



TRS19D1354

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Dear Mr Mullighan

**APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991***

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 21 May 2019.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Minister's Advisory Committee – Minutes from the Committee Meeting 003' as described on the Objective document management system, between 12 July 2018 and 21 May 2019."*

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in full to 1 document; a copy of which is enclosed.

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the *Freedom of Information Act 1991*.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, Section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, Section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely

A handwritten signature in black ink that reads "Rob Lucas". The signature is written in a cursive style.

**Hon Rob Lucas MLC**  
*Principal Officer*

17 November 2019

RETURN TO WORK ACT 2014

MINISTER'S ADVISORY COMMITTEE

MINUTES

COMMITTEE MEETING 003 – SESSIONS 1 & 2

9.30am – 11.00am 13 & 20 AUGUST 2018

ReturnToWorkSA, Bremer and Light Rooms, 400 King William Street

**Present:**

Dr Michelle Atchison (Presiding Member)

Mr Les Birch

Mr Donald Blairs

Adj Assoc Prof Elizabeth Dabars

Dr Peter Jezukaitis

Ms Anna Moeller

Mr Stephen Myatt

Dr Roger Paterson

Ms Estha van der Linden

**RTWSA staff In Attendance:**

Sally Burrige (Manager, Government Relations)

Paula Mifsud (Government Relations Specialist)

**Apologies:**

Nil

Item	Agenda Title	Discussion	Minute No
1.	<b>Meeting procedures</b>	The meeting was conducted over two sessions.	
	• <b>Welcome</b>	Session one was opened at 9.34am on Monday 13 August 2018. Session two was opened at 9.32am on Monday 20 August 2018. The Presiding Member welcomed Committee members to the meeting. Dr Roger Paterson joined the meeting of the first session at 9.44am.	
	• <b>Apologies</b>	Nil.	
	• <b>Conflict of interest</b>	The Presiding Member reminded members of their obligation to declare any conflict of interest.	
2.	<b>Confirmation of Minutes/ Business Arising</b>	The minutes of the Minister's Advisory Committee meeting 002 held on 21 May 2018 were confirmed as correct.	
3.	<b>For Information</b>		
3.1	Presiding Member's update	The Presiding Member provided members with an update since the last meeting, which included: <ul style="list-style-type: none"> <li>• Reaccreditation of IMAs – The Presiding Member gave information and advice to Professor Marshall, Chair of the IMA Selection Committee, around the issues of the small number of IMAs being utilised by the SAET and the low remuneration received for such complex work. Further consideration will be given to this advice by Professor Marshall.</li> <li>• Meeting with the Treasurer, the Hon Rob Lucas MLC held on Friday 22 June 2018 - The Presiding Member, Mr Les Birch, Mr Donald Blairs and Ms van der Linden attended the meeting. The Treasurer took an interest in the advisory and legislative functions of the Committee. The Treasurer requested that future</li> </ul>	

		<p>minutes of the Committee were provided to his office and expressed an interest in attending a future meeting of the Committee. As per action 002-001, the retirement and leave of SAET members was also raised with the Treasurer at this meeting and a letter was sent to the Treasurer from the Presiding Member on behalf of the Minister's Advisory Committee on 23 July 2018, regarding the recovery of Medicare benefits from lump sum payments and statutory obligations of the Committee under the RTW Act (copy of letter tabled at the Committee meeting on 13 August 2018). A copy of the acknowledgement letter from the Treasurer was emailed by the Committee Secretariat upon receipt to members on Monday, 13 August 2018.</p> <ul style="list-style-type: none"> <li>• Removal of Secondary Injuries under the former legislation - The Presiding Member noted ReturnToWorkSA's response to action 002-003 – Removal of Secondary Injuries under the former legislation, as tabled at session 1 of the Committee meeting on 13 August 2018.</li> </ul>	
4.	<b>Committee Matters</b>		
4.1	<p>Independent Review of the <i>Return to Work Act 2014</i></p> <p>Discussion of the Report prepared by the Hon. John Mansfield AM QC tabled in Parliament on 26 July 2018.</p>	<p>The Presiding Member provided the Committee with a high level summary of the Report of the Independent Review of the <i>Return to Work Act 2014</i> prepared by the Hon. John Mansfield AM QC as tabled in Parliament on 26 July 2018. This included a discussion that:</p> <ul style="list-style-type: none"> <li>• the general position of the report finds that the Return to Work scheme is still in a transitional phase and that it is premature to consider major legislative change at this stage.</li> <li>• the report notes various improvements in Scheme performance and its relative financial stability however points there are risks around legal precedent, yet to be settled.</li> </ul> <p>Some issues/observations that were raised by members regarding the report included:</p> <ul style="list-style-type: none"> <li>• data provision and statistics to determine Scheme performance and determining the benefit/outcome for workers vs employers.</li> <li>• that there was limited visibility of Crown performance.</li> <li>• issues associated with pre-approvals for surgery in the current Scheme.</li> <li>• WPI discussion – some members expressed concern at the bulk of assessments are being done by a small pool of assessors, which can be problematic in that it raises issues with reliability/consistency/fairness. Discussion ensued relating to how the WPI score relates to a person's actual capacity to work – e.g.: A person can be at 30% and very capable at returning to work. It was felt that the report did not extensively deal with this issue.</li> <li>• <i>Mitchell</i> case – some discussion ensued relating to the case and the impact that was reported it would have to the financial viability of the Scheme and that it would test WPI boundaries.</li> </ul> <p>The Committee's high level view on each of the recommendations from the Hon. John Mansfield's have been detailed at <b>Attachment A</b> to the minutes.</p>	

