

Dear Justice Mansfield

Return to Work SA Second Submission

Return to Work SA's second submission to your review, dated 23 March 2018, has come to our attention just now.

We have not had an opportunity to analyse it in detail.

Nonetheless, we are extremely concerned by it.

Because of the very serious concerns we have about significant elements of Return to Work SA's second submission to your review, we provide this very brief summary form response to ensure that you are aware, in outline, of our concerns.

The first recommendation in Return to Work SA's second submission

RTWSA recommends that for clarity, financial stability and maximising return to work outcomes, that core issues relating to compensability thresholds be clarified/restored so that there are less disputes and greater certainty for all scheme participants.

Overall, Return to Work SA's second submission to your review fails to present a fair or remotely balanced picture of the topics raised in relation to this recommendation.

It seems clear that the essence of Return to Work SA's second submission to your review in relation to this recommendation is to present matters in an unfair manner which is highly prejudicial to the interests of injured workers and which aims to reduce the usefulness of the scheme to injured workers.

In terms of the complaints about levels of disputation and the causes of same, extremely poor decision-making by compensating authorities is by far the greatest cause of disputation.

Rather than seeking to blame this failure on other matters, compensating authorities' decision-making should be greatly improved.

If your review is considering adopting the suggestions made which underpinned this recommendation, please let us know so we can address you on those matters in more detail.

The second recommendation in Return to Work SA's second submission

RTWSA recommends that the Act be amended to require transparent actuarial advice on the expected financial impact on both workers and employers and the scheme's financial stability be provided to Parliament whenever amendments (increases or decreases) relating to the core benefits package are proposed.

Our concerns about this recommendation are less acute than our concerns about other recommendations.

The history of the scheme has involved actuarial assessments being very significantly different to what has in fact transpired.

The utility of such a legislative requirement is unclear, as to our understanding it would not bind Parliament.

Actuarial assessments are extremely dependent on the assumptions they are premised on, and the methodologies used to extrapolate matters from those assumptions.

Whilst they are a useful tool, their importance can easily be overstated.

The third recommendation in Return to Work SA's second submission

RTWSA recommends the introduction of an alternative/administrative dispute resolution process that is separate to the SAET and does not require legal representation. Disputes that cannot be resolved through this process could then proceed to SAET with a strict timeline around resolution.

Unequivocally, this recommendation should be rejected.

The dispute resolution system works relatively well.

The major problem with the dispute resolution system is the conduct of compensating authorities.

Frequently, compensating authorities do not "get real" about what a sensible resolution might be without the formalities of Tribunal proceedings and injured workers being well represented by lawyers.

It is our experience in many contexts that when there is a significant power imbalance, as there is between injured workers and compensating authorities, the more powerful actors' (the compensating authority) engagement in a sensible approach to settlement is directly related to the proximity of an outcome being imposed upon on judicially.

Injured workers are often extremely vulnerable, often for reasons including psychiatric ill-health, lesser levels of education, financial pressures and having English as a second language. Inevitably, compensating authorities are extremely advantaged by barriers to injured workers receiving full and proper legal representation.

The reasoning deployed by RTWSA support of this recommendation should largely be rejected. The fact that no support for this approach by any organisation involved in supporting injured workers is mentioned, and the mention of support for prominent organisations who support employer interests, illustrates that this proposal would severely disadvantage injured workers and advantage compensating authorities.

In the strongest possible terms, we ask that this recommendation be rejected.

If your review is considering adopting the suggestions made which underpinned this recommendation, please let us know so we can address you on those matters in more detail.

The fourth recommendation in Return to Work SA's second submission

RTWSA recommends the disputes relating to medical questions could be managed separately, simply requiring referral to an independent accredited medical practitioner or a panel, consistent with other jurisdictions and expectations of injured workers and employers.

This recommendation should be rejected. It is egregious.

The previous system of medical panels under the *Worker's Rehabilitation and Compensation Act 1986* was an abject failure.

Decision-making by those medical panels was extremely poor. That is at the heart of why those panels were abolished.

The suggestion that such a process is "consistent with the expectations of injured workers" is, from our perspective, inexplicable and absolutely and completely wrong.

If such a process was "consistent with the expectations of injured workers" it would be reasonable to expect those who represent injured workers to advocate for it. So far as we understand it, that has not occurred. Rather, all advocates for injured workers we are aware of were extremely critical of the former system of medical panels and are fiercely opposed to their reintroduction.

In the strongest possible terms, we ask that this recommendation be rejected.

If your review is considering adopting the suggestions made which underpinned this recommendation, please let us know so we can address you on those matters in more detail.

The fifth recommendation in Return to Work SA's second submission

RTWSA recommends that consideration be given to addressing a number of drafting issues within the Act.

Where there are **genuine** drafting issues, and there is a proposal which would clearly deliver positive change, we would support that.

However, it seems very unlikely that there would be a consensus that the matters RTWSA suggests are "drafting issues" are in fact merely drafting issues, rather than being substantive matters of policy.

Examples

1. The suggestion of expiation notices in relation to non-compliance with s18 obligations is merely one possibility for addressing such employer non-compliance. A better approach would be for a civil penalty enforcement regime modelled on the Commonwealth *Fair Work Act 2009*.

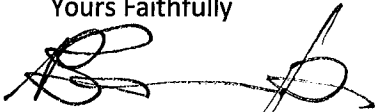
We do not have confidence in RTWSA playing a useful role in enforcing employer legal obligations. The persons most affected by breaches of employer s18 obligations (e.g. injured workers) should have the capacity to address such non-compliance (e.g. in addition to existing processes)

2. We support an amendment to s18 to make clear that host employers have an obligation to provide suitable employment for long-term labour hire workers injured at their worksite. We expect that that matter would be highly controversial with labour hire employers and their clients.
3. It is outrageous that the reintroduction of a dependency requirement for death lump sums is represented by RTWSA to be a "drafting matter". That would be an extremely significant change. It is a very important policy matter.

In short, the matters said to be “drafting issues” require very thorough consideration and input from stakeholders.

If your review is considering adopting the suggestions made which underpinned this recommendation, please let us know so we can address you on those matters in more detail.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'Peter Lamps', written over a horizontal line.

Peter Lamps

Branch Secretary

Australian Workers Union