

House of Assembly—No 82

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South Australia

Police (Return to Work) Amendment Bill 2015

A BILL FOR

An Act to amend the *Police Act 1998*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Police (Return to Work) Amendment Act 2015*.

5 2—Commencement

This Act will come into operation 3 months after the date of assent.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Police Act 1998*

4—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Return to Work—special provisions

1—Interpretation

- 15 (1) In this Schedule—

existing injury has the same meaning as under clause 29(1)(a) of Schedule 9 of the **RTWA**;

new injury has the same meaning as under clause 29(1)(b) of Schedule 9 of the **RTWA** (including on account of the operation of clause 29(2) of that Schedule);

prescribed entity means the agency or instrumentality of the Crown responsible for the employment of police officers;

prescribed police officer means a police officer, other than a police officer who is a seriously injured worker, who suffers a work injury that results in incapacity for work;

RTWA means the *Return to Work Act 2014*.

- (2) This Schedule applies in conjunction with the **RTWA** but in the event of an inconsistency between this Schedule and the **RTWA**, this Schedule prevails to the extent of the inconsistency.
- (3) Terms used in this Schedule and also in the **RTWA** have the same meaning in this Schedule as they have in that Act.
- (4) For the purposes of this Schedule (and without limiting Part 2 Division 1, or clause 30 of Schedule 9, of the **RTWA**), an existing injury or a new injury must be an injury that is directly related to the execution of a prescribed police officer's duty in the protection of the community.

2—Application of Schedule

- (1) Clause 4 of this Schedule applies in relation to a prescribed police officer who suffers, or has suffered, a new injury (whether before or after the commencement of this Schedule).
- (2) Clause 5 of this Schedule applies in relation to a prescribed police officer who has suffered an existing injury.
- (3) The remaining provisions of this Schedule apply in relation to a prescribed police officer who has suffered, or who suffers, an existing injury or a new injury (whether before or after the commencement of this Schedule).

3—Modification of section 33 of RTWA

Section 33 of the **RTWA** applies to a prescribed police officer with the following modifications:

- (a) despite subsection (5) of section 33, a decision under subsection (4) of that section relating to a prescribed police officer is a reviewable decision under Part 6 of the **RTWA**;
- (b) subsection (20) of that section does not apply in relation to a prescribed police officer.

4—Extended income support for prescribed police officers—new injuries

- 5 (1) Subject to this clause (and to the provisions of this Schedule and the **RTWA**), a prescribed police officer who suffers a new injury that results in incapacity for work that occurs after the end of the second designated period that applies under section 39(1)(b) of the **RTWA** is entitled to weekly payments in respect of that incapacity in accordance with the following principles:
- 10 (a) for any period when the prescribed police officer has no current work capacity—the prescribed police officer is entitled to weekly payments equal to 80% of the prescribed police officer's notional weekly earnings;
- 15 (b) for any period when the prescribed police officer has a current work capacity—the prescribed police officer is entitled to weekly payments equal to 80% of the difference between the prescribed police officer's notional weekly earnings and the prescribed police officer's designated weekly earnings.
- 20 (2) For the purposes of subclause (1), the *designated weekly earnings* of a prescribed police officer will be taken to be the current weekly earning of the prescribed police officer in employment or self-employment (if any) but not so as to include a prescribed benefit (as defined by section 37 of the **RTWA**).
- 25 (3) An entitlement under subclause (1) will be reduced (including so as to reduce the entitlement to zero) to take into account any lump sum that has been paid under Part 4 Division 6 of the **RTWA** in accordance with a scheme prescribed by the regulations.

5—Extended income support for prescribed police officers—existing injuries

- 30 (1) In the case of a prescribed police officer to whom this clause applies in relation to an existing injury—
- 35 (a) if the prescribed police officer, in respect of the existing injury, has an incapacity for work that occurs after the end of the second transitional period that applies under clause 37 of Schedule 9 of the **RTWA**, the prescribed police officer is entitled to weekly payments in respect of that incapacity in accordance with the following principles:
- 40 (i) for any period when the prescribed police officer has no current work capacity—the prescribed police officer is entitled to weekly payments equal to 80% of the prescribed police officer's notional weekly earnings;

- 5 (ii) for any period when the prescribed police officer has a current work capacity—the prescribed police officer is entitled to weekly payments equal to 80% of the difference between the prescribed police officer's notional weekly earnings and the prescribed police officer's designated weekly earnings; and
- (b) clause 35 of Schedule 9 of the **RTWA** does not apply to the prescribed police officer; and
- 10 (c) subclause (3) of clause 37 of Schedule 9 of the **RTWA** does not apply to the prescribed police officer (but paragraph (a) of this clause will apply instead in relation to the existing injury).
- 15 (2) For the purposes of subclause (1), the *designated weekly earnings* of a prescribed police officer will be taken to be the current weekly earnings of the prescribed police officer in employment or self-employment (if any) but not so as to include a prescribed benefit (as defined by section 37 of the **RTWA**).

20 **6—Economic adjustments to weekly payments for prescribed police officers**

- 25 (1) If a prescribed police officer is incapacitated for work or appears likely to be incapacitated for work for more than 1 year, the prescribed entity must, during the course of each year of incapacity, review the weekly payments being paid to the prescribed police officer under the **RTWA** or this Schedule for the purpose of making an adjustment to the amount of those payments under this clause.
- (2) Before the prescribed entity begins a review under this clause, the prescribed entity must give the prescribed police officer notice, in a designated form—
- 30 (a) informing the prescribed police officer of the proposed review; and
- (b) inviting the prescribed police officer to make written representations to the prescribed entity on the subject of the review within a reasonable time specified in the notice.
- 35 (3) An adjustment under this clause—
- (a) must be based on—
- 40 (i) changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the prescribed police officer's injury arose; or

(ii) if the prescribed police officer applies, in a designated manner and a designated form, for the adjustment to be made on the basis of changes in rates of remuneration prescribed by an award or enterprise agreement payable to a group of workers of which the prescribed police officer was a member at the time of the occurrence of the injury—changes in those rates of remuneration; and

(b) operates—

(i) in the case of an adjustment under paragraph (a)(i)—from the end of the year of incapacity in which the review is made;

(ii) in the case of an adjustment under paragraph (a)(ii)—from the prescribed entity's decision on the application, back-dated to the date of the relevant changes in rates of remuneration.

(4) If the prescribed entity makes an adjustment to weekly payments under this clause, the prescribed entity must give notice in writing, in a designated form, to the prescribed police officer—

(a) containing such information as the regulations may require as to the grounds on which the adjustment is being made; and

(b) informing the prescribed police officer of his or her rights to have the prescribed entity's decision reviewed.

7—Modification of section 48 of RTWA

Section 48 of the **RTWA** applies to a prescribed police officer with the following modifications:

(a) a notice requirement under subsection (6) of section 48 of the **RTWA** will extend to a decision to reduce or discontinue weekly payments under clause 4 or 5; and

(b) subsection (10) of that section does not apply to a prescribed police officer who is entitled to weekly payments under clause 4 or 5 (but not so as to go beyond a date where the weekly payments will come to an end in any event under either clause or under another provision of the **RTWA** (other than section 39 or Schedule 9 of the **RTWA**)).

8—Reviewable decisions under Part 6 of RTWA

A decision of a prescribed entity that relates to weekly payments under clause 4 or 5 is reviewable for the purposes of section 97 of the **RTWA**.