

## **Key Messages from ReturnToWorkSA**

### ***Review of the Return to Work Act (2014)***

ReturnToWorkSA (RTWSA) has been asked by the Scheme Reviewer, the Hon John Mansfield AM QC to provide a submission on the Review terms of reference released by the Minister for Industrial Relations on 14 November 2017. The attached submission provides information from RTWSA's perspective as the Insurer and Regulator of the Return to Work Scheme, which provides work injury insurance for South Australian employers and workers.

The workers compensation system in South Australia went through momentous change when the Return to Work Act (2014) (the Act) came into operation in July 2015. The old system was a pension style Scheme, with inconsistent service outcomes, a significant unfunded liability of over \$1bn, and a high rate of legal dispute. It paradoxically incentivised people to remain sick, promoted an adversarial culture, had poor return to work outcomes and put pressure on South Australian businesses through uncompetitive premiums.

The new Return to Work Scheme is characterised by lower levels of claim and premium disputes and complaints, and currently has the best return to work rate in South Australia's history. The average premium rate paid by employers is at its lowest level since 1987. RTWSA's view is that this success is attributable to both the new legislation and service reform. The Act requires balancing the interests of workers and employers. This along with the health benefits of work are key principles that underpin the way RTWSA operates.

It is important to be mindful of history through this Review. Changes to the legal boundaries in the Scheme directly influence the experiences of injured workers and the premium employers pay. The Act also incentivises certain cultures and behaviours. Based on evidence and data, we know that the Scheme needs to empower and support people to recover and return to work and encourage cooperation between employers and workers – this is what is best for workers' physical and mental health, employers' productivity and the State's economy. The Scheme must also have financial durability in an unpredictable economic climate and in the face of many unknowns. Workers and employers need to be confident in the Scheme's ability to pay for lifetime support for those workers who unfortunately sustain the most serious, life-altering injuries.

A very significant challenge for ReturnToWorkSA in implementing the new Scheme has been managing the consequences of the legislative provisions that brought people with existing claims from the old Scheme into the new Return to Work scheme, instead of "running off" their claims under the old Scheme. Many of these transitional claimants were long term recipients of financial support under the old Scheme, which had a significantly different benefit package to the new Return to Work scheme.

Of the approximately 22,000 people with existing claims who transitioned to the Return to Work Scheme, most used the financial support available to access medical and allied health services to support their recovery and return to work, or continuation at work. About 6,000 people chose to redeem their entitlements to income and medical support rather than transition to the new Scheme. However, approximately 1,000 people who transitioned on 1 July 2015 were still dependent on income support when their entitlement ended on 28 June 2017, two years after their transition. Data about services and benefits funded for this group demonstrates that, as a general trend, they tended to be extensively engaged in legal disputes and less engaged in recovery/return to work and training activity in both the old and new Schemes. We remain committed to significant efforts to try and engage and support this group of people as they approach the end of their transitional medical entitlements in June 2018.

***In summary, ReturnToWorkSA's view is that on all key measures the Return to Work Act together with the service approach implemented by ReturnToWorkSA, is delivering better return to work outcomes for workers, at a more affordable premium price for employers.***

It is important to remember that the Scheme is still maturing, as the legislation has only been in operation for two full financial years and SA's premium rate, although significantly reduced, still remains higher than other mainland jurisdictions. It is clear that there is still much to be done, and we welcome any recommendations that will drive further improvements for South Australian workers and employers. We look forward to other opportunities to contribute to this Review and engage with stakeholders throughout the process.



**Joanne Denley**  
Chairman, Board Scheme Review Committee  
ReturnToWorkSA



**Rob Cordiner**  
Chief Executive Officer  
ReturnToWorkSA

11 January 2018

## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

*The extent to which the scheme, the dispute resolution processes, and the South Australian Employment Tribunal Act (2014) have achieved a reduction in the number of disputed matters and a decrease in the time taken to resolve disputes.*

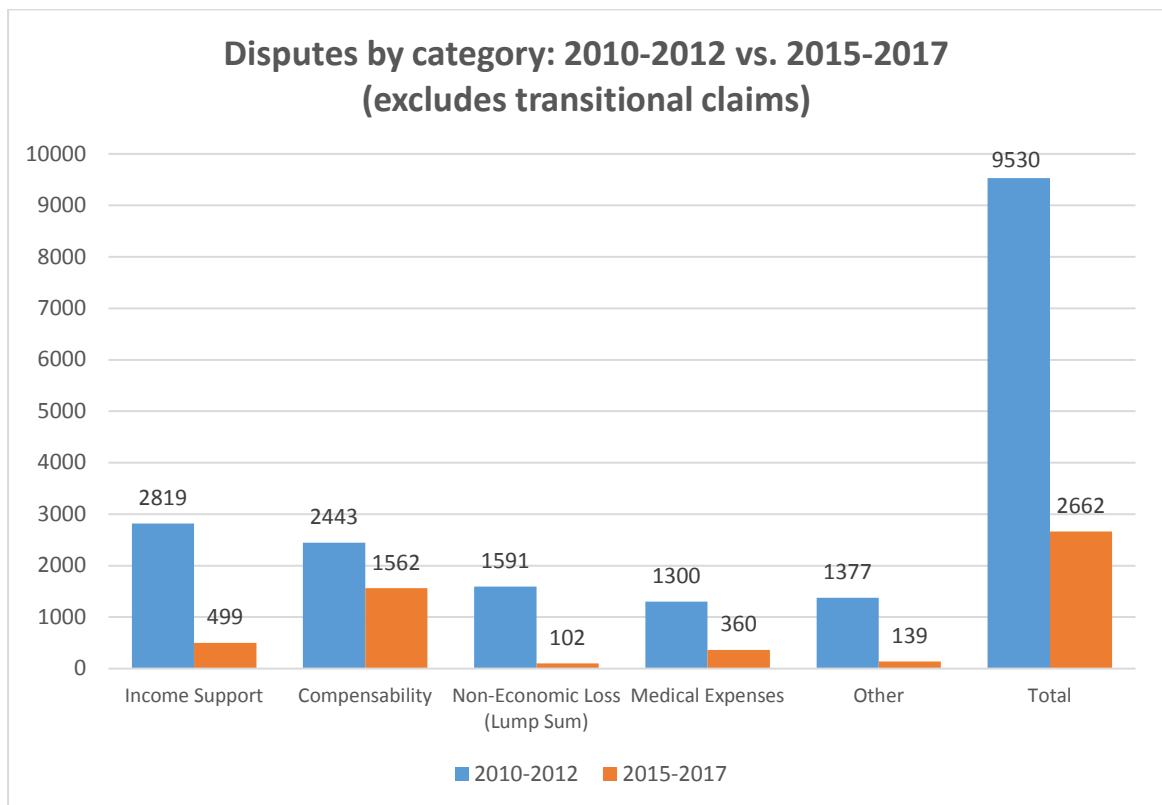
### Reduction in dispute numbers

RTWSA has provided commentary below in terms of its observations associated with this term of reference. However, the South Australian Employment Tribunal (SAET) is of course the primary source of information on dispute number and duration (inclusive of self-insured employers).

