

A new Return to Work scheme for South Australians

A policy statement to support the Return to Work Bill 2014



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A message from the Minister



The Government's reforms to workers compensation are aimed at delivering better outcomes for injured workers and their employers within a financially sustainable scheme.

The first stage of reform was completed during 2013. It consisted of a new WorkCover Charter, a new WorkCover Performance Statement and amendments to the *WorkCover Corporation Act 1994* to increase Board accountability.

The new management and Board of WorkCoverSA have worked hard with agents and providers to turn the scheme from a passive to an active footing. Those changes have resulted in significant improvements in return to work rates and a \$96 million turnaround in the scheme's financial results for the six months to the end of 2013.

In February this year, before the election, I released a policy statement outlining proposals for significant long-term reform of workers compensation in South Australia. The State Government has remained committed to wholesale reform of the scheme.

After a long period of discussion with key parties including employer and industry groups and employee representatives that commenced in early 2013, the details of a new Return to Work Scheme have been finalised.

The Return to Work Bill 2014 creates a scheme that delivers better health outcomes by providing more focused, timely and relevant recovery and return to work services – that means helping people recover more quickly and return to work and life sooner. This will, in turn, lead to a healthier and more affordable scheme.

The new scheme focuses on helping workers recover from a work-related injury more quickly and return to work by providing a service tailored to their individual needs rather than the current more general approach.

It provides less seriously injured workers with up to two years of income support and a further 12 months of medical and related support. This means workers can access up to three years intensive and focused support so they can return to work and their life sooner. This support will build on new initiatives already in place such as the early intervention program.

The most seriously injured will not be required to return to work and will receive income support to retirement age and lifetime care and support.

These reforms will create a scheme that is about getting workers healthy and back to work. This will, in turn, lead to a healthier and more affordable scheme and those benefits will flow onto employers across South Australia.

Businesses currently pay a 2.75 per cent average premium to fund the work-related injury insurance. I'm pleased to confirm the proposed scheme, if delivered as envisaged, will reduce the average premium to between 1.5 and 2 per cent.

Of course prevention of injuries at work remains an absolute priority for all of us and to deliver on this, the South Australian Government has now put in place a 50% injury reduction target to be attained by 2022.

This is the most ambitious injury reduction target in the country. To assist South Australian workplaces in achieving this goal I have directed SafeWork SA to establish a new directorate which will work directly with industry to help them prevent incidents and injuries from occurring.

I expect this new prevention focussed group will work to ensure that safety information is accessible, relevant and helpful.

SafeWork SA's prevention activities will complement the WorkCover reform programme and will provide an integrated approach to prevention and injury management which will deliver long term benefits to the economy and people of SA.

John Rau

Deputy Premier

Minister for Industrial Relations

A new Return to Work scheme for South Australians

Why does the current WorkCover scheme need changing?

Reform of workers compensation is a priority for Government as the current workers compensation scheme does not best serve workers, employers or the State.

Workers experience worse return to work outcomes than in other jurisdictions and the services provided to them are not providing early and effective recovery and return to work support.

Employers pay much more than in other jurisdictions and they are not sufficiently supported to provide their employees with opportunities to remain at work or return to work early.

South Australia needs a fair, effective and sustainable return to work scheme that provides quality services and support to injured workers and employers. To deliver this, the scheme also needs both a strong regulator and a service focused insurer.

A new Return to Work scheme

The Government is committed to improving outcomes for injured workers and their experiences when dealing with the scheme. It is also committed to reducing the amount of workers compensation premium collected from employers by at least \$180 million per annum.

To achieve this in a fair and responsible way, a new approach to the support provided to injured workers and employers, backed by legislation, is required.

The Government proposes to create a new Return to Work Scheme, starting on 1 July 2015, supported by the Return to Work Bill 2014.

How will a return to work scheme be different?

The new scheme is based around these key principles:

- a strong focus on early intervention, targeted return to work services and provision of retraining (where required)
- recognition that workers who are seriously injured require different services and support to those workers who are not seriously injured
- clearly articulated rights and obligations for all parties: workers, employers and the Corporation
- a simple and efficient dispute resolution process with an improved framework including clear boundaries and requirements for evidence-based decision making.

The new Scheme is considered to be the fairest possible, within the cost-limitations, with significant support and high quality services provided to injured workers for their recovery and return to work.

Strong management and regulation

ReturnToWorkSA (RTWSA) will be responsible for administering the new Scheme. They will be expected and required to meet high-quality service standards focused on early intervention and achieving sustainable return to work outcomes.

Meaningful obligations will be placed on RTWSA to achieve the objectives of the new legislation.

