



Introduction

I have prepared a briefing note in relation to how the Return to Work Scheme will impact on claims by workers with existing injuries.

For the purposes of this briefing note, I have assumed that the Return to Work Bill will be passed in its current form and will commence on 1 July 2015.

The transitional provisions of the Bill govern how “existing injuries”¹ will be dealt with under the Return to Work Scheme.

It is significant to note that the transitional provisions under consideration are drafted in radically different terms to the transitional provisions in the 1986 Act. The 1986 Act expressly preserved the operation of the 1971 Act for existing injuries. The Return to Work Scheme repeals the 1986 Act for existing and new injuries. So, it follows that all entitlements for all injuries will be governed exclusively by the Return to Work Scheme.

Medical Expenses

Instead of whole of life, the entitlement to medical expenses will come to an end if the worker has not had an entitlement to receive weekly payments for a continuous period of 12 months (commencing from 1 July 2015). Workers will still be able to claim for the cost of therapeutic appliances.

Permanent Impairment

A worker with an “existing injury” will not be entitled to a lump sum for permanent impairment under the Return to Work Scheme if they have already had their entitlement determined (i.e. a section 43 decision has already been made).

¹ An injury that occurs before 1 July 2015 and is compensable under the current legislation

Weekly Payments

Self-Insured Employers should be aware that the transitional provisions could significantly extend the period of entitlement of weekly payments.

Under the transitional provisions, a worker who is “entitled”² to weekly payments as at 1 July 2015 will be entitled to weekly payments for up to 104 weeks. That is, from 1 July 2015 to 1 July 2017.

Under the current legislation, the majority of claims are effectively limited to 130 weeks by virtue of the power to conduct a “work capacity” review pursuant to section 35B. There is no analogous provision in the Return to Work Scheme. The only basis to discontinue or reduce weekly payments before 1 July 2017 is pursuant to the equivalent of the current sections 36 or 38.

If a worker is entitled to weekly payments under the transitional provisions, then the duration of weekly payments paid prior to 1 July 2015 is irrelevant. As extreme examples, if a worker had received weekly payments for 1 week or 129 weeks as at 1 July 2015, both workers would be eligible for weekly payments, up to, a further 2 years.

So, it is important for self-insured employers to appreciate that some workers close to “cut off” under the current legislation will be entitled to an additional 2 years of weekly payments at the 80% rate.

Self-insured employers should be aware that the transitional provisions relating to weekly payments do not apply if weekly payments have been ceased pursuant to section 36 prior to 1 July 2015. In that event the worker has no further entitlement to weekly payments in respect of the existing injury³.

Self-insurers should carefully review all claims to check the adequacy of reserves and should carefully manage all claims to progress the claim in a manner which may provide a valid basis for discontinuance prior to 1 July 2015.

For example, rehabilitation should be directed to restoring workers to pre-injury hours/wages so that they do not have an entitlement to income maintenance. Also, where there has already been a return to work or the worker is in receipt of full wages then self-insurers should ensure a formal discontinuance determination has been issued. Also, where a worker has received weekly payments for 130 weeks then self-insurers should conduct a “work capacity” review pursuant to section 35B.

Please note that the above information does not relate to “seriously injured workers”⁴.

For further information in relation to this subject, please contact:

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² This covers workers actually in receipt of weekly payments and workers who subsequently establish an entitlement for weekly payments as at 1 July 2015

³ Clause 36(7) of the transitional provisions

⁴ A worker with a whole person impairment of 30% or more.