

A new recovery and return to work system for South Australians

A workers' compensation policy statement



www.saplan.org.au/yoursay/changes-to-workcover

A message from the Minister



In South Australia today we have a workers' compensation scheme that most people agree is not working. It does not deliver effective return to work outcomes for workers injured at work and its costs are not commensurate with the benefits it delivers.

I am committed to ensuring we have a workers' compensation system that delivers material benefit for South Australians.

One that supports workers to recover and return to work in a safe, durable and timely manner.

One that has a particular focus on the needs of workers who are seriously injured at work.

One that is very clear about the responsibilities of all parties in the recovery, re-training (where required) and return to work process.

One that resolves disputes in a simple and timely manner, with a clear focus on supporting the return to work process.

This is an important milestone in the history of workers' compensation in South Australia. We are now contemplating what we need in order to have a sustainable and affordable workers' compensation system for the future.

I have listened with great interest to the passionate views of South Australians about our workers' compensation system. I have heard what the problems are and what possible solutions might be.

What I have also heard consistently is the commitment that people have to creating a workers' compensation system that will work effectively for workers and employers.

I thank everyone for their comments and contributions to date.

This policy statement provides an outline of the State Government's view regarding a new workers' compensation system for South Australia.

I look forward to having many discussions about the features set out in this statement and leading the process to implement a new system that does deliver.

John Rau

Deputy Premier

Minister for Industrial Relations

Our vision

To have a supportive recovery and return to work system that is sustainable and affordable for South Australians

Why are we doing this?

The current South Australian workers' compensation scheme works well for 74% of workers with a work related injury as they return to work within two weeks of the injury or claim only for medical costs. However, 11% of claims extend past six months, and these claims account for 92% of the Scheme's costs. The workers staying on the scheme are experiencing some of the poorest return to work rates across Australia, with the consequence that employers are paying the highest premium rates.

What has also emerged over the last decade is strong evidence that being at work assists greatly in recovery and is essential for the health and well-being of workers.

The position statement from the Australasian Faculty of Occupational and Environmental Medicine¹ calls for action from

health professionals, employers and governments to recognise the health benefits of work. One key recommendation from the position statement is provided below:

“Government continues to support healthcare professionals, leading medical bodies, employers, unions, researchers and other interested parties to focus on the health and wellbeing of work, in line with two key principles:

- *Work, in general, is good for health and wellbeing; and*
- *Long term work absence, work disability and unemployment have, in general, a negative impact on health and wellbeing.”*

Poor return to work rates are damaging for workers, with 25% of workers who are injured at work and off work for more than 2 weeks, remaining off work for 2 years (24 months) or more.

In this context, significant change is needed to curtail the long term costs, reduce the current unsustainable scheme deficit and reduce workers' dependency on the scheme.

By creating and encouraging a sustainable and affordable workers compensation system, we will support workers in returning to work, and improve their health outcomes.



1. Realising the health benefits of work – a position statement, The Royal Australasian College of Physicians and The Australasian Faculty of Occupational and Environmental Medicine, October 2011

What are we doing?

The State Government is building a new workers' compensation system to benefit South Australia.

This means fundamental change.

South Australia needs a new system underpinned by:

- A strong commitment to the support and wellbeing of the most seriously injured at work.
- An absolute focus on recovery, retraining (where required) and return to work for those less seriously injured.
- Clear return to work responsibilities for all parties that are enforceable and have consequences.
- Simple and fast processes to resolve disputes.

This will, if implemented as envisaged, deliver a recovery and return to work system at a comparable cost to other jurisdictions. The State Government is targeting an average premium rate of between 1.5% and 2%.

What have we done so far?

WorkCover Charter

The State Government published the WorkCover Charter² in August 2013, which outlines a number of key initiatives to improve the support for workers and their return to work outcomes. The key initiatives include:

- Implementing an outcome focused return to work services model.
- Establishing early intervention programs to support workers and employers in focusing on achieving effective, timely and durable return to work outcomes.
- Improved engagement with employers' Rehabilitation and Return to Work Coordinators to support them in the work they do with workers in the recovery and return to work process.