		<p>It was agreed that the Committee's high level view of the Report would be incorporated into a formal letter to the Treasurer.</p> <p>Dr Peter Jezukaitis endeavoured to circulate to the Committee via the Committee Secretariat a copy of the Safe Work Australia Comparison Report 2017, Table 3.14: <i>Exclusionary provisions for psychological injuries</i>, a table that refers to impairment thresholds and provisions of entitlements for psychological claims. This was circulated to the Committee by the Committee Secretariat on Friday, 17 August 2018.</p>	001
4.2	Legal decisions discussion	Legal issues were raised as part of the Committee's discussion of the Report.	
<b>5.</b>	<b>Other business</b>		
5.1	Supplementary income support for incapacity resulting from surgery.	<p>Mr Donald Blairs raised an anomaly/drafting issue in the Act that relates to Supplementary income support for incapacity resulting from surgery.</p> <p>The issue arises for workers who have passed the end of their second designated period and have the surgery inside their medical entitlement period.</p> <p>The committee agreed that this is an unintended consequence of the legislation. It was further agreed that Mr Donald Blairs would draft a letter on this issue and send to the Committee Secretariat to forward to Committee for feedback/comment prior to sending to the Treasurer's office.</p> <p>Mr Les Birch raised some Supreme Court decisions, which would be beneficial for the Committee to read, particularly the cases of <i>Karpathakis</i> and <i>Rudduck</i>. Mr Les Birch endeavoured to circulate the decision of the Supreme Court of this case to the Committee by email. This was circulated to the Committee members by email by Mr Les Birch on 20 August 2018.</p>	002
<b>6.</b>	<b>Next meeting</b>	<p>The next meeting of the Committee would be held on 24 September 2018.</p> <p>The Committee noted a presentation will be given at this meeting by Ms Trish Bowe, Manager Impairment Assessment Services on the proposed draft Impairment Assessment Accreditation Scheme, as consultation on the Scheme with the Committee is a requirement under the <i>Return to Work Act 2014</i>.</p>	
<b>7.</b>	<b>Close</b>	The Presiding Member closed session one of the meeting held on 13 August at 11am and closed session two of the meeting held on Monday, 20 August 2018 at 11.05am.	

Review of the Return to Work Act (2014) by the Hon John Mansfield

ATTACHMENT A

The Minister's Advisory Committee supports the general position of the Report, prepared by the Hon. John Mansfield AM QC into the Independent Review of the Return to Work Act 2014, in that Scheme is still in a transitional phase to consider major legislative change at this stage. The Committee also generally supports improvements that are recommended to support the Scheme's performance and stability however notes there are risks around legal precedent, yet to be settled.