Service Standards are included in the legislation about how the Corporation deals with workers and employers and meets their reasonable expectations.

A sustainable, affordable scheme for employers

Early intervention and improving injury management approaches, including the involvement of the employer, are at the heart of the new Scheme and will provide improved health and life outcomes for people injured at work.

The new Scheme is designed, if everything is implemented and delivered as expected, to have a break even premium rate of less than 2%. This is a significant change that will provide employers with financial relief from the cost impost of the current scheme.

Premium system changes

The premium system continues to allow for financial incentives that recognise the different circumstances and levers for small, medium and large employers.

There will no longer be a cap on industry premium rates, which will remove the current cross-subsidies and allow industry ratings to closer reflect their natural claims experience.

The costs associated with secondary injuries will be included in all parts of the premium calculation.

Some things will stay the same

Useful definitions and provisions that work well in the existing Act have been replicated in the Return to Work Bill 2014 to maintain consistency wherever possible. Examples include the provisions relating to average weekly earnings, reduction or discontinuance of weekly payments, employer registration and funding and self-insurance.

Rights and obligations for employers

RTWSA will work with employers to assist them in understanding their rights and meeting their obligations under the Act.

Employers have a right to expect support in claims management and early intervention from RTWSA.

Employers are obliged to:

- support their workers' participation in recovery and return to work activities
- provide suitable employment
- pay an appropriate wage for any alternative or modified duties or return to suitable employment.

An employer (who has 30 or more workers) must also appoint (and retain) a return to work co-ordinator to assist injured workers to remain at or return to work as soon as possible and to assist the preparation and implementation of recovery/return to work plans.

Changes to benefits and services

Making a claim

To make a claim under the Return to Work scheme, there needs to be a strong connection between the injury and the worker's employment.

- For a physical injury to be accepted it must arise out of or in the course of employment and the employment must be **a** significant contributing cause of the injury.
- For a psychiatric injury to be accepted employment must be **the** significant contributing cause and have not arisen from various reasonable actions.

Workers must be offered interim payments if their claim is not determined within 10 business days.

Approximately 70% of new claimants either stay at work or return to work in less than two weeks.

Support and services

There will be a strong focus on early intervention, with support provided to employers and injured workers in the work place to help identify suitable duties and ensure everyone understands their rights and obligations in the return to work process.

The new scheme makes an important distinction between workers who are seriously injured and those who are not-seriously injured to recognise the different supports and services required.

Seriously injured workers will be those workers with an assessment of 30% or more whole person impairment (WPI). An interim decision to consider a worker as seriously injured, can be made prior to a WPI assessment being undertaken.

Support for seriously injured workers

Seriously injured workers will be offered life time care and support. They will be entitled to weekly income maintenance payments of:

- 100% of notional weekly earnings from 0 to 52 weeks
- 80% of notional weekly earnings from 53 weeks until retirement age

Seriously injured workers can also either:

- access a redemption for weekly payments by agreement between the injured worker and the Corporation; or
- make a common law claim for economic-loss damages, where their employer's negligence caused or contributed to the injury.

Medical, health and support services will be provided by the scheme for the life of the worker.

Lump sum payments for non-economic loss will continue to be available based on the worker's whole person impairment.

There will be no obligation placed on seriously injured workers to return to work. However if the worker is willing and able, return to work, job seeking and retraining support will be provided.

Support for non-seriously injured workers

For non-seriously injured workers, the scheme focuses on providing timely and personal support for the worker to return to work.

Income support

The step-downs in weekly payments have been amended to provide increased financial support:

- 100% of notional weekly earnings from 0 – 52 weeks
- 80% of notional weekly earnings from 53 weeks to 104 weeks

Income maintenance payments will be time-banded and will cease at 2 years from the first date of incapacity.

About 45.6% of people injured after the commencement of the new Act and receiving income maintenance will receive additional payments because of the changes to step-downs.

Workers may receive a redemption payment in place of weekly payments, by agreement between the injured worker and the Corporation.

Medical, health and return to work services

Injured workers who are likely to be incapacitated for work for more than 4 weeks will have a recovery/return to work plan prepared.

Targeted, intensive and customised support will be available to help injured workers return to work, either with their pre-injury employer or by providing skills recognition or development and job seeking support to return to work in a new occupation or with a new employer.

Workers will be entitled to be compensated for costs of medical services that are reasonable, necessary and reasonably incurred. This entitlement is also time-banded and will cease 12 months after income support ends. Although pre-approved surgery, aids and prosthetics will continue to be available.

Compensation for permanent impairment

There will be one assessment and payment for permanent impairment that results from 1 or more injuries arising from the same trauma.

