

Australian Industry Group

# Commonwealth Options for greater involvement by private sector life insurers in worker rehabilitation

**Submission to**  
Parliamentary Joint Committee on  
Corporations and Financial Services

**MAY 2018**



# **INQUIRY INTO OPTIONS FOR GREATER INVOLVEMENT BY PRIVATE SECTOR LIFE INSURERS IN WORKER REHABILITATION**

## **SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES**

### **Introduction**

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

We have ongoing contact with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace relations, work health and safety and workers' compensation. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact.

An important part of our role is to develop strong relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered. Ai Group is a member of Safe Work Australia (SWA) and its related Strategic Issues Group – Workers' Compensation.

Ai Group welcomes the opportunity to make a submission to the Committee. However, we note the short timeframes available to make this submission, and hope that employers and employer associations will have the opportunity to have input into further consideration of recommendations that may be made by the Committee.

Ai Group does not claim to have a detailed knowledge of private sector life insurers, or how they operate. Our reason for making a submission to the inquiry is that we do have a detailed understanding of the employment related issues that may be at play when a worker with a non-work-related injury or illness is attempting to recover and return to work. There are many complex issues which cut across a range of disciplines: work health and safety; workers' compensation; and workplace relations.

### **Attracting and retaining skilled employees**

Attracting and retaining skilled employees is a high priority for employers. Over recent years Ai Group, and our members, have had a strong focus on skill shortages.

Ai Group recently reported<sup>1</sup> that the third highest priority of business for the 2018-19 Federal Budget was to “address the current and future skill shortages”, with 31% of businesses ranking it as either their first or second priority.

Further Ai Group's April 2018 Research Note<sup>2</sup>, highlighted four key points:

- Skills shortages is the most important skilling factor inhibiting business growth;
- Skills shortages continue to be a concern with over half of CEOs experiencing difficulty;
- The lack of suitable apprentices and trainees compounds skill shortage concerns; and
- CEOs are retraining existing employees and employing experienced staff to meet their skill needs.

In this context, employers recognise the importance of retaining the skilled staff they have. Many employers do actively seek to support workers with non-work-related injury or illness to return to work.

However, despite these good reasons to assist an ill or injured worker to return to work, there are several barriers that may be encountered.

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<sup>1</sup> Business priorities for the 2018-19 Federal Budget

[http://cdn.aigroup.com.au/Economic\\_Indicators/Economic\\_Outlook/2018-19\\_Budget\\_Priorities.pdf](http://cdn.aigroup.com.au/Economic_Indicators/Economic_Outlook/2018-19_Budget_Priorities.pdf)

<sup>2</sup> Skills Shortages Research Note April 2018

[http://cdn.aigroup.com.au/Reports/2018/Skill\\_Shortages\\_Research\\_Note\\_April\\_2018\\_WD.pdf](http://cdn.aigroup.com.au/Reports/2018/Skill_Shortages_Research_Note_April_2018_WD.pdf)

Employers may be concerned about: whether they can provide a workplace that is healthy and safe for the returning worker; the possibility of the worker aggravating their injury or illness at work and becoming entitled to workers' compensation; disruptions to the workplace and other workers; and any workplace relations issues that may arise if the return to work attempts are not successful, especially if modified duties are provided but may not be sustainable in the long term. We will consider each of these issues, and possible solutions, in the following sections of our submission.

## **Providing a workplace that is healthy and safe**

### ***The barrier***

Employers have obligations under state and territory laws to ensure that they eliminate or minimise risks so far as is reasonably practicable. The penalties for not doing so are high, both for organisations and the officers that have overall control of those workplaces.

### ***A possible solution***

A private sector life insurer who is attempting to facilitate a return to work for one of their clients may be able to assist the employer to identify how best to modify the workplace and/or work to protect the returning worker. This could be achieved by funding the services of a Work Health and Safety Adviser or Occupational Rehabilitation Provider to assist the employer to adjust or modify the workplace. It may also be appropriate for the life insurer to fund the costs of modifications that are required.

## **Risks of Workers' Compensation Claims**

### ***The barrier***

If work contributes to an aggravation of a pre-existing injury or illness, or the worker has a new injury due to restrictions created by their injury or illness, there may be an entitlement to workers' compensation payments.

An accepted workers' compensation claim creates a range of obligations for employers, including facilitating return to work and providing suitable duties for a significant period of time; in some jurisdictions that obligation does not have a clear end point.

The occurrence of a claim will also impact on the premium that an employer pays for workers' compensation insurance, usually for a period of three years, but in some circumstances the impact could be longer. If the employer is large, this can be a major cost impact.

### ***A possible solution***

Dealing appropriately with the health and safety risks, as outlined above, may reduce the concern an employer has about this risk, but it will not completely address it.

This is not a risk that can be dealt with by the private sector life insurers in isolation. In order to protect an employer from the risk of workers' compensation obligations and costs there would need to be an arrangement made with the workers' compensation scheme to cover any potential costs. It is likely that this could only occur if legislation was changed in each workers' compensation jurisdiction.

## **Disruptions to the workplace and other workers**

### ***The barrier***

When someone returns to work at a lower capacity than normal, there are fears of disruption to the workplace and other workers. This may be due to the need to provide real support to the person for them to be able to do a job that would normally be undertaken by one person. It may be due to concerns about how other workers will, and should, respond to the worker's capacity issues.

### ***Possible solution***

These issues should be contemplated when planning the return to work.

The private life insurer may have ways that they can compensate the employer for any extra costs associated with the worker returning to work, e.g. reimbursing the cost of engaging another worker to assist the injured worker.

The potential impact on other workers should also be considered, including any concerns they have about how to respond to the worker's injury / illness.

With the agreement of the returning worker, it may be helpful to provide information to other workers about how their injury / illness might impact them and the workplace, and how workers should best respond to issues that arise, e.g. if the illness leads to shaking, what would be 'normal' considering the condition and when might there be a need to intervene and seek medical assistance.

**Workplace relations issues that may arise if the return to work attempts are not successful or sustainable.**

***The barrier***

Employers have a range of obligations placed on them by the Fair Work Act. Most significantly in relation to this issue, an employer cannot terminate a workers' employment because of a temporary absence due to illness or injury. Once the absence is deemed to no longer be 'temporary' (as defined in the Fair Work Regulations), subject to following due process, an employer can commence a process that determines whether the worker will be able to undertake their inherent requirements of their pre-injury role. If the worker is unable to return to their pre-injury duties, termination of employment may be the outcome.

An employer may be concerned that their ability to withdraw from a return to work process may be restricted by the provisions of the Fair Work Act if they have facilitated an unsustainable return to work for a worker who would otherwise be on a 'non-temporary' absence.

***Possible solution***

Consideration could be given to an approach which allows the employer and employee to enter into an agreement for a time limited, but extendable, 'work trial', without impacting on the provisions associated with 'temporary absence'.