2. The WorkCover Charter is a requirement of the *WorkCover Corporation Act, 1994*, section 17A and is available at <http://saplan.org.au/yoursay/changes-to-workcover>

- Introducing earlier and more timely assessments of return to work goals for workers to ensure retraining and/or job placement needs are identified and acted on.
- Improve the financial incentive for small employers to provide active support and suitable employment to workers suffering a compensable injury.

Board and governance structure

The WorkCover Corporation (Governance) Amendment Act 2013 was proclaimed and took effect from 21 November 2013.

The structure of the WorkCover Board has changed from a nine member Board with stakeholder representation to a seven member board with a strong commercial focus.

The new Board is now in place and had its first Board meeting in December 2013.

Consultation

The Minister for Industrial Relations has sought feedback about the current workers' compensation system from unions, business groups, and provider representatives throughout 2013.



What are the challenges and way forward?

Whilst the State Government is confident that the work done to date will lead to improvements in the return to work experience for workers and improve the sustainability of the workers' compensation system, it is clear that much more needs to be done.

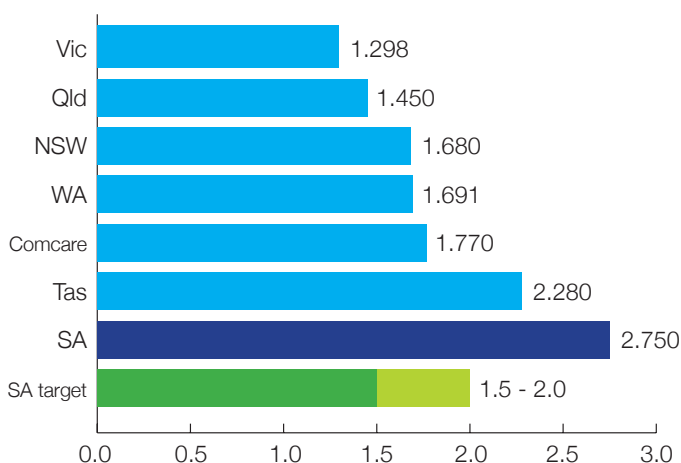
The services supporting workers are often too late and insufficient to deliver real benefit and outcomes for workers and employers. This is demonstrated by 25% of workers (injured at work and off work for more than 2 weeks) remaining off work at 2 years (24 months)³.

The current system and culture is not working to support workers to remain at or return to work.

South Australia has higher disputation rates than other comparable jurisdictions. More disputes, coupled with longer dispute resolution timeframes, contribute to poor health outcomes for workers.

The current scheme was intended to operate around the level of a 3% average premium rate scheme and, apart from the period 2003 to 2006, has operated at 3% or higher (regardless of what average premium rate was charged at the time).

Average Premium Rates – 2012-13



Source: Comparison of workers' compensation arrangements in Australia and New Zealand, Heads of Workers Compensation Authorities, July 2013

3. WorkCover data, 17 September 2013

The challenge for South Australia is to deliver a scheme where workers are strongly supported in their efforts to return to work or the community, at a cost that employers can afford. It is only by doing this that we can contribute effectively to the ongoing economic prosperity of South Australia.

In addition to initiatives already being implemented, the State Government has proposed that a new legislative framework be put in place. The key features are:

- Full income maintenance benefits to retirement and lifetime care and support for seriously injured workers.
- Access to common law.
- Strengthened thresholds for compensability.
- Strengthened return to work responsibilities for employers and workers.
- A capped scheme for workers less seriously injured.

A new recovery and return to work system for South Australians

The new recovery and return to work system is underpinned by the following principles:

- A strong commitment to the support and wellbeing of the most seriously injured at work.
- An absolute focus on recovery, retraining (where required) and return to work for those less seriously injured.
- Clear return to work responsibilities for all parties that are enforceable and have consequences.
- Simple and fast processes to resolve disputes.

Benefits for seriously injured workers

The current legislative approach in South Australia treats seriously injured workers in the same way as those less seriously injured. The seriously injured have the same obligations to return to work, in a scheme that has a 'one size fits all' compensation approach to injuries and workers.

Whilst the number of workers who are seriously injured is small, they require significant support to maximise their recovery and ability to participate in the community. They require specialised, individualised and intensive case management under a lifetime care and support model.

