

25 August 2023

The Hon Kyam Maher MLC  
Attorney-General of South Australia

*Via email:* attorneygeneral@sa.gov.au

Dear Attorney

**Re: Return to Work (Employment and Progressive Injuries) Amendment Bill 2023**

The South Australian Chamber of Mines and Energy (SACOME) is the leading industry association representing the resource and energy sector in South Australia, the powerhouse of the State's economy.

SACOME welcomes the opportunity to seek clarity and provide comment on the Government's draft Return to Work (Employment and Progressive Injuries) Amendment Bill 2023 and associated Regulations. SACOME acknowledges the primary purposes of these amendments is to simplify processes under s 18 of the *Return to Work Act* (the Act) and to make compensation fairer for victims of dust diseases.

To inform its submission, SACOME has consulted relevant member companies.

In addition, and pursuant to the *Work Health and Safety Act 2012*, SACOME is a member of the Mining and Quarrying Occupational Health and Safety Committee (the Committee). The purpose of the Committee is to promote high work health and safety standards within the sector, with a particular focus on dust diseases, and administers the Fund formerly known as the Workmen's Compensation Silicosis Scheme.

Our comments are principally confined to the compensation provisions for victims of dust diseases and the need for further clarity regarding the employer's duty to provide work in the context of labour hire arrangements.

**Compensation provisions**

The proposed cl 4 would allow workers who have been diagnosed with dust diseases to *elect* to have average weekly earnings calculated at the point of the diagnosis of the

disease, rather than at the exposure time (the 'relevant date'). This may or may not be advantageous; noting, however, it is for the worker to determine.

The proposed cl 3 inserts new s 4(18) and (19) to include a definition of 'stabilised' for the purpose of impact assessments. Victims of dust diseases have, under current definitions in the Act, found it difficult to obtain an assessment of permanent impairment because it is the nature of these diseases to become progressively worse.

SACOME welcomes these changes. We further note the draft Regulations, which contain the following dust diseases to which the proposed provisions would apply:

- Asbestosis
- Asbestosis-induced carcinoma
- Asbestosis-related pleural diseases
- Mesothelioma
- Pneumoconiosis, including silicosis, and other diseases as far they are caused by exposure to crystalline silica dust.

SACOME has no additions to suggest.

### **Employer's duty to provide work**

The majority of the proposed changes in s 18 are regarded as acceptable or non-controversial by members. SACOME welcomes the codification of case law by including factors to be taken into consideration as to whether it is reasonably practicable to provide employment.

Proposed ss 18(16a) and (16b), in its application to labour hire arrangements, have caused significant concern and warrant further clarity by Government.

SACOME understands these changes to transform the labour hire market from one that is focussed on temporary casual labour in times of need to imposing a continuing statutory duty that adds ongoing commitments to host employers to provide suitable employment to workers injured in the course of the hire agreement.

It is unclear in these amendments if host employers have any standing in applications brought under the amended s 18, which begs the question as to how it is fair to impose orders on them when they are not party to proceedings.

Further questions that arose in this context were:

- What becomes of the existing labour hire agreement if its obligations are limited to that of providing a manual labourer but the duties to be provided are now clerical duties? Is the agreement enforceable or does there need to be a fresh agreement?
- What if the labour hire agreement is between an interstate company and the laws of South Australia do not apply under the agreement?
- What happens if the labour hire company is no longer in business? Does the obligation nonetheless continue?
- How can the host employer extinguish the obligation to provide suitable employment in the event that the worker returns to their pre-injury level of capacity?

It is SACOME's strong view that these provisions need to be confined. Government should engage in targeted re-consultation to ensure there are no unintended consequences for industry.

In addition, proposed ss 18(16c) and (16d), which impose a duty on self-insured employers that fall within an umbrella Group of Companies to potentially provide work in another part of the business, are vague. Members were unsure of the circumstances in which this could be characterised as reasonable or practicable, but agreed that, were this to apply, it would need to be carefully considered on a case-by-case basis.

SACOME thanks the Attorney-General's Department for the opportunity to provide a submission on the draft Bill and Regulations.

Yours sincerely



**Rebecca Knol**  
Chief Executive Officer