

South Australia

Return to Work (Transitional Arrangements) (Dissolution of Workers Compensation Tribunal) Regulations 2016

under the *Return to Work Act 2014*

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1—Short title

These regulations may be cited as the *Return to Work (Transitional Arrangements) (Dissolution of Workers Compensation Tribunal) Regulations 2016*.

2—Commencement

These regulations will come into operation on the day on which the *Return to Work (Dissolution of Workers Compensation Tribunal) Proclamation 2016* comes into operation.

3—Interpretation

In these regulations—

Act means the *Return to Work Act 2014*;

relevant day means the day on which these regulations come into operation;

repealed Act means the *Workers Rehabilitation and Compensation Act 1986*;

SAET means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

WCT means the Workers Compensation Tribunal established under the repealed Act.

4—Transitional provisions relating to dissolution of Workers Compensation Tribunal

For the purposes of Schedule 9 clause 52 of the Act, the following provisions will apply:

- (a) a decision, direction or order of WCT in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET;

- (b) a right of review of, or appeal against, a decision of WCT in existence before the relevant day (but not exercised before that day) will be exercised as follows:
- (i) a right of review against a decision of WCT constituted of a conciliation officer under section 95A(7) of the repealed Act may be treated as a right of review under Part 5 of the *South Australian Employment Tribunal Act 2014* against a decision of SAET constituted of a conciliation officer under that Act;
 - (ii) a right of appeal under section 86 of the repealed Act against a decision of WCT constituted of a single presidential member under that Act may be treated as a right of appeal under Part 5 of the *South Australian Employment Tribunal Act 2014* against a decision of SAET constituted of a Presidential member under that Act;
- (c) a right to make an application to WCT for a reference of a matter to a conciliation conference under section 42 of the repealed Act in existence before the relevant day by virtue of the operation of Schedule 9 clause 42 of the Act (but not exercised before that day) may be exercised as a right to make an application to SAET for a referral of the matter to a compulsory conciliation conference under the *South Australian Employment Tribunal Act 2014* and—
- (i) the provisions of section 42 of the repealed Act as in force immediately before 1 July 2015, will apply to, and in respect of, that conciliation conference; and
 - (ii) a reference to the Tribunal in section 42 of the repealed Act will be taken to be a reference to SAET; and
 - (iii) a reference to a conciliator in section 42 of the repealed Act will be taken to be a reference to a conciliation officer appointed under the *South Australian Employment Tribunal Act 2014*;
- (d) nothing in this regulation affects a right of appeal to the Supreme Court under section 86A of the repealed Act against a decision of WCT made before the relevant day in respect of proceedings of the Full Bench of WCT where those proceedings have been completed before the relevant day (and therefore are not proceedings that fall within the ambit of paragraph (e)(ii));
- (e) any proceedings before WCT under the repealed Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where—
- (i) in the case of proceedings relating to an action for the recovery of compensation under section 54 of the repealed Act as in force immediately before 1 July 2012—they may proceed before SAET (and section 54 of the repealed Act, as in force immediately before 1 July 2012, will apply to, and in respect of, those proceedings); or
 - (ii) in any other case—they may proceed as if they had been commenced before SAET;

- (f) any proceedings before WCT in relation to a reference of a matter to a conciliation conference under section 42(5) of the repealed Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed before SAET as if the conference were a compulsory conciliation conference under the *South Australian Employment Tribunal Act 2014* and—
 - (i) section 42 of the repealed Act as in force, immediately before 1 July 2015, will apply to, and in respect of, those proceedings; and
 - (ii) a reference to the Tribunal in section 42 of the repealed Act will be taken to be a reference to SAET; and
 - (iii) a reference to a conciliator in section 42 of the repealed Act will be taken to be a reference to a conciliation officer appointed under the *South Australian Employment Tribunal Act 2014*;
- (g) for the purposes of Schedule 9 clause 42 of the Act—
 - (i) any proceedings before WCT under section 42(2)(e)(iii) of the repealed Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET constituted of a Presidential member under the *South Australian Employment Tribunal Act 2014*; and
 - (ii) a right to make an application to WCT for a determination under section 42(2)(e)(iii) of the repealed Act in existence immediately before the relevant day (but not exercised before that day) may be exercised as a right to make an application to SAET constituted of a Presidential member under the *South Australian Employment Tribunal Act 2014*; and
 - (iii) section 42 of the repealed Act as in force, immediately before 1 July 2015, will apply to, and in respect of, proceedings under subparagraph (i) and an application under subparagraph (ii);
- (h) proceedings in relation to costs payable under the repealed Act in respect of proceedings before WCT completed before the relevant day may be commenced before SAET (and the provisions of Part 6A Division 7 and Part 6B of the repealed Act will apply);
- (i) SAET may—
 - (i) receive in evidence any transcript of evidence in proceedings before WCT, and draw any conclusions of fact from that evidence that appear proper; and
 - (ii) adopt any findings or determinations of WCT that may be relevant to proceedings before SAET; and
 - (iii) adopt or make any decision, direction or order in relation to proceedings before WCT before the relevant day (including so as to make a decision, or a direction or order in relation to proceedings fully heard before the relevant day); and

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- (iv) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this regulation (including by giving directions as to any procedural matter which will then have effect according to their terms).

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 3 March 2016

No 18 of 2016

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