s workplace*”; and “*I have discussed with the employer the kinds of work that might be appropriate for the worker in the view of the disability*”.

It is Ai Group’s view that more needs to be done to educate THPs on the health benefits of work. In addition, there should be an automatic escalation of the claim within the Agent where a person is being certified as having no capacity to work, more than four weeks after they first lodge a claim.

Other suggestions from members to enhance the role of THPs in return to work included:

- Specifically authorising trained THPs to be the only ones to issue Work Capacity Certificates
- Paying a higher fee to THPs that have completed appropriate training, and actively participate in return to work activities
- Establishing a fee structure which encourages THPs to initiate discussions with employers and attend worksites to better understand the workplace and the worker’s situation
- Setting timeframes for provision of reports, and paying a lower fee if the timeframe is not met (e.g. 2 x normal fee if report is submitted within a week; 1.5 x normal fee if provided within two weeks; and the normal fee if provided outside that timeframe).

Hearing loss claims

Hearing loss claims, and subsequent impairment payments, are a particular issue within the scheme.

As hearing loss claims are not included in individual premiums, we have concerns relayed to us by members about the level of ‘push back’ implemented in the claims assessment process.

We would appreciate some transparency about hearing loss claims in terms of lodgement, acceptances and rejections.

Our overarching concern remains the viability of the scheme.

RECOMMENDATIONS INCLUDED IN THE FINAL REPORT OF THE INQUIRY

Ai Group wishes to comment on some of the specific recommendations contained in the final report of the Inquiry.

Recommendation 1: Reintroduction of provisional liability, but limited to payment of early intervention services

Ai Group understands the rationale behind this recommendation which is aimed at the provision of early intervention services, particularly in relation to psychiatric claims where there may be delays in determining claims. However, the concept of provisional liability does not sit well with employers who see this as relaxing access to workers' compensation without the worker needing to demonstrate that the injury or illness met the access criteria to have a claim accepted.

While we support an approach which would result in workers receiving early access to appropriate interventions, we would like to see further consideration as to how this can be achieved without returning to a concept of provisional liability. This may involve allowing Agents to approve specific services for specific types of conditions, or making greater use of services available under Medicare, such as mental health plans. It is our understanding that WorkSafe Victoria has an arrangement with the Federal Government that, if such services are provided whilst a claim is pending, the scheme will reimburse the amounts paid to Medicare.

Recommendation 2: In relation to psychiatric injuries, replace "the significant cause" with "a significant cause'.

Ai Group objects to this recommendation. It is essential that a claim for psychiatric injury is only accepted if there is a strong connection to work.

Recommendation 4: Consider the inclusion of a "narrative test" to supplement the prescribed whole person assessment processes.

Ai Group strongly objects to this recommendation, as it has the potential to completely dismantle the benefit structure that was integral to this package of reforms.

The Victorian experience is useful to consider. In Victoria, a worker must obtain a *serious injury certificate* if they wish to initiate a common law damages claim. A certificate will be issued if the worker is assessed as having a WPI of 30% or more. If a worker does not get assessed at that level, they can use a narrative test to demonstrate that they are seriously injured, in spite being assessed at below 30%.

It is our understanding that this was initially designed to enable people that fell marginally short of the 30%, to demonstrate that their personal circumstances made the injury "serious", and to deal with a small number of anomalies.

It has been the experience of the Victorian scheme that the narrative test is being utilised to achieve an assessment of "seriously injured" in circumstances where the WPI is significantly lower than 30%, with recent increases in applications being made by claimants being assessed as 10% or less.

Given the information provided in the RTWSA submission (p.9) that there is significant variation in assessments for workers with similar injuries, it would appear that the concern around the ≥30% WPI assessment may be more readily addressed by improving the quality of assessments.

If the SA Government determines that this option should be considered, it should first seek feedback from WorkSafe Victoria about the way in which the narrative is being applied by the courts and then the Agents.

Recommendation 7: Amend the legislation so that reasonable costs of future surgery are payable by the scheme without the precondition that the surgery was approved during the medical support period.

Ai Group understands that there may be some situations where the need for an operation is not identified within the period in which a worker has access to medical support (up to 12 months after weekly compensation ceases).

However, we would need to be convinced of the merits of a decision to allow an operation for a claimant many years after medical support has ceased.

If there are administrative issues that are resulting in delays, then this could be dealt with by providing a level of discretion around the application of the exclusion, as long as the delays were not in the quantum of years.

Recommendation 8: Amend the legislation to make the 104 weeks an aggregate of weeks, not calendar weeks.

Ai Group does not support this recommendation.

However, as indicated earlier in this submission, we could support a change to aggregated weeks for the first step down, if it reverted to 13 weeks, rather than 52 weeks. The count of 104 weeks must continue to be counted as calendar weeks.

Recommendation 9: Common law and its inclusion in the scheme.

The inquiry recommended that common law and its inclusion in the scheme should be considered as part of the mandated review. Ai Group supports this, and hopes that the Review will include statistics and analysis of the impact of common law on the scheme and its relative role in the scheme. Most schemes find common law to be one of the biggest financial risks to the scheme, not just through payouts, but also legal and administrative costs. If common law is maintained, ongoing review will be required to ensure that any interventions can be undertaken in a timely manner.

Recommendation 16: Consider amending the Act to allow workers with a psychiatric injury to receive payments for economic loss and non-economic loss similar to those who suffer physical injuries.

The exclusion of psychiatric injuries from an entitlement to lump sum payments was not a new provision in the RTW Act. Under the previous Act, workers with a psychiatric injury were not entitled to a lump sum payment for non-economic loss; lump sum payments for economic loss are new in the RTW Act.

It is Ai Group's view that this is not an issue that can be addressed without significant investigation, which include discussion around primary versus secondary injuries, related threshold levels, scheme viability and a clear understanding of the original basis for exclusion.

Other Recommendations

In relation to the other recommendations of the Inquiry, Ai Group is mostly supportive, subject to consideration of cost and implementation issues, with ongoing consultation be undertaken with stakeholders. For completeness, these recommendations are listed below:

Recommendation 3: Replace the terminology "seriously injured worker" with "worker with high needs" or "worker with highest needs".

Recommendation 5: Broaden the coverage of medical expenses with no time limit for coverage of:

- *Reasonable costs associated with medication; or*
- *Treatment for which there is evidence that the treatment is required to maintain a worker to remain at work.*

Recommendation 6: Ensure all injured workers have access to return to work services for the full duration allowed in the Act including the 12-month period after income support ceases.

Recommendation 10: Ensure that RTWSA holds all employers accountable in providing suitable employment for their injured workers as soon as the worker is certified fit for return to work and develop an Agent KPI for compliance with these obligations.

Recommendation 11: Minister to review the compliance of the Corporation to meeting the Statement of Service Standards and report the findings to the committee.

Recommendation 12: Minister to direct RTWSA to review the information available on its website about the scheme for injured workers to ensure information is easily accessible; also ensure that information is available to those unable to access the internet.

Recommendation 13: Minister review and advise the committee of the impact that the reduction of rehabilitation / return to work service provider spend has had on the outcomes of the Scheme.

Recommendation 14: Minister to require RTWSA to review and advise on improvements of their services for regional and remote injured workers to ensure high quality services.

Recommendation 15: Information about the ReCONNECT service should be made available to workers earlier.

Recommendation 17: Amend the RTW Act to require that workers receive financial advice for any lump sum payments over $50,000.

Recommendation 18: Require RTWSA to communicate to any employer the reason for any change to their premium.

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