To address this term of reference, dispute numbers are broken down below by comparing historical dispute rates with disputes relating to injuries sustained following 1 July 2015 to give a picture of performance of the new Act outside of the issue of transitional claims. It is clear that disputes have decreased markedly for injuries sustained post 1 July 2015, and that disputes are now more likely to relate to the core issue of compensability.

Date of Injury	Total disputes	Average disputes per month
July 2010 – December 2012	9530	318
July 2015 – December 2017	2662	89

The graph below breaks down the disputes for each of the periods above, by dispute type:



## **Review of the *Return To Work Act (2014)* – *ReturnToWorkSA Initial Submission***

The following factors have influenced the decline from 318 to 89 disputes per month (on average):

- The elimination of Work Capacity Reviews, which were characterised by high rates of dispute. Formerly, after a worker had received income support for 130 weeks, the insurer was required to undertake a Work Capacity Review and make a determination as to whether a worker's income maintenance payments should continue or cease. These decisions were frequently disputed.
- The new Scheme features time limited firm boundaries around entitlement periods, e.g. a limit of two years of income support and a further one year of medical entitlements (unless a worker is seriously injured). These boundaries are not reviewable. However, there have been significant numbers of disputes associated with the 30% whole person impairment (WPI) threshold which determines access to lifetime care and financial support. Many of these disputes are from people with claims that transitioned from the old Scheme.
- The introduction of RTWSA's new mobile claims management service model whereby around 100 mobile staff are deployed in the field to provide early assistance face-to-face where possible, taking into consideration the specific circumstances of the person who has been injured and those of their employer. Early intervention and prompt decision making is aimed at ensuring workers will receive the treatment, care and support they need to achieve a safe and sustainable recovery and return to work as quickly as possible.

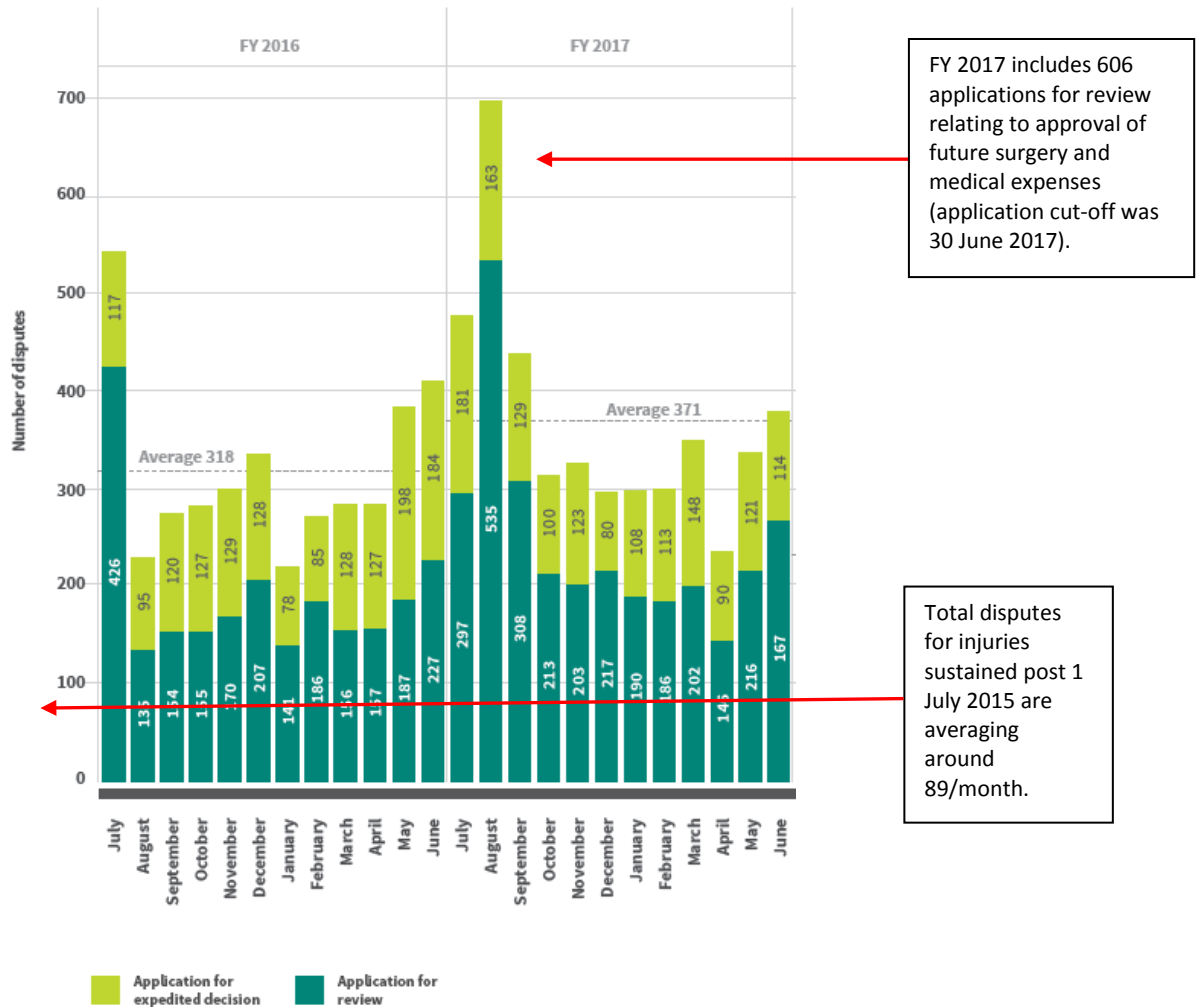
In any new Scheme, disputes (and complaints) in relation to the impact of new legislation and new boundaries are expected to be tested through disputes brought by claimants' legal representatives. We are seeing these issues, along with transitional claims, impact upon general dispute numbers in the Tribunal and at appeal.

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### Recent trends and approvals for future medical expenses

A significant spike as seen in disputes occurred around the deadline for requests for future surgery for transitional claims, as illustrated below. These statistics include old Scheme and new Scheme claims (excluding self-insured) for the last two complete financial years. It should be noted there is no evidence to suggest there will be any further such spikes once the transitional claim disputes are resolved.