A lump sum payment for permanent impairment (non-economic loss) will continue to be available for workers with a physical injury where the whole person impairment (WPI) is 5% or greater.

Compensation for loss of future earning capacity

An additional lump sum payment for loss of future earning capacity (economic loss) will be available to workers whose whole person impairment for a physical injury is 5% or greater and less than 30%.

The amount payable will be based on:

- level of permanent impairment
- age at the time of injury and number of years to retirement age
- hours worked per week at the time of injury.

EXAMPLE OF NEW ECONOMIC LOSS LUMP SUM

A person is injured at 35 years old. They were working full time hours and are assessed as having a WPI of 10%.

- the maximum economic lump sum for 10% WPI is \$41,342 (indexed)
- because they are 35 years old, the age factor to apply is 90%
- because they work full-time, the hours worked factor is 100%
- The calculation is therefore 90% of 100% of \$41,342
- The amount payable to the worker is:
 $0.9 \times 1.0 \times 41,342 = \$37,207.80$

Note: this payment is in addition to the lump sum payment for permanent impairment, which is \$20,768. This means that under the new scheme, a worker under this example would receive \$20,768 + \$37,207.80 which equates to \$57,975.80 in total. Under the current Act, the same worker would receive \$20,641 (2014 indexed).

Transitional arrangements for existing claims

Subject to the passing of the Return to Work Bill, the new scheme will commence from 1 July 2015.

Existing claimants, who are not seriously injured, will be supported during the transition to the new scheme. They will be eligible for an additional 2 years income maintenance support where a return to work has not yet been achieved. An additional year's medical services will also be provided once income maintenance payments cease.

Case managers will be offering targeted, intensive and customised support to assist existing claimants to return to work, either with their pre-injury employer or by providing retraining and job seeking support to return to work with a new employer.

Existing claimants who are seriously injured (determined as having a whole person impairment of 30% or more) will continue to receive income maintenance support and medical services from the scheme.

Review of the scheme reform

An independent review of the reforms is required to commence three years after the commencement of the new scheme.

Specifically, the review will need to consider whether the reforms and the dispute resolution approach (including the resolution of medical questions) has achieved a significant reduction in the number and duration of disputes.

Additional changes for workers

- Workers will be able to apply to the Tribunal for an order for their pre-injury employer to provide alternative duties, if the employer is not meeting their obligations to support the worker's return to work.
- The retirement age has been amended to align with the Federal aged pension age.
- The amount of income support provided will, where necessary, be increased so that it is not less than the Federal minimum wage.
- Income maintenance can continue (on request) in relevant disputes before the Tribunal.
- When the scheme is performing financially well, additional funding will be allocated to providing retraining and job seeking services to workers whose entitlements have ceased and who have not returned to work.
- The maximum lump sum payment for death will be made to a worker's partner(s) and child(ren) regardless of dependency.
- Medical certificates will certify workers' capacity rather than incapacity and will be required to support any periods when income support is payable.

Simple and efficient dispute resolution pathways

A new South Australian Employment Tribunal

The Return to Work scheme seeks to minimise the potential for disputes by establishing clear boundaries and expectations for all parties about their entitlements and obligations under the legislation.

Improved, evidence-based decision making and active case management will also minimise the potential for disputes.

Where disputes do occur, the new South Australian Employment Tribunal (SAET) will be solely responsible for their resolution. SAET will be established by the South Australian Employment Tribunal Bill 2014

SAET will have powers, functions and operating arrangements similar to the South Australian Civil and Administrative Tribunal. It will be focused on resolving disputes as quickly as possible, expediting matters where possible.

Resolution of medical matters

SAET will be able to access Independent Medical Advisers (IMAs), operating under the direction of SAET, for answers to medical questions.

IMAs will be appointed by the Minister to the Independent Medical Advisory Board (IMAB).

The Minister's Advisory Committee and medical professional associations will be asked to nominate members to participate in a selection committee. The selection committee will be tasked with recommending medical practitioners to the Minister for appointment to the IMAB. This process is in place to ensure the independence of IMAB.

Again, to maintain independence, assessors of whole person impairment will also be appointed by the Minister, with the accreditation process established by the Minister's Advisory Committee.

