

South Australia

Return to Work (Transitional Arrangements) (General) Regulations 2015

under the *Return to Work Act 2014*

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Legislative history

1—Short title

These regulations may be cited as the *Return to Work (Transitional Arrangements) (General) Regulations 2015*.

3—Interpretation

In these regulations—

Act means the *Return to Work Act 2014*;

existing injury has the same meaning as in Part 10 of Schedule 9 of the Act.

4—Assessment of permanent impairment—seriously injured workers

- (1) In this regulation—

designated worker means a worker who has suffered an existing injury that gave rise to a permanent impairment under the repealed Act that gave rise to a payment of compensation for non-economic loss by way of lump sum under that Act as in existence before 1 April 2009;

relevant compensating authority in relation to a designated worker means—

- (a) unless paragraph (b) applies—the Corporation;
- (b) if the relevant existing injury arose from employment by a self-insured employer—the self-insured employer.

- (2) The relevant compensating authority must, on application under this regulation by a designated worker, arrange for an assessment of the degree of whole person impairment applying in relation to the worker in respect of the relevant existing injury to be undertaken for the purpose of determining whether the designated worker is a seriously injured worker under the Act.

- (3) An assessment under this regulation—
- (a) must be made in accordance with the Impairment Assessment Guidelines; and
 - (b) must be made by a medical practitioner who holds an accreditation under section 22 of the Act,
- (and an assessment will not be undertaken unless or until the Impairment Assessment Guidelines have been published and a suitable medical practitioner is available).
- (4) This regulation does not apply in relation to a designated worker if the relevant compensating authority has notified the worker that the relevant compensating authority is willing to make a determination under clause 34(2) of Schedule 9 of the Act.

5—Lump sum compensation—non-economic loss

- (1) In this regulation—
- relevant compensating authority* in relation to a worker means—
- (a) unless paragraph (b) applies—the Corporation;
 - (b) if the relevant existing injury arose from employment by a self-insured employer—the self-insured employer;
- 2010 regulations* means the *Workers Rehabilitation and Compensation Regulations 2010*.
- (2) The table set out in Schedule 4 of the 2010 regulations will continue to apply in respect of an existing injury—
- (a) despite the revocation of those regulations by regulations under the *Return to Work Act 2014*; and
 - (b) despite (if relevant) any assessment of a worker's degree of whole person impairment in respect of the existing injury being made under the *Return to Work Act 2014* rather than under the repealed Act (and if such an assessment is made under the *Return to Work Act 2014* in respect of an existing injury then regulation 39(1) and Schedule 4 of the 2010 regulations will apply as if any reference to a worker's whole of person impairment assessed under Part 4 Division 5 of the repealed Act were a reference to a worker's degree of whole person impairment assessed under Part 2 Division 5 of the *Return to Work Act 2014*).
- (3) Subregulation (4) applies (subject to subregulation (5)) in relation to a worker in respect of an existing injury that has given rise to an entitlement to compensation for non-economic loss under section 43 of the repealed Act if—
- (a) the existing injury has affected more than 1 part of the body; and
 - (b) there has been, before 1 July 2015, a determination under Part 4 Division 5 of the repealed Act, or an order of the Workers Compensation Tribunal, that has given rise to an entitlement to the payment of compensation under that Division but the determination or order (or a combination of both) has not covered all aspects of the non-economic loss suffered by the worker.

- (4) A worker to whom this subregulation applies may receive compensation for the non-economic loss to the extent that it has not been covered by a determination or order referred to in subregulation (3) if—
 - (a) an application under this subregulation is made to the relevant compensating authority before 1 July 2016; and
 - (b) the injury to which the application relates has stabilised (whether before or after that date); and
 - (c) the relevant compensating authority is satisfied that the compensation for non-economic loss with respect to the injury to which the application relates is payable in accordance with the provisions of Part 4 Division 5 of the repealed Act (and the 2010 regulations in the manner contemplated by subregulation (2)).
- (5) Subregulation (4) does not apply in relation to—
 - (a) an aggravation, acceleration, exacerbation, deterioration or recurrence of an existing injury that occurs on or after 1 July 2015; or
 - (b) any *sequelae* that occurs on or after 1 July 2015.
- (6) For the purposes of section 97 of the Act, a decision on an application under subregulation (4) is declared to be reviewable.

6—Requirement that regulation not take effect until disallowance

- (1) Section 185(4) of the Act does not apply to a regulation made for the purposes of section 185(3)(k) of the Act that is expressed to come into operation on 1 July 2015.
- (2) Section 186(2) of the Act does not apply to a regulation made for the purposes of section 186(1)(i) of the Act that is expressed to come into operation on 1 July 2015.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|----------------------|
| 2015 | 30 | <i>Gazette 19.3.2015 p1241</i> | 19.3.2015: r 2 |
| 2015 | 180 | <i>Gazette 25.6.2015 p3104</i> | 1.7.2015: r 2 |

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|---|--|-----------------|
| <i>r 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2015</i> |
| r 5 | | |
| r 5(1) relevant compensating authority | inserted by 180/2015 r 4(1) | 1.7.2015 |
| r 5(3)—(6) | inserted by 180/2015 r 4(2) | 1.7.2015 |