### Dispute trends (inclusive of old Scheme and new Scheme claims)



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### Costs on appeal

It is worth noting that the new Act requires RTWSA to pay for costs on appeal at the Full Bench of the SAET and Supreme Court no matter the outcome, whereas the old legislation did not [s106 of the new Act versus s95 of the *Workers Rehabilitation and Compensation Act* (1986)].

In 2016-2017, RTWSA spent \$28.8m on legal costs, which is a significant cost to the Scheme and represents around 6% of total premium collected. We have seen a significant number of appeals lodged since the new legislation commenced. Below is data from SAET's 2016-2017 annual report in relation to reviews and appeals. <sup>1</sup>

### **Data on reviews and appeals – SAET Annual Report 2016-2017**

Reviews and Appeals	2015-16	2016-17
Review a decision of a Conciliation Officer (s66)	4	19
Appeal of a decision to the Full Bench (s67)	8	53
Presidential referrals to a Full Bench	0	6
Application to the Supreme Court to appeal a Full Bench decision (s68)	1	5

The SAET would be able to provide further information on this point and how this rate of appeal compares to their historical data from the former Workers Compensation Tribunal.

### Dispute duration

For closed disputes RTWSA's data indicates that under the old Scheme the average duration between dispute lodgement and consent orders being issued was approximately 270 days. In the new Scheme, this average duration is approximately 120 days. However, it is anticipated that this timeframe will be impacted by the number of appeals being heard, which extends the timeframe for resolving similar matters.

We suggest that the SAET is best placed to comment further on this, as it relates to their performance in terms of timely resolution of disputes. Evidence shows that disputes often distract workers from their focus on recovery and return to work, and the more prolonged a dispute, the greater negative impact on recovery and return to work outcomes.

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<sup>1</sup> SAET Annual Report, 2016-2017, page 10.

## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

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

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RTWSA is not in a position to comment on the effectiveness of the South Australian Civil and Administrative Tribunal (SACAT) as a dispute resolution body. However, RTWSA notes SACAT's objectives include:

- *keep costs to a minimum*
- *be accessible and responsive to your needs*
- *process and resolve your dispute as quickly as possible*
- *use language we can all understand*
- *be as flexible as possible*
- *promote the best principles of public administration, including independence, natural justice and procedural fairness, quality and consistent decisions, and transparency and accountability.*<sup>2</sup>

These objectives are positive in the context of workers compensation, which can often be a complex area of law for workers and employers to understand, particularly if they are unrepresented. ReturnToWorkSA would welcome any dispute resolution reforms that make the process simpler and quicker for workers and employers.

In terms of SACAT's remit to keep costs at a minimum, the Act provides that the insurer pays costs for all parties on appeal at the SAET Full Bench and Supreme Court. Any significant Scheme cost translates to increased costs for employers, whether incurred directly (self-insured employers) or via the average premium rate (for employers insured by RTWSA).

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<sup>2</sup> <http://www.sacat.sa.gov.au/about-sacat/our-objectives>

## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

*The extent to which there has been an improvement in the determination or resolution of medical questions arising under the Return to Work Act.*

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It is difficult to define “improvement” given the significant differences between the old and new Schemes. Therefore, our comments in this section focus mainly on a significant number of cases before the SAET and some on appeal at the Supreme Court that relate to medical questions, as well as cases on medical issues that have potential serious impacts on the financial durability of the Scheme.<sup>3</sup>

### Whole Person Impairment

An example of a significant case centred on medical issues is *Mitchell*<sup>4</sup>. This case relates to combining side-effects from medication with the permanent consequences of the initial work injury for the purposes of calculating Whole Person Impairment (WPI). The Full Bench of the SAET found that an initial back injury attracting a WPI of 26% could be combined with impairments associated with side-effects of certain medications – resulting in a combined WPI of 70%. The cost basis of the new Scheme, including the average premium rate, is contrary to this interpretation of the Act. RTWSA has appealed this matter at the Supreme Court.

ReturnToWorkSA’s actuary (Finity Consulting) has made the following assessment of liabilities associated with the *Mitchell* decision:

*At 30 June 2017 RTWSA were in a strong financial position, with a funding ratio of 119.5% and net assets of \$500m. Since then there has been no re-evaluation of either the assets or liabilities that would materially change this, although a recent legal precedent Mitchell has the potential to result in a significant deterioration in the scheme liabilities (to be clear, the impact of Mitchell is not reflected in the current balance sheet).*

At RTWSA’s request, Finity assessed the claims liability impact if the *Mitchell* decision were to be maintained on appeal at the Supreme Court. The impact on claims liabilities ranges between \$166m and \$570m, and the potential impact on the average premium rate ranges from an increase of 0.16% to an increase of 0.58%. To be clear, the latter would result in an average premium rate of 2.35% for South Australia (compared to the current 1.80%). Average premium rates for 2017-2018 across Australia are provided below for context.

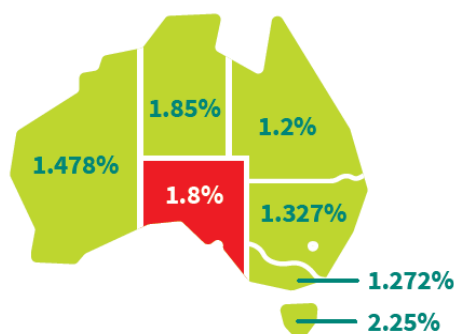
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<sup>3</sup> Some significant cases of note in this area include: *Anderson v RTWSA* [2017] SAET 67; *RTWSA v Brealey and Rullo v RTWSA* [2017] SAET 133; *Brooks v RTWSA* [2017] SAET 151; *RTWSA v Mangano* [2017] SAET 172; *RTWSA v; Dept of Health and Ageing v Neilson* [2017] SAET 136; *Reavill v RTWSA* [2017] SAET 148; *Mitchell and Stephenson v RTWSA* [2017] SAET 132

<sup>4</sup> [2017] SAET 81



Average premium rates in Australia: 2017-2018



Such an increase would make South Australia the most expensive jurisdiction in Australia in terms of the average premium rate.

RTWSA's view is that, aside from the significant financial risks a decision like *Mitchell* presents to the Scheme, it also runs contrary to the objects of the legislation, in that it encourages a culture of litigiousness, perversely incentivises the taking of medications that have negative outcomes for the worker (such as opioids) and embeds a culture of dependence and sickness rather than focusing on a worker's capacity to return to work.