The high level view of the Minister's Advisory Committee on each of the recommendations is below:

Term of Reference	Recommendations	Comments
1.	1. That consideration be given to amending section 102 of the RTW Act to provide for a more robust and transparent initial reconsideration process.	Supported in principle. The Minister's Advisory Committee supports the process discussed in this recommendation by the Reviewer but the committee's view is that this can be seen as a cultural and contractual issue that a change in legislation will not necessarily address. The committee notes that cultural and contractual improvements could positively impact on the quality of decision making and timeframes of this process. They noted that adequate resourcing is necessary so that RTWSA can carry out reconsiderations without them being 'rubber stamping' of previous decisions.
2.	2. That the SAET collect statistical data of the number of decisions that are resolved at the initial reconsideration stage.	Supported. The Committee notes that RTWSA as a regulator should be monitoring the reconsideration of decisions and that there should be better linkages between SAET and RTWSA data.
3.	3. That RTWSA keep records in respect of all disputed decisions, comparing the decision with the outcome of the dispute. That data should be published in RTWSA's annual report and must include the type of decision and whether the SAET confirmed the decision or, if the dispute is	Supported in principle. The committee notes that there is value in keeping data as recommended by the Reviewer, however notes that decisions at the SAET can be impacted by commercial outcomes/negotiations, e.g. it may not be clear that an initial decision was wrong where a settlement has been reached to

Term of Reference	Recommendations	Comments
	<p>resolved at conciliation or via consent orders, whether the outcome was more favourable than the original decision or not.</p>	<p>resolve the matter. The committee also questioned whether unresolved disputes are included in this data, as the experience of some committee members is that disputes are taking longer to resolve, and if disputed can take up to eighteen months to have a determination. This leads to concern that treatment of an injury may be delayed waiting for an injury is determined.</p> <p>The committee supports prompt investigation of claims and good quality reconsiderations, if required, at the earliest possible stage.</p>
2.	<p>4. That the SAET retain its jurisdiction under the RTW Act.</p>	<p>Supported.</p>
3.	<p>5. That consideration be given to amendments to the RTW Act and/or RTW Regulations to require compensating authorities to notify personal claimants of time limits well in advance of expiry of time limits and to provide potential applications with relevant information about their rights (including the correct forms) to seek pre-approval of future surgery.</p>	<p>Supported.</p> <p>The committee notes that RTWSA currently communicates with workers when their income support is ending, however supports communicating explicitly on future surgery entitlements early in the claim process.</p>
6.	<p>6. That consideration be given to amending the RTW Act and/or RTW Regulations to clarify that applications for pre-approval of surgery are required to be submitted with supporting evidence under regulation 22 and are not merely applications to preserve the right to make a substantive claim for the expense of surgery at a later date.</p>	<p>Supported.</p>
7.	<p>7. That consideration be given to amending the RTW Act and/or RTW Regulations to clarify that applications for pre-approval of future surgery need not be supported by evidence with the level of detail that would ordinarily be expected if the surgery was imminent and that requests for future surgery may be broadly framed to account for uncertainty about exactly what surgery is required.</p>	<p>Supported in principle.</p> <p>The committee supports the recommendation in principle but notes the medical and legal complexities, which require careful drafting and there is the possibility that an amendment could make this area even more complex. The Committee notes the case of <i>Ledo</i> deals with this issue, which may be resolved at the Supreme Court.</p>

Term of Reference	Recommendations	Comments
4.	<p>8. That consideration be given to amending the RTW Act to provide, that, in the event of a decision on a claim for income support payments being made to RTWSA, and a decision to accept or not to accept the claim is not made within 10 days of the claim, and the worker is not otherwise being paid by the employer, the worker be entitled to income maintenance for the period from the commencement of the claim until a decision is made to accept or not to accept the claim.</p>	<p>Committee members have differing views on this recommendation. It was noted by the Committee that the injured worker is entitled to 'interim payments' however the worker must pay back this payment if the claim is rejected.</p> <p>It was further noted by the Committee that this recommendation was similar to 'provisional liability' under the previous Scheme. An introduction of provisional liability would be supported by some members. This however was seen to be problematic by some members of the committee in that it may create perverse outcomes (incentivises lodgement of a claim without merit, as there is no financial risk to the worker), therefore a consensus view was not reached.</p> <p>The committee discussed not only income maintenance but also medical expenses be included so that treatment is not delayed.</p>
	<p>9. That RTWSA analyse records of the outcomes of the decisions which are referred to SAET as disputes by injured workers or employers (see Recommendation 3) to determine whether they indicate that there is some appropriate change in processes or procedures which should be made to improve initial decisions.</p>	<p>Supported.</p> <p>The committee noted the importance of transparency in data collection. They also noted that resourcing to RTWSA must be adequate for this to be carried out.</p>
5.	<p>10. That the Government release all future versions of the Actuarial Report for the Liability for Crown Workers Compensation Claims for public consumption.</p>	<p>Supported.</p> <p>The committee noted the importance of transparency in data collection.</p>
6.	<p>11. That RTWSA maintain records of the terms on which injured workers return to work, including whether the return to work is to the previous employment position or some other position, whether the return to work is to the same level of hours or some other hours, and whether the return to work is temporary or indefinite/apparently permanent.</p>	<p>Supported.</p> <p>The committee notes that RTW already keeps much of this data, but visibility of this data is needed.</p>



