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WORKERS COMPENSATION & SELF INSURANCE

The Parliamentary Inquiry in the *Return to Work Act 2014* (SA)

An Investigation in the Known Unknowns and the Unknown Unknowns

By Patrick Walsh

Recently it has been announced that the Parliamentary Committee on Occupational Safety Rehabilitation and Compensation will conduct an inquiry into the effects of the *Return to Work Act* ('the Inquiry'). For those who haven't had the opportunity to review the Terms of Reference, I have faithfully reproduced them here:

- 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 threshold for ongoing entitlements to weekly payments;
- c. The current restrictions on medical entitlements for injured workers;
- d. Potentially adverse impacts 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 alternative 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 Terms of Reference make it clear that the purpose of the inquiry is to adduce evidence to support an attempt to roll back the recent legislative changes in the Scheme and, in particular, the curtailment of the period of entitlement to weekly payments and medical expenses, and reduce the threshold at which an injured worker is deemed to be a '*seriously injured worker*' under the Act.

It is difficult to see how any probative data, which might lead to sensible policy decisions, can have been collected on the impact of legislation that is still in its infancy. Particularly when there are still

so many (to borrow from Donald Rumsfeld) "Known Unknowns" while the South Australian Employment Tribunal endeavours to build a body of case law for the Act.

Between 2009 and 2012 the South Australian Scheme had a median time loss figure of 9.9 weeks (the highest in Australia) and the 2012-13 National Return to Work Survey reported that South Australia's return to work rate was 82% (the lowest in the Country). It is important to note that even if you use these admittedly dismal figures for the Scheme before the commencement of the *Return to Work Act*, the vast majority of injured workers in South Australia arguably enjoy greater benefits under the *Return to Work Act* as very few workers fail to return to work within 104 weeks.

That means, as a result of the recent legislative changes to the Scheme, the vast majority of workers who have an accepted claim for worker's compensation, now have an entitlement to:

- Receive 100% of the average weekly earnings for the first 52 weeks of each claim;

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- Receive a lump sum payment for economic loss, as well as the lump sum for non-economic loss; and
- Make an application to the South Australian Employment Tribunal for the provision of suitable employment by the employer from whose employment the injury arose.

Before the Estimates Committee on 28 July 2016, Deputy Premier John Rau reiterated that as a consequence of the changes to the Scheme,

ReturnToWork SA has collected \$180 million dollars less in premiums than the previous year.

Given the current state of the South Australian economy and the unemployment rate of 6.9% in May 2016 (Australian Department of Employment), it would be reasonable to expect that any changes to the Scheme will need to be balanced to ensure that there is no increase in premiums at a time that South Australian businesses can ill afford it.

The closing date for submissions to the Inquiry is **30 September 2016**. Any businesses that are concerned about the impact that further changes to the Scheme could have on their workers, or their business, should contact their legal advisors, or their representative associations.

The following associations will also be providing submissions to the Inquiry on behalf of their members.

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