More generally, RTWSA has observed high levels of opioid prescribing in the Scheme, with injured workers unfortunately experiencing the well-known societal and personal issues associated with extended or inappropriate opioid use. In these instances, such medications can impede return to work outcomes and negatively impact a worker's health and recovery. Medications such as opioids are a known risk for substance use disorders, and are strongly associated with risk for further accident/injury, poor engagement in return to work programs and the development of persistent pain problems.<sup>5</sup>

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 bulk of assessments are done by a small group of assessors (1524 out of a total of 3443 assessments have been completed by 6 assessors since 1 July 2015). There is significant involvement from lawyers in the WPI process, including advising workers which assessor to select.

<sup>5</sup> See <https://attendee.gotowebinar.com/recording/3566103616398093> for a Webinar produced by RTWSA and Drug and Alcohol Services on opioid usage. RTWSA is currently exploring regulatory options to support workers and health providers in this area.

## **Review of the *Return To Work Act (2014)* – *ReturnToWorkSA Initial Submission***

### Low utilisation of Independent Medical Advisors by the SAET

The Act pursuant to s121 allows for the appointment of an independent medical advisor (IMA) to consider medical questions or issues where there is a dispute. RTWSA has observed that medical issues are being determined by the SAET members themselves rather than through referrals to IMAs for advice. The SAET Annual Report 2016-2017 states that only 11 referrals were made to IMAs last financial year.

### Requests for future surgery

Section 33 and regulation 22(2) set out what is required to make a request for approval of future surgery. Some applicants are putting in requests for future surgery without a claim having been made or approved. Requests have also been made that are open ended (i.e. not restricted to a particular body part, with no medical evidence to support the need for the surgery). This has resulted in a number of disputes in the Tribunal.<sup>6</sup> RTWSA's view is that it was never intended that the Scheme fund surgery in the absence of an accepted work injury claim and/or without medical evidence to support surgery, and this should be an area for future legislative reform.

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<sup>6</sup> See *Ruddock, Karpathakis and Ashfield v RTWSA* [2017] SAET 41 January 2018

## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

*The performance of ReturnToWorkSA in managing claims, including ReturnToWorkSA's outcomes in reducing instances of work injury.*

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The success of the Scheme depends in part on how it is administered. Some observations on RTWSA's claims management performance are provided below. Please note that return to work performance is discussed on page 17.

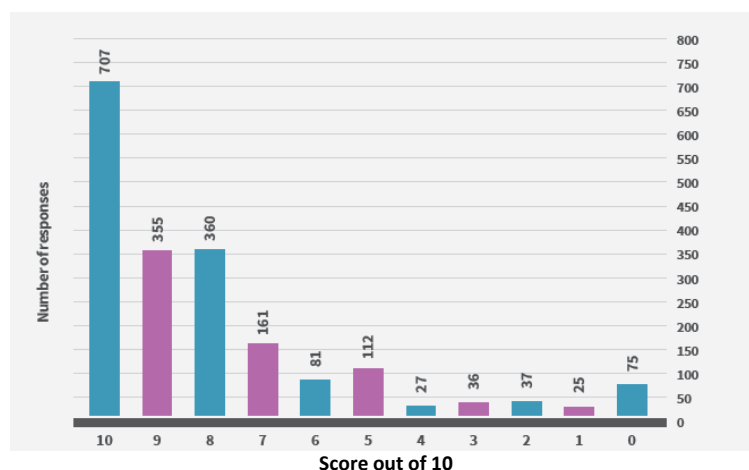
In relation to the latter part of this term of reference, it should be noted that since the separation of SafeWorkSA and the then WorkCover over ten years ago, prevention of injuries has been the primary responsibility of SafeWorkSA. However, information on the RTWSA initiatives that support prevention is included below.

At the commencement of the Act in July 2015, RTWSA implemented a number of successful service innovations, including:

- telephone reporting instead of paper-based (80% of claims are currently reported by telephone)
- mobile claims management and a more personalised, face-to-face service model – there are around 100 mobile claims staff throughout Adelaide and the major regional population centres, with low average caseloads
- a simpler premium system that incentivises injury prevention
- more efficient processing of payments for claimants and providers. RTWSA has also since implemented an online payment portal for service providers and employers.

This service redesign has resulted in a significant drop in premium and claim complaints, as well as positive levels of client satisfaction. Service feedback is a key part of RTWSA's service model. Employers and workers are regularly surveyed on RTWSA's performance. RTWSA uses a 'Net Promoter Score' to assess its performance. The current score is +32, which is considered very positive by insurance industry standards. The graph below shows that 80% of those surveyed, rate the service 7/10 or higher, with more than 50% giving a score of 9 or 10.

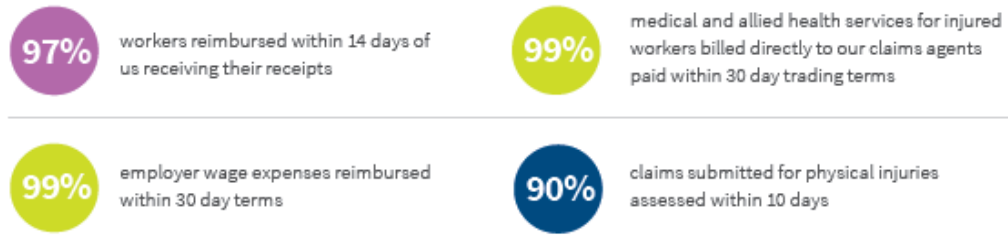
**Customer service scores**



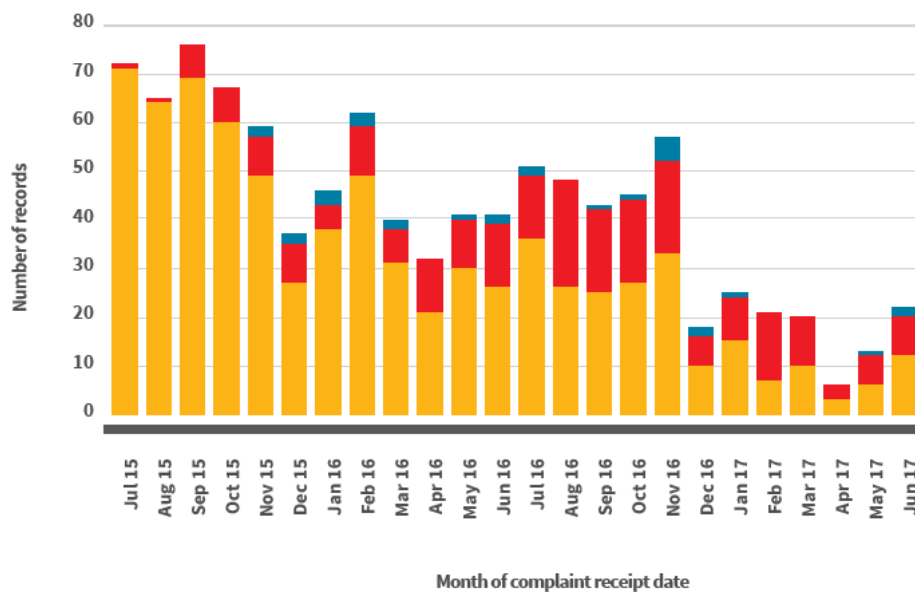
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The diagrams below illustrate aspects of performance against key service measures in the new Scheme as at 2016-2017.

