

SAPS Injury Management Practice Note

Transitional Arrangements

Objectives, Targets & Performance Indicators

Objective	Target	Performance Indicator
SAPS agencies apply provisions of the RTW Act for the management of existing claims (prior to 1/7/2015).	All SAPS agencies.	Agencies have an implemented procedure for the management of claims with a date of injury prior to 1/7/2015 under the RTW Act.

Purpose

To ensure the provisions of the Return to Work Act 2014 (the Act) are applied in managing existing claims (date of injury pre-1 July 2015) by South Australian Public Sector (SAPS) agencies.

Context

The Act provides in Part 10 - Transitional Provisions

An 'existing injury' is an injury that is attributable to a trauma that occurred before the designated day and is a compensable injury under the repealed Act A 'new injury' is an injury that is attributable to a trauma that occurred on or after the designated day	PART 10 Clause 29 (1)
An injury that is partially attributable to a trauma that occurred before the designated day and partially attributable to a trauma that occurred on or after the designated day will be taken to be a 'new injury'	Clause 29 (2)
Designated day means a day appointed by proclamation (1 July 2015)	Clause 27 (1)
The question as to whether an existing injury is compensable will be determined under sections 30 and 30A of the repealed Act	Clause 30 (1)
Section 7(3) of the RTW Act extends to an injury (the 'designated' injury) that is or results from an aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury where: (a) the prior injury is wholly or partially attributable to a trauma that occurred before the designated date and (b) the designated injury is wholly or partially attributable to a trauma that occurred on or after the designated day	Clause 30 (2)
A notice of injury given by a worker under section 51 of the repealed Act will be taken to be notice under Section 16 of the (new) Act	Clause 31
Employers duty to provide work under Section 18(3) extends to a worker who has been incapacitated for work before the designated day	Clause 32
A Rehabilitation Program in force under the repealed Act immediately before	Clause 33 (1)

the designated day will continue for the purpose of providing recovery and return to work services until reviewed or discontinued by the agency	
A Rehabilitation and Return to Work Plan in force under the repealed Act immediately before the designated day will continue and be taken to be a recovery/return to work plan under the (new) Act.	Clause 33 (2)
A person whose degree of whole person impairment has been assessed to be 30% or more under the repealed Act will be taken to be seriously injured under the (new) Act	Clause 34 (1)
In relation to medical expenses for an existing injury the twelve month period will be the period that runs from the designated day (1 July 2015) OR commences on or after the designated day	Clause 35 (a) (b)
In relation to weekly payments the first transition period is the period of 52 weeks commencing from the designated day and the second transitional period is the period of 52 weeks beginning immediately after the end of the initial transitional period	Clause 37(1)(a) and 37(1)(b)
A worker who in respect of an existing injury is incapacitated for work at any time during the period beginning on the designated day and ending 104 weeks from the designated day, will be entitled to weekly payments in accordance with the principles set out in Clause 37(1)(2). See table on page 3 of this Practice Note	Clause 37(1)(2)
A worker has no entitlement to weekly payments after the end of the second transitional period unless they have been assessed to be a seriously injured worker	Clause 37(3) and 37(5)
A person who before the designated day has ceased to have an entitlement to weekly payments due to discontinuance under Section 36 of the repealed Act is not entitled to weekly payments under this clause	Clause 37 (6)
The retirement age discontinuance provisions of Section 44 of the RTW Act apply to weekly payments being paid pursuant to the Transitional Provisions	Clause 40
Nothing in this Part affects the application of Section 42 of the repealed Act with respect to negotiations or redemption agreements entered into prior to the designated day	Clause 42 (1)
A person whose entitlement for non-economic loss has been determined under the repealed Act for an existing injury is not entitled to an assessment under Part 2 Division 5 of the (new) Act in relation to the same injury (or any other injury arising from the same trauma)	Clause 44
The Common law provisions do not apply to an existing injury or the death of a worker resulting from an existing injury	Clause 49
An application or other proceedings commenced before the WCT under the repealed Act before the designated day may be continued and completed under the repealed Act	Clause 50 (1)

The agency must on application by a designated worker arrange for an assessment of the degree of whole person impairment.

RTW
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Regulations 2015
Section 4

This regulation does not apply if the agency has notified the worker that they are willing to be make a determination under clause 34(2) of Schedule 9 of the Act

SAPS Practice

The designated day is to be taken as **1 July 2015**.

Any injury arising pre 1 July 2015 is defined as an “existing injury” and the transitional arrangements outlined in the table below must be applied.

If an injury post 1 July 2015, is an aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury i.e. predating 1 July 2015, the new Act applies and the claim is to be determined in accordance with Section 7 (3) of the Act.

Entitlement	Transitional Arrangement for ‘existing injuries’
Notice of injury	A notice of injury under Section 51 of the WRC Act (repealed Act) is deemed to be a notice given under Section 16 of the new Act
Medical expenses	Commence from 1 July 2015 for 12 month period to 30 June 2016. Payments cease 30 June 2016 unless worker assessed as ‘seriously injured’ or other exceptions apply e.g. therapeutic appliance to maintain capacity
Weekly payments	1 st transition period commences from 1 July 2015 for 52 weeks 2 nd transition period commences from 1 July 2016 for 52 weeks Entitlement based on step down period as at 1 July 2015 At 1 July 15 if: <ul style="list-style-type: none"> a) worker on 100%, then has 100% for 52 weeks then 80% for next 52 weeks b) worker on 90% then 90% for 52 weeks then 80% for next 52 weeks c) worker on 80% then 80% for 52 weeks then 80% for next 52 weeks Weekly payments cease at 104 weeks i.e. July 2017 unless assessed as ‘seriously injured’ or unless discontinued under the Act (s48).
Retirement age	Exceptions to the above weekly payment arrangement: Once a worker reaches 65 years of age, the entitlement to weekly payments ceases If a worker was within two years of retirement age or above retirement age when weekly payments commenced, the entitlement to weekly payments ceases at the expiration of two years
Discontinuance and reductions of weekly payments	If discontinued prior to 1 July 2015, in accordance with Section 36 of the WRC Act, no entitlement for further weekly payments under transitional arrangements or under the WRC Act. Post 1 July 15, new Act applies to discontinuance and reduction of weekly payments
Rehab & RTW plans	Plans/programs established prior to 1 July 15 will continue until reviewed or discontinued
Lump sum payments	Entitled to non-economic loss but NOT entitled to loss of future earning capacity i.e. economic loss payment

WPI 30% or more	If worker assessed with 30% WPI prior to 1 July 15, to be determined as 'seriously injured' under the new Act
Lump sum determined prior to 2008 (unknown WPI)	<ol style="list-style-type: none"> 1. If an application is received from a worker for seriously injured status, the agency MUST arrange for an assessment. 2. Agency can seek to assess WPI and issue determination under new Act
Redemptions	If negotiations, and any agreement, commenced or entered into prior to 1 July 15 can proceed
Disputes	Disputes commenced prior to 1 July 2015 will continue until completion under the WRC Act. If a dispute is lodged post 1 July 15 it will be dealt with by SAET.
Common law	Not entitled to common law action