

Return to Work Act 2014

Minister's Advisory Committee

C/- ReturnToWorkSA

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22 February 2018

The Hon John Mansfield AM QC
Review of the Return to Work Scheme
GPO Box 464
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Dear Justice Mansfield

Return to Work Scheme Review – Minister's Advisory Committee

Thank you for your invitation to make a submission to the above review and for granting the Minister's Advisory Committee an extension.

The Minister's Advisory Committee is established under section 171 of the *Return to Work Act 2014* (the Act). Its role includes advising the Minister for Industrial relations on the operation of the Act. The Committee has been in operation since the Act commenced and very recently a new Committee was formed after the expiry of its first term. Members were appointed to the Committee by His Excellency the Governor in Executive Council on 23 January 2018. The Committee is made up of professionals with diverse experiences, including medical professionals and members representing employers and workers/unions.

As a Committee and within our own professional practices/work roles, we have discussed a number of issues and some unintended consequences relevant to the review you are undertaking pursuant to section 203 of the Act.

Issues discussed by the Committee include:

- **Future Surgery** - It has been noted that there are large numbers of applications for approval of future surgery. Some members hold a concern that if the sections of the Act and regulations relating to such applications are interpreted narrowly it could lead to perverse medical outcomes when injured workers are forced to make decisions about whether or not to undergo surgery at a point in time based on the threat of their entitlements ceasing. Furthermore, the requirement for future surgery to be identified prior to the expiration of a worker's entitlement to medical expenses could mean that a worker may not be entitled to claim for surgery, which is clearly related to his or her compensable injury, simply because they did not make an application in time.

There are a range of reasons why a worker may not have made an application for a particular surgery such as the surgery not being anticipated at that time, or the worker being unaware that such an application needed to be made.

- **Independent Medical Advisors** – The committee has noted that the South Australian Employment Tribunal has rarely utilised the services of independent medical advisors, instead determining many medical issues themselves.
- **Whole person impairment and transitional claims** – Some members have taken issue with the way injuries are combined or not combined under the legislation, specifically insofar as it relates to whether a person meets the definition of a seriously injured worker as per s21 of the Act, and the impacts of the legislation on transitional claims. In order for a whole person impairment assessment to have any connection to a worker’s level of incapacity (and hence entitlement to compensation) it should measure the worker’s overall level of impairment (i.e. their whole person impairment) not just component parts considered in isolation.
- **Psychological Claims** – Some members feel that compared with physical injuries, there is a higher threshold that work must be ‘the’ contributing cause of the injury, not ‘a’ significant contributing cause as it is for physical work-related injuries. Through the provision of statistical information, the Committee has observed a notable decline in claims for psychiatric illness since the introduction of the new Act and it is the view of some Committee members that the Act does not support employees who have sought previous treatment for a psychiatric illness, noting that presently there is active health promotion about seeking help for mental health issues. The Committee notes however that case law on interpretation of compensability in this area is the subject of appeal.

The Committee holds diverse expertise and views and wishes to impress that these matters as described, do not represent a consensus position of the Committee but rather summarise a range of issues and observations of members of the Committee.

The Committee would welcome the opportunity to meet with you to discuss any issues or opportunities within the submissions you receive, should you feel this will assist with your deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MA', with a long horizontal flourish extending to the right.

Dr Michelle Atchison
Presiding Member on behalf of the
Minister’s Advisory Committee

cc: The Hon John Rau MP, Minister for Industrial Relations