### Service measures - timeliness



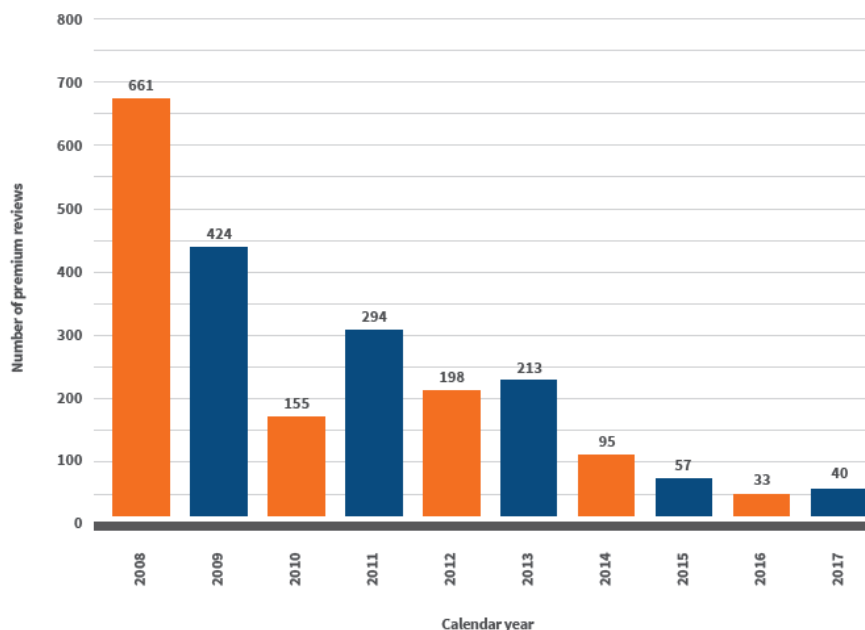
### Complaints: old scheme vs new scheme



#### CLAIM TRANSITION INJURY CATEGORY DESCRIPTION

- Not claim related
- 1 July 2015 onwards
- Prior to 1 July 2015

## Employer Premium Complaints



### Service delivery for seriously injured workers<sup>7</sup>

As at December 2017 there are 521 current serious injury claims (which have accumulated since 1987), that is, where workers have been determined to have a permanent whole person impairment of greater than 30%, and are therefore entitled to income support until retirement age and lifetime medical and related expenses.

RTWSA recognises that people with the most serious, life altering injuries <sup>8</sup> need a specialised service. RTWSA manages these most serious claims in-house through its EnABLE unit (116 of the total 521 serious injury claims are managed in this way). EnABLE clients are supported by Disability Support Consultants, who are highly skilled in complex, high needs disability claims management. These consultants have small caseloads so that they can maximise face-to-face support for the most seriously injured workers and their families, with this support often commencing in the very early stages of a traumatic injury, well before a claim is made. The EnABLE service approach recognises that these claimants have a lifelong relationship with the Scheme, and strives to help them get the treatment and support they require to maximise their quality of life.

<sup>7</sup> Serious injury claims represent around 2/3 of the Scheme's outstanding claims liability.

<sup>8</sup> The criteria for receipt of this service includes catastrophic injuries such as: permanent spinal cord injuries; traumatic brain injuries; limb amputations; severe burns and permanent legal blindness.

## **Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission**

### RTWSA programs that support prevention

Since the commencement of the new Scheme in 2015, new claim numbers have been stable at approximately 14,000 per year (about 12,600 of these are accepted). As noted at the beginning of this section, RTWSA does not have direct responsibility for injury prevention, but information is provided below on RTWSA activities that support prevention, either directly or indirectly.

### *Outlier employers*

RTWSA has a risk management team that engages with premium-paying employers whose claims performance is not trending in line with industry norms. Measurements include claims costs, number of claims and injury performance against industry competitors. In 2016-2017, 490 employers received some type of risk management intervention. The claims costs for this cohort of employers are reviewed monthly and any deteriorating performance is addressed with the employer.

### *New Access – a beyondblue program*

RTWSA co-funds a mental health intervention program developed by beyondblue and delivered by Bolton Clarke that is a free and confidential support service to help people tackle day-to-day pressures and minor mental health issues via coaching/support. The program offers six free coaching sessions and appointments can occur over the phone or face-to-face. There have been 761 referrals and 3,928 coaching sessions delivered to participants to date. The NewAccess program is particularly successful with the male population, (53% of the client base is male), which is notable as traditionally men are less likely to seek help for anxiety and depression than women.

### *Mentally Healthy Workplaces*

With the combination of the high prevalence of mental health conditions in society, the changing nature of work and the blurring of boundaries between work and home, RTWSA recognises the importance of supporting workplaces in providing mentally healthy workplaces and has an advisory service that offers assistance to registered employers of all sizes. RTWSA also runs information programs with other stakeholders (SafeworkSA, SA Health, Ai Group, beyondblue, SA Mental Health Commission, Business SA, SA Mental Health Coalition and SA Unions) including regional workshops.

### *Self-insured employers*

Private self-insured employers have their work health and safety and injury management performance regularly evaluated by RTWSA. This evaluation drives the renewal or otherwise of their self-insurance registration, and also can impact the duration of their registration.

## **Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission**

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

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General information on the profile of private self-insurance in South Australia is provided below, from data held by ReturnToWorkSA. The majority of South Australian public sector agencies and public corporations are deemed to be self-insured by the Act (s130). They are not currently regulated by RTWSA. The information below only relates to private self-insured employers, who are regulated by RTWSA.

Other stakeholders, including self-insured employers, the Crown and Self Insurers of South Australia (SISA) may wish to provide further information on this term of reference, particularly in relation to the success of initiatives aimed at reducing the incidence of work injury.

### Observations on performance

Self-insurance in total (public sector and private) currently makes up 38% of the Scheme by remuneration or 31% of total claims, with private self-insurance representing 18% of the Scheme by remuneration or 16% of total claims.