The new system will change the existing approach. There will be:

- Clear objective criteria for workers to be identified as being seriously injured. It is intended that serious injury cases will include injuries such as significant amputations, quadriplegia, blindness and significant burns.
- Full benefit entitlements, which will include income maintenance to retirement age and lifetime care and support. Income maintenance will be paid at 100% of notional weekly earnings⁴.

- No obligations for seriously injured workers to return to work. However, they will be supported if they wish to pursue return to work options.
- Consistency with the National Injury Insurance Scheme. The Commonwealth is planning to establish Australia-wide coverage for catastrophically injured people. We will seek to ensure our service provision integrates with this model to ensure the best possible services are provided to seriously injured workers.

Access to common law

Currently, there is no access to common law in the South Australian workers compensation scheme.

Common law will be re-introduced to the South Australian system. This recognises that a variety of compensation approaches is often useful in a community, in order to suit different needs. A benefit dependency cycle may be avoided where a worker receives a common law settlement, and can then take responsibility for the ongoing management of their injury and control of their life.

Common law will be available to workers with a compensable work-related injury, subject to appropriate thresholds and restrictions. Our common law approach will ensure workers clearly understand the process, likely timeframes and estimated damages and costs. This will put workers in the best possible position to make their decisions. There will be special provisions for seriously injured workers to ensure funds for lifetime care and support are protected.

⁴. Capped as per current legislative requirements (twice State average weekly earnings)

Strengthened compensability thresholds and return to work responsibilities

Compensability thresholds

The current test applied in South Australia requires the injury or disease to 'arise from employment', in order to be compensable. This test (sometimes known as the 1% test) is a less stringent test than that in place in other states. This is perceived by employers as unjust where the injury is predominantly caused by non-work factors – for example, age, sports or home maintenance work.

In addition, secondary injuries are identified separately and excluded from premium calculations. This creates an artificial distraction from the critical task of focusing on recovery and return to work.

Thresholds will be strengthened and streamlined:

- The entry provisions for psychiatric injury will be strengthened so that employment needs to be **the** significant contributing cause of the injury.
- The entry provision for other injuries will be reviewed.
- The separation of secondary and primary injuries will be removed.



Return to work responsibilities

An effective workers compensation system has clear expectations and boundaries in the area of return to work. Both parties, employers and workers, should have clear and definitive obligations to participate in and support effective return to work strategies and activities.

Whilst a number of initiatives are underway to improve return to work outcomes for workers and support employers during that process, the legislative framework needs further work to ensure it appropriately creates clearer responsibilities and boundaries.

- The current provisions for supplementary payments to be imposed on employers will be used as a strong tool to influence employer behaviour.
- Current provisions requiring employers to provide suitable employment for their workers will be strengthened to include the worker's right to request an investigation by WorkCover and to apply for re-instatement.
- Current provisions for workers to return to suitable employment when they have work capacity will be strengthened to ensure all parties effectively participate in the return to work process.
- Strengthened legislative provisions relating to early intervention, involvement of the employer's return to work coordinator and a timely focus on re-training and job placement when required.
- Strengthened requirements for employers to maintain the relationship with their workers, including requirements to pay income maintenance and seek reimbursements from WorkCover in a timely manner.

A capped scheme for those less seriously injured

The 2008 legislative amendments introduced further income maintenance step-downs for the scheme. The amendments moved the '100% of notional weekly earnings for 12 months' to a 13 week period and introduced two more entitlement periods, settling at 80% of notional weekly earnings after 26 weeks.

This change was made to increase the financial incentive for the worker to return to work. It is arguable, given the poor return to work results experienced in the scheme, that the step-downs have not delivered the expected improvement.

This may be because the quality and timeliness of treatment, intervention and return to work services plays a bigger part in achieving improved return to work outcomes than the reductions in income maintenance.

For workers who are less seriously injured, the income maintenance step-downs will be adjusted to better reflect the recovery and return to work process. (Note the different benefits for seriously injured workers discussed earlier.)

Their entitlement to income maintenance ceases at the 2 year point. They will have the option to pursue common law, after considering the expected timeframes, possible damages settlement and costs.