Term of Reference	Recommendations	Comments
	<p>12. That RTWSA consider, in consultation with other major employer and employee organisations, whether there are other initiatives which might be taken to be better or more effectively secure the return to work of injured workers, including consideration of strategies used to achieve return to work of injured workers under other schemes operating in Australia.</p>	Supported.
	<p>13. That RTWSA maintain records of the return to work rates of the injured workers with a WPI of or greater than 30%, and consider the development of strategies to provide opportunities for such injured workers to return to work in some suitable employment.</p>	<p>Supported.</p> <p>The committee noted, as does the Reviewer, that WPI does not correlate with ability to work. Some committee members in considering this recommendation stressed that there can be capacity for work where 30% WPI or over, and that supporting these workers is important.</p>
7.	<p>14. The level of entitlements currently provided to workers in the two year income support period under the RTW Scheme should be maintained.</p>	<p>Committee members hold different views on this recommendation and noted that these views will be provided to the Treasurer via individual submissions from organisations represented on the committee.</p> <p>Concern was raised that the two year time period is not evidence based.</p>
	<p>15. RTWSA should identify workers at risk of not returning to work within two years and commence providing ongoing support to those persons via the ReCONNECT program before the cessation of entitlements.</p>	<p>Supported in principle.</p> <p>The committee notes the difficulty of psychological/social issues creating barriers to returning to work within two years.</p> <p>The committee also notes that section 25(10) of the RTW Act requires that at 6 months, consideration be given to assist workers in their return to work options. The committee believed that this part of the Act should be strengthened.</p>
	<p>16. That consideration be given to amending section 18 of the RTW Act to clarify parties' rights and duties.</p>	<p>Supported in principle.</p> <p>The committee notes that such an amendment is very difficult to draft in practice, as what is reasonably practicable for an employer is complex (e.g. based on size/nature of employment etc.), but noted that for many employers clarification of their obligations would be helpful. Further,</p>

Term of Reference	Recommendations	Comments
		<p>committee members feel that the SAET has largely been able to resolve these issues on dispute at the level of the conciliation commissioner.</p> <p>The committee also notes there is a risk that in clarifying this section it becomes more legally complex and unwieldy.</p>
8.	<p>17. That RTWSA continue to conduct its ReSkilling pilot program, including the consideration of the introduction of financial incentives to support the re-employment of injured workers, and at an appropriate time including consideration of a meeting of all groups properly interested in reskilling injured workers to encourage their return to work.</p>	<p>Supported.</p> <p>The committee notes that the ReSkilling program is an important initiative and this, along with mobile case management, has been seen as very positive for the Scheme.</p>
	<p>18. That RTWSA ensure that its ReSkilling program extends to seriously injured workers, including those who continue to receive income maintenance after the expiry of two years from their injury.</p>	<p>Supported.</p> <p>The committee notes that there has been favourable outcomes from the ReSkilling program and supports this program being offered to seriously injured workers if it is used in a positive and productive way.</p>
9.	<p>19. That consideration be given to the amendments, proposed by RTWSA, to the RTW Act and the IAGs if the decision in Mitchell is upheld by the Full Court; and independently verified data collated after the Supreme Court decision is delivered definitively indicates that the precedent threatens the financial stability of the RTW Scheme.</p>	<p>Committee members have differing views on this recommendation. They noted the need to do due diligence on any impact of the Mitchell decision when it occurs.</p>
10.	<p>20. That consideration be given to amending the RTW Act and/or RTW Regulations to allow for persons who are working to receive compensation for medical treatment necessary for their continued employment beyond the three year limit.</p>	<p>Supported.</p> <p>The committee notes however, that there should be a review built in to such an amendment (for example every 6 months) ensuring that the ongoing treatment is still reasonable and necessary (e.g. is keeping the person at work) and that the treatment is meaningfully connected to the initial work injury.</p>