Self-insurance is an experience-based insurance product where the employer manages their own claims and return to work activities, and pays the direct and indirect financial costs of workplace injury, rather than paying an insurance premium and having the actual claim costs paid by RTWSA. Bearing the costs of workplace injury is a strong incentive for self-insured employers to invest in significant financial, physical and human resources to prevent and manage workplace injury. Generally speaking, self-insured employers tend to be larger companies that are already profoundly aware of the benefits of investing in injury prevention and management.

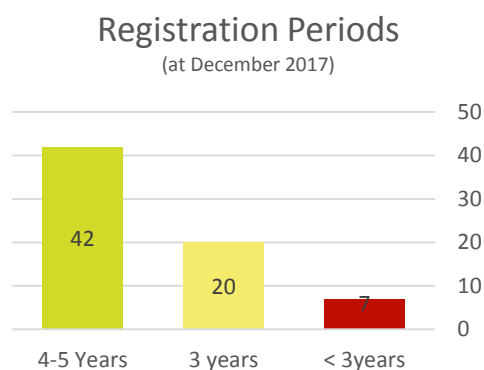
RTWSA's evaluation of private self-insured employers management systems indicate they are generally well resourced, risk focused, and work cooperatively with RTWSA on performance monitoring and improvement activities.

### Stability of self-insurance

Self-insurance is a mature and stable feature of the Return to Work Scheme. Of the existing 69 private self-insured employers, 29 have been self-insured for over 20 years. A further 23 employers have been self-insured for a period of between 10 and 20 years.

The performance of self-insured employers against the requirements of registration has been both positive and stable. In the last decade there has been just one instance where RTWSA has recommended revocation of registration as a self-insured employer for reasons other than a direct request by the self-insured employer or insolvency.

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Currently 60% of private self-insured employers have been granted the maximum 4-5 year period of registration. Approximately 10% of private self-insured employers have periods of registration of two years or less; with reduced periods granted to facilitate increased oversight, largely due to financial viability concerns or other matters not solely related to the self-insured employer’s injury management and return to work performance.

RTWSA prescribes the benchmarks used to measure the financial viability of a self-insured employer. The long term stability of self-insurance indicates the risk management strategies applied to private self-insured employers (including the requirement for financial guarantees and excess of loss reinsurance) and financial benchmarks set by RTWSA to monitor ongoing financial viability, are appropriate.

### Claims management

RTWSA has observed that private self-insured employers have proactive education, reporting and intervention processes. Many have early intervention treatment programs through which they fund and support treatment of minor workplace injuries without the need to lodge a claim. They all have integrated injury management roles and responsibilities, and accountability is built into their management systems.

Self-insured employers invest significant financial, physical and human resources to prevent and manage workplace injury and evaluation outcomes indicate private self-insured employers have well-resourced claims administration systems and practices, which in RTWSA’s view are adequate in the context of the number and complexity of reported claims. The table below shows the low incidence of claims for most private self-insured employers:

### **Self-insured claim numbers**

No. of claims received FY16/17	Number of self-insured Employers
<b>1-50</b>	74
<b>51-100</b>	11
<b>101-150</b>	5
<b>201-250</b>	2
<b>251-300</b>	1



## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

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

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Historically speaking, return to work rates as at the end of November 2017 are at an all-time high. Currently 79% of people who suffer a work injury are at work within 4 weeks. Return to work rates at different points in time with historical comparisons are provided below, with the most recent results highlighted.

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

It is RTWSA's view that the service redesign outlined earlier, in a less adversarial Scheme, has allowed participants to concentrate on return to work, contributing to better outcomes.

Education programs for participants have also had a positive impact on return to work rates. For instance, RTWSA educates allied health providers and doctors on the health benefits of work and focusing on a worker's capacity rather than incapacity for work. Further, RTWSA identifies 'outlier' practitioners (e.g. those whose patients have lower return to work rates than their peers) and provides targeted education and support to those practitioners.

RTWSA has observed that other societal and economic factors influence a person returning to work, including:

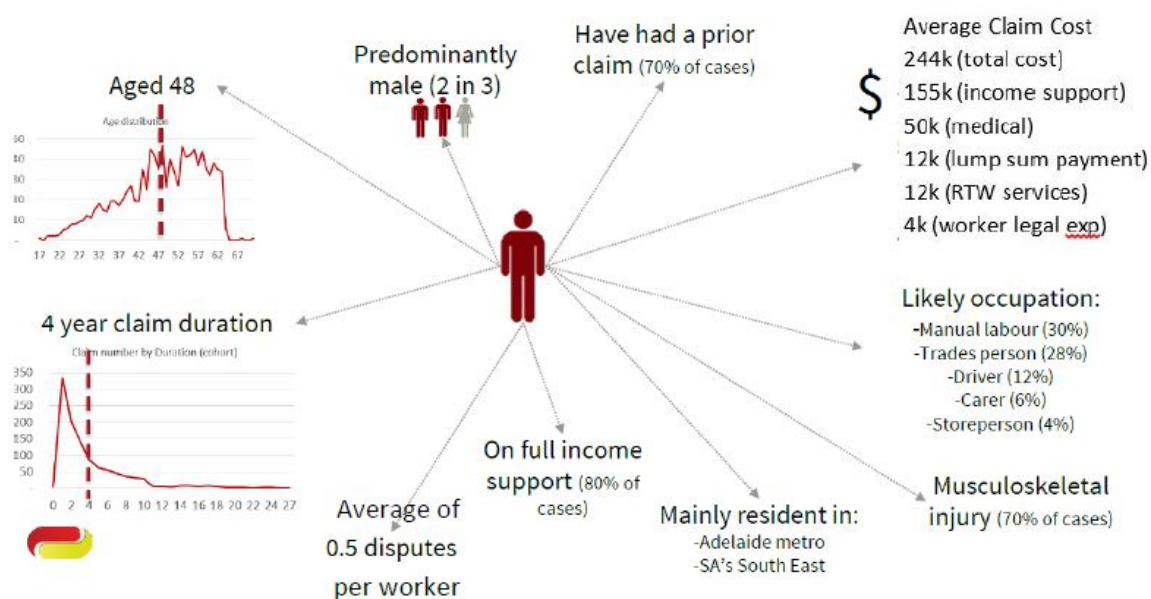
- general employment market conditions
- the availability of appropriate training opportunities (for instance there can be challenges associated with securing training for workers who live in regional areas)
- attitudes of participants, e.g. the worker themselves and their family/support network, the worker's health practitioners and legal providers.