Access to medical and related services will end after the entitlement to income maintenance has ceased for 12 months. (Again, different provisions have been made for seriously injured workers).

Of the workers who are currently receiving medical and related services 12 months after income maintenance has ceased, the vast majority (about 90%) have no or reasonably low whole person impairment.

The new system is focused on recovery, re-training (where required) and return to work. A sustainable and affordable system must choose where its funds and services are best focused.

A new approach to dispute resolution

Effective dispute resolution is a necessary part of an effective workers' compensation scheme. People must have appropriate mechanisms for issues to be raised, considered and resolved. Importantly, effective dispute resolution that produces optimal outcomes for the individuals concerned, in a manner that is consistent with the objectives of the scheme, is an essential part of a healthy workers' compensation scheme.

Effective dispute resolution gives all parties confidence that the 'system works'. Workers are 'heard' in a fair manner and have the opportunity for independent consideration of their concerns.

Disputes

Income maintenance will continue to be paid when a dispute exists regarding the cessation or reduction of income maintenance payments (with payments recoverable if appropriate, once the matter is settled).

Medical assessment

Medical Panels were established in 2008 to determine a range of 'medical questions'. Whilst in broad terms, it makes sense for a medical expert to consider and resolve medical questions, the problem in practice is that issues which appear to be disputed medical questions often involve complex and mixed issues of medical opinion and non-medical facts.

Expert consideration and advice on medical matters can be invaluable to a court when considering a matter. The current Medical Panel will be replaced with Independent Medical Assessors, established within the jurisdiction of the Workers' Compensation Tribunal (WCT).

The Independent Medical Assessors will be available to the WCT to provide advice on medical matters.

A sustainable and affordable recovery and return to work system

This policy statement outlines the key features of the new recovery and return to work system.

This reform package has been designed to deliver an average premium rate of between 1.5% and 2%. I am confident that our current initiatives and this scheme design will result in a culture that really does focus on supporting workers to recover, retrain (where required) and return to work.

This will mean that South Australia has a workers' compensation system that has comparable costs to other jurisdictions – an important consideration to sustainability and affordability.

What does this mean for you?

A strong workers' compensation system benefits the whole community.

There will be a clear focus for employers and workers to actively participate in the recovery, training (where required) and return to work process.

Seriously injured workers will have access to special provisions to appropriately support them throughout their life.

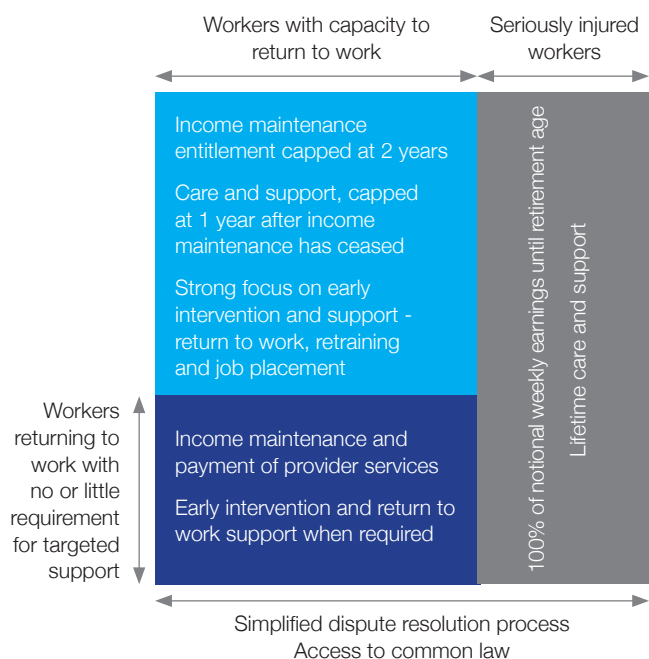
Workers will have increased choices regarding the management of their injury and compensation.

The health benefits of work will be a prime objective of the new recovery and return to work system in South Australia.

What happens next?

The Minister for Industrial Relations is actively listening to the views of unions, business groups and provider representatives.

Following consultation, a bill will be drafted to implement the new system. This will be available for further consultation during 2014.





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