

## Standing Committee on Law and Justice

### 2018 review of the workers compensation scheme

#### Response from Australian Lawyers Alliance to Question on Notice – Hearing 24 July 2018

##### QUESTION (p 15 of Transcript)

**Mr DAVID SHOEBRIDGE:** Going back to the Hon. Taylor Martin's proposition, this is perhaps one clear area where we could look around the rest of the jurisdictions in the country and perhaps pick something that is far simpler with a body of interpretation around it already that could replace PIAWE, rather than yet again churning through SIRA and the bureaucrats and coming up with another model. Do you think there is some merit in that? If so, would you be willing to take that on notice?

**Mr STONE:** As I understand Mr Stanton's answer, you do not need to look at other jurisdictions, you just need to pull out one of the historical law books that I see sitting around this room and look at what we used to have and it worked all right.

**The CHAIR:** Except for the deficit, I would say.

**Mr STONE:** I do not think that was the cause of the deficit.

**Mr DAVID SHOEBRIDGE:** I do not think there is any suggestion that the definition of pre-injury earnings was the reason for the deficit.

**The CHAIR:** I am not sure the scheme in 2012 was perfect.

**Mr DAVID SHOEBRIDGE:** Maybe it is back to the future, maybe it is down to Victoria, or off to Tasmania, maybe there is some other solution. Could you take on notice a version, historical or current, that would be a great improvement on that terrible acronym PIAWE?

**Mr STONE:** Yes.

##### ANSWER

There are many options that would be a great improvement on the current version of PIAWE. That however probably says more about the current version of PIAWE than it does about the alternatives (historical or current).

In terms of the preferred method the ALA supports the options that were set out in the report by Professor Tania Sourdin in her report titled "Report on NSW Workers Compensation Arrangements in Relation to Pre-Injury Average Weekly Earnings (PIAWE)" which is dated March 2017. In her report Professor Sourdin concludes that:

*"Consultation with stakeholders has revealed a clear and unanimously held preference for legislative amendment in order to achieve a simplified PIAWE definition."*

These options that were supported by stakeholders and recommended by Professor Sourdin were:

- i) *Substitute the definition Average Weekly Earnings and Current Weekly Wage Rate that applied prior to the introduction of the Workers Compensation Legislation Amendment Act 2012 (NSW) in respect of PIAWE;*
- ii) *Amend the legislation so that the calculation methodology which currently applies in relation to exempt workers applies to all workers; or*
- iii) *Amend the definition of PIAWE to make it consistent with the definition which applies in the Australian Capital Territory (ACT).*

Option i) and ii) are in effect the same given that the methodology that currently applies to exempt workers is the same as what was used prior to the introduction of the *Workers Compensation Legislation Amendment Act 2012 (NSW)*.

Ultimately a balance needs to be achieved between simplicity and fairness. The current definition of PIAWE has never been described as simple. The more layers you add to a definition of PIAWE to take into account various circumstances the more complex the process become. It might be suggested that reverting to the pre-2012 sacrificing fairness for simplicity. The ALA disagrees and feels that the suggestion by Professor Sourdin strike a good balance between fairness and simplicity. The pre 2012 methodology was capable of catering for many different workers and flexible to adapt with changing working arrangements. In that regards the ALA supports the evidence given by Ross Stanton before the Standing Committee:

*"It was one of those strange things. No-one was agitating to have PIAWE created, no-one was complaining about the old provisions of how things were done. The old provisions in fact had a lot of inherent flexibility to them that was much easier to deal with in practice. The association's position is that it would be a great improvement to go back to what you had before 2012."*

We note that the report of Professor Sourdin was tabled before the standing committee on 25 July 2018 by Carmel Donnelly.