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

Transitional claims - trends

RTWSA has analysed data on the group of workers who transitioned from the old Scheme to the new Scheme, and ceased to be entitled to income support at 28 June 2017. Our analysis highlights some of the barriers that prevent people from returning to work, in addition to economic factors and employment market challenges. The diagram below provides a snapshot of some common characteristics of the transitional group of workers whose entitlement to income support ended on 28 June 2017 (and are not seriously injured) based on RTWSA data. This data is useful in designing programs to assist this group – noting of course that all workers are individuals and the service they receive needs to be tailored to their specific circumstances.

**Snapshot: average characteristics of workers whose income support ended on 28 June 2017**



Eighty percent of the transitional group of workers impacted by the cessation of income support at 28 June 2017, were older than 40, and suffering musculoskeletal/joint ligament/muscle/tendon injuries. Two out of three of those workers were male and the majority of those workers had manual labour/low-skilled jobs. The average duration of their claim was four years and a high proportion reside in areas experiencing socio-economic challenges.

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### New Scheme Claims – Trends

A demographic picture of workers who were injured post-July 2015 and have not returned to work after two years is still emerging due to the period of time the Act has been in operation, however, RTWSA has been analysing trends in relation to this cohort and can provide the following information:

- Average age is 44.3 years old
- 70% of these workers are male
- 72% have had a prior workers compensation claim.

### Challenges associated with returning to work

The challenges associated with certain subsets of workers returning to work are not isolated to people impacted by a work injury. For instance, the ABS has reported that older people who become unemployed tend to be unemployed for longer periods of time.<sup>9</sup>

The Productivity Commission has also reported that higher literacy and numeracy skills are associated with better labour market participation.<sup>10</sup> Their report *Men Not at Work*<sup>11</sup> also found:

- Un-partnered men who live alone, with their parents or in group housing are much more vulnerable to labour market withdrawal.
- Many working aged males leave the labour market upon injury/ill-health (with about half the men aged 25-64 who are outside the labour force in receipt of a Disability Support Pension).
- An important explanation for the lower labour force participation rates of these men is the shift away from unskilled manual work in an increasingly service-sector and skill-based economy.
- Female engagement in the labour force has dramatically increased in recent years.
- Many economically inactive men have pre-existing traits that made them vulnerable to both labour market withdrawal and to lower levels of wellbeing.

It should be noted that the issues in the first and last dot points listed above are apparent in the Scheme. Workers who have not returned to work after two years are often experiencing other issues outside of their work injury, e.g. comorbidities, addiction problems, a history of mental health issues/personal and family crises that makes return to work planning substantially more difficult. RTWSA has also observed these issues amongst injured female workers who are unsuccessful in returning to work.

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<sup>9</sup> Unemployment and participation rates in Australia: a cohort analysis <http://www.abs.gov.au/ausstats/abs@.nsf/featurearticlesbytitle/7BE42BCDC861C989CA256D580081A098?OpenDocument>

<sup>10</sup> Productivity Commission's 2014 report *Literacy and Numeracy Skills and Labour Market Outcomes in Australia*

<sup>11</sup> <http://www.pc.gov.au/research/supporting/men-not-at-work>

## **Review of the *Return To Work Act (2014)* – *ReturnToWorkSA Initial Submission***

Return to work outcomes also fluctuate with the state of the labour market. It is worth noting that the average duration of unemployment in South Australia for a non-injured worker is currently 56 weeks.<sup>12</sup> There can also be challenges associated with finding suitable employment for injured workers in small businesses, which make up a large proportion of the employers insured by RTWSA.

In recognition of the challenges associated with making a transition from workers compensation entitlements to other forms of community and government support, RTWSA established the ReCONNECT service. ReCONNECT is a free and voluntary service provided by appropriately skilled RTWSA staff. The program delivers practical assistance to people who require some ongoing support to transition from Scheme funded services to community based support services when their entitlements cease. In 2015/16 and 2016/17 ReCONNECT received a total of 830 referrals, with 577 of these opting to participate in the service. Of the 577 participants, 468 indicated that they had achieved their individual goals.

Clearly, the above challenges impact Australian society generally, and are not unique to the Scheme. RTWSA will continue to analyse the experience of these workers to inform service design to assist these workers. RTWSA welcomes any suggestions brought forward through this Review aimed overcoming the barriers that prevent people returning to work, as the health benefits of participation in work and society are well known.

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<sup>12</sup> ABS, Labour Force, November 2017  
January 2018

## **Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission**

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

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In 2016-2017, RTWSA spent \$2.45m on retraining services – one component of this is RTWSA's 'ReSkilling' program. RTWSA understands this term of reference to include all retraining/reskilling initiatives.

### ReSkilling

Each year, a small percentage of injured workers (approximately 1,000 of the 12,600 accepted claims each year) have more than three months off work after having a workplace injury. About half of those workers need to find employment with a different employer due to the nature of their injury. The ReSkilling program is designed to assist those workers. It includes skill maintenance, skills assessment, training /re-training and outplacement services.

ReSkilling started as a three year pilot program in July 2016 with the intent of trialling the initiative with a smaller cohort of workers so that the service experience could be refined before scaling it up. The pilot has been considered a success in its first year with more than 500 referrals and approximately one in three workers returning to work after undertaking the program. Of course, one should be cautious in drawing a direct link between undertaking such a program and returning to work, as the reasons why a person returns to work are complex and dependent upon an individual's circumstances and the labour market. RTWSA continues to evaluate the pilot to assess its effectiveness and inform service design.

RTWSA is cognisant of the need for workers in regional areas to have access to innovative and tailored services. This continues to be a challenge due to many providers being located in metropolitan Adelaide, however, RTWSA continues to explore the feasibility of expanding services into the regions. A current focus of the program is also expansion of outplacement opportunities with each of the suppliers.

RTWSA welcomes any recommendations around effective reskilling and retraining programs and innovations that support people returning to work through this Review.

## Review of the *Return To Work Act (2014)* – *ReturnToWorkSA Initial Submission*

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

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### Defining ‘financial stability’

RTWSA is funded entirely through premiums and self-insured fees paid by South Australian employers. It is worth considering how to define ‘financial stability’ prior to commenting on whether the Scheme is in such a position.

The legislation provides some parameters around measuring financial performance/stability, including:

- The average premium rate should not exceed 2% (s137)
- The fundamental requirement for the Compensation Fund to have sufficient funds into the future to meet costs associated with the legislated benefit package including:
  - income support (for up to 2 years) and medical expenses (for up to 3 years) for injured workers
  - income support for seriously injured workers until retirement age
  - life-time care and support costs for all seriously injured workers.
- The *Return to Work Corporation of South Australia Act (1994)* requires RTWSA to take all reasonable steps to ensure that the scheme is ‘fully-funded on a fair basis’ (s12(e)) while providing ‘fair compensation for work related injuries’ (s12(c)) and minimising costs for employers (s12(d)).