If you have any questions about the management of your current workers compensation claim, please contact WorkCover Assist on 13 18 55

Summary of key features

Topic	Details
Injury must arise from employment	A physical injury must arise out of or in the course of employment and the employment was a significant contributing cause of the injury to be accepted. For a psychiatric injury to be accepted employment must be the significant contributing cause and did not arise from various reasonable actions.
Service Standards	Standards are included in the legislation about how the Corporation deals with employers and workers and meets their reasonable expectations.
Worker's rights and obligations * not applicable to seriously injured workers	Right to: early intervention, active case management, expect employer to participate and co-operate in assisting return to work, reasonably request the Corporation to review services or investigate non-compliance of employer, apply to the Tribunal for the employer to provide work. Obligated to: participate in all activities supporting recovery and return to work*, provide medical certificates, return to suitable employment*, take reasonable steps to mitigate any loss, give notice of a work injury occurring.
Employer's rights and obligations	Right to: early intervention, support in claims management, request a medical examination of the worker. Obligated to: support their worker's participation in recovery and return to work activities, mitigate loss, provide suitable employment, pay an appropriate wage for any alternative or modified duties or return to suitable employment, give 28 days' notice before termination of employment, register with the Corporation, pay a premium, provide information as requested, keep accounts, maintain confidentiality.
Self-insured employer's obligations and liabilities	Obligated to: support their worker's participation in recovery and return to work activities, mitigate loss, provide suitable employment, pay an appropriate wage for any alternative or modified duties or return to suitable employment, give 28 days' notice before termination of employment, register with the Corporation, pay a premium, provide information as requested, keep accounts, maintain confidentiality. Liable for: all payments of compensation for work injuries arising from employment by a self-insured employer.
Recovery/return to work plans	Injured workers who are likely to be incapacitated for work for more than 4 weeks will have a recovery/return to work plan which employers must support.
Return to work co-ordinators	An employer must appoint (and retain) a return to work co-ordinator to assist injured workers remain at or return to work as soon as possible and to assist the preparation and implementation of recovery/return to work plans.
Medical expenses * not applicable to seriously injured workers	A worker is entitled to be compensated for costs of medical services that are reasonable, necessary and reasonably incurred. This entitlement ceases 12 months after income support ends*.
Income support * capped at twice State average weekly earnings ** seriously injured workers are those with a whole person impairment assessment of 30% or more	Non-seriously injured workers will be entitled to: 100% of notional weekly earnings* (NWE) from 0 – 52 weeks 80% of NWE* from 53 – 104 weeks. The Corporation can determine a weekly amount that a worker could be earning based on their capacity to perform work. This amount will be deducted from the NWE* after 6 months' notice. Seriously injured workers** will be entitled to: 100% NWE* from 0-52 weeks. 80% of NWE from 53 weeks to retirement age.

Topic	Details
Interim benefits	The Corporation must offer to make interim payments if it fails to determine a claim within 10 business days.
Federal minimum wage safety net	Income support will, where necessary, be increased so that the combined amount (amount otherwise payable + any designated earnings) equals the Federal minimum wage. If this is required the Corporation can charge the employer for the difference through the supplementary payment system.
Lump sum payments (non-economic loss and death)	An assessment for permanent impairment will only be undertaken once in respect of any impairment that results from 1 or more injuries arising from the same trauma. A lump sum payment for physical injuries is payable where the whole person impairment (WPI) is 5% or greater.
Lump sum payments (death)	The maximum lump sum payment for death will be made to a worker's partner(s) and child(ren) regardless of dependency.
Lump sum payments (loss of earning capacity)	An additional lump sum payment for loss of future earning capacity (economic loss) will be available to workers whose WPI for a physical injury is 5% or greater and less than 30% (not available for hearing loss claims).
Redemptions	A liability to make weekly payments may, by agreement between the injured worker and the Corporation, be redeemed by a capital payment to the worker. If a seriously injured worker agrees to receive a redemption they cannot access common law.
Common law	Workers with a physical injury and with a WPI of 30% or more can pursue a common law claim. To succeed they will need to prove some level of negligence by the employer. Workers with a psychological work injury caused primarily by the negligence of their employer and with a whole person impairment of 30% or more can pursue a common law claim. Only economic-loss damages are available and will be paid by the Corporation. The rules of the Civil Liability Act 1936 apply.
Dispute resolution	The South Australian Employment Tribunal (SAET) will be solely responsible for dispute resolution. SAET will be focused on resolving disputes as quickly as possible, expediting matters where possible. Income maintenance can continue (on request) in relevant disputes during SAET.
Independent medical advice	SAET will be able to access Independent Medical Advisers, operating under the direction of SAET, where required.
Self-insured employers	An employer, or group, can apply for registration as a self-insured employer. A foreign company doesn't have to be taken into account when determining whether an employer is part of a group. The Crown and any agency or instrumentality of the Crown will be taken to be registered as self-insured employers. Renewal of registration can be made for up to 5 years. A self-insured employer must pay a fee to the Corporation. A self-insured employer can appeal various decisions to the Minister.