The RTWSA Board through its policies also defines what financial performance and stability looks like based on insurance best practice and accounting standards, including:

- The need for RTWSA’s investments to be able to withstand global shocks and changes in the discount rate<sup>13</sup> that can occur. (For instance, during the global financial crisis the 2008 calendar year, loss in the value of RTWSA’s investments was \$236m).
- The need to minimise volatility in the average premium rate, enabling employers to budget for future costs.
- A long-term return on investments of CPI plus 2.5%.
- Claims liabilities reserved to a probability of sufficiency of 75%<sup>14</sup> and a funding ratio target (total assets/total liabilities) between 90% - 120%.

### RTWSA’s financial position as at 30 June 2017

RTWSA’s financial position for the year ended 30 June 2017 is provided below. Further information can be found in RTWSA’s annual report.<sup>15</sup>

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<sup>13</sup> The ‘discount rate’ is the rate used in discounted cash flow analysis to determine the present value of future cash flows based on market trends.

<sup>14</sup> Probability of sufficiency is a risk margin, whereby the probability of assets meeting future liabilities is measured. For instance, a minimum probability of sufficiency of 75% means that there must be a 75% probability that the estimate will be adequate, and less than 25% chance that the estimate will be inadequate. The Australian Prudential Regulation Authority requires insurance liabilities to be assessed with a minimum probability of sufficiency of 75%. While ReturnToWorkSA is not required by law to comply with this requirement (as it is Government owned), it complies with this target.

<sup>15</sup> [www.rtwsa.com](http://www.rtwsa.com)

## Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission

### ReturnToWorkSA Statement of Financial Position As at 30 June 2017

	Notes	2017 \$'000	2016 \$'000
<b>Assets</b>			
Cash	15	3	3
Trade and other receivables	16	65,432	78,200
Investments	17	2,991,426	2,749,676
Property, plant and equipment	18	4,309	5,771
Intangible assets	19	13,322	16,759
Total assets		<u>3,074,492</u>	<u>2,850,409</u>
<b>Liabilities</b>			
Trade and other payables	21	19,356	22,673
Outstanding claims	10, 11	2,459,637	2,480,528
Employee benefits	14(a)	16,989	21,212
Provisions	22	4,343	636
Tax equivalents		73,371	-
Total liabilities		<u>2,573,696</u>	<u>2,525,049</u>
Net assets		<u>500,796</u>	<u>325,360</u>
<b>Equity</b>			
Retained earnings		<u>500,796</u>	<u>325,360</u>
Total equity		<u>500,796</u>	<u>325,360</u>

As at 30 June 2017, RTWSA is fully funded, with net assets of \$500.8m, and a funding ratio of 119.5%. However, this financial position does not account for the uncertainty relating to significant SAET decisions, such as the *Mitchell* or *Li*<sup>16</sup> decisions, and their potential financial impacts on the Scheme. There are presently 9 matters for which leave to appeal at the Supreme Court has been granted (7 of which have been initiated by RTWSA; one by a self-insured employer where RTWSA has intervened; and one appeal from a worker).

RTWSA's view is that until the ultimate outcomes of the legal process in these significant cases is known, as well as the Government's potential legislative change response to any such outcomes, the Scheme cannot be considered to be financially stable. For example, as noted earlier in this paper, the *Mitchell* decision alone (if upheld by the Supreme Court) could impact claims liabilities in such a way as to completely eliminate the current surplus, and lead to an average premium rate increase of up to 0.58%, taking the average premium rate to 2.38%, which is above the 2.00% maximum required by the Act (s137).

The *Li* case relates to compensability of psychological injury and is worth mentioning here due to its significance. The initial assessment of RTWSA's actuary is that if the *Li* decision is upheld, it will have a very significant financial impact on the Scheme, in relation to both current claims liabilities and future premium rates.

<sup>16</sup> See *Li v Dept for Health and Ageing* [2017] SAET 75. Both of these cases are on appeal at the Supreme Court. January 2018

## **Review of the Return To Work Act (2014) – ReturnToWorkSA Initial Submission**

Other issues impacting the financial performance and stability of the Scheme include:

- The current average premium rate of 1.80% and the Scheme's liabilities are based on assumptions around the scope of entitlements in the legislation, which can be changed by Parliament (and legal precedent, as mentioned).
- There are inherent uncertainties associated with future macro-economic impacts, e.g. if in future years medical/personal care costs for seriously injured workers rise significantly this will impact the Scheme's financial position (noting the Auditor-General has also highlighted this uncertainty in recent reports).
- Premium income is impacted by the general performance of the State's economy (the size and remuneration of the private sector in South Australia, noting the Crown is self-insured).
- Volatility in investment markets.
- Fluctuations in the discount rate used to project long term claims liabilities.
- The culture of the Scheme is still in transition. The new Scheme is intended to embed a culture that recognises the health benefits of work, however it takes time for such a cultural shift to be reflected in the behaviour of Scheme participants, e.g employers, workers, medical and legal practitioners.

It is RTWSA's view that the Scheme has not yet reached financial stability. Primarily this is due to the unresolved uncertainty regarding legal precedent and interpretation decisions of the SAET, including those on appeal at the Supreme Court, concerning the scope of entitlements for claimants. The quantum of other uncertainties have greater predictability (e.g. fluctuations in the discount rate). In relation to this uncertainty, the Auditor-General in its 2016-2017 report included an emphasis of matter, highlighting that there is uncertainty surrounding the courts' interpretation of the legislation, as the new Scheme is experiencing legal appeals.<sup>17</sup>

It is also essential to remember that many of the factors above, particularly significant legal decisions and their consequences, impact self-insured employers as well as RTWSA. This includes both private self-insurers, many of whom are South Australia's largest employers, and the public sector. Liability impacts on private self-insured employers also lead to increased financial guarantee requirements, which reduces their capacity to invest in more productive projects.

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<sup>17</sup> See <https://www.audit.sa.gov.au/publications/annual-reports/2017-reports/annual-report-by-agency/return-to-work-corporation-of-south-australia>



**Review of the *Return To Work Act (2014)* – *ReturnToWorkSA Initial Submission***

*Any other recommendations consistent with the objects of the Return to Work Act.*

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RTWSA has been asked by the Hon John Mansfield AM QC to provide this initial response to the Review Terms of Reference as the Insurer and Regulator of the South Australian Return To Work Scheme, so that stakeholders may use this information in preparing their own submissions to the Review.

As such, any other suggestions that RTWSA wishes to propose will be addressed in a future RTWSA submission to the Review.