

SAPS Injury Management Practice Note

Dispute Resolution

Objectives, Targets & Performance Indicators

Objective	Target	Performance Indicator
SAPS agencies have an implemented procedure regarding dispute resolution	All SAPS agencies	Implemented policy/ procedure

Purpose

To ensure SAPS Agencies have an implemented procedure in accordance with Part 6 of the Return to Work Act 2014 (RTW Act), SA Employment Tribunal Act (SAET Act), SAET Rules, Practice Directions and relevant regulations.

Context

The RTW Act outlines dispute resolution as follows:

<p>The powers of jurisdiction in the Tribunal are intended to achieve an outcome in any proceedings that is based on quick and efficient decision making that resolves disputes expeditiously and fairly.</p>	<p>Part 6 – Division 1 Section 95</p>
<p>In this part - <i>applicant</i> means the person who makes an application to the Tribunal under this Part <i>party</i> to proceedings means -</p> <ul style="list-style-type: none"> a) the applicant; and b) the relevant compensating authority; and c) if the matter is about a work injury and the worker who suffered or is alleged to have suffered the work injury is not the applicant – the worker; and d) if the matter is about a work injury and the employer from whose employment the injury arose or is alleged to have arisen is not the applicant- the employer; and e) a person who has a direct interest in the matter and has notified the registrar of the interest; <p><i>relevant compensating authority</i> in relation to a particular decision means -</p> <ul style="list-style-type: none"> a) if the decision was made by the Corporation or a body corporate exercising powers delegated by the Corporation – the Corporation or the relevant delegate; or <p>if the decision was made by a self-insured employer – the self-insured employer; <i>rules</i> means the rules of the Tribunal.</p>	<p>Section 96</p>

Reviewable Decisions –

Section 97

Pursuant to section 97 of the RTW Act the following decisions are reviewable:

- a) a decision made as a result of an application under section 21 (3) –
 - pending an assessment of permanent impairment, the Corporation may on its own initiative, or must on application made by the worker in accordance with the regulations, make an interim decision to the effect that a worker will be taken to be a seriously injured worker under this Act if –
 - (i) it is satisfied, or it appears, that the worker’s injury has or will result in permanent impairment; and
 - (ii) it appears that the degree of whole person impairment is likely to be 30% or more
 - b) a decision about the nature or scope of recovery/ return to work services provided, or to be provided, for a worker;
 - c) a decision relating to a recovery/ return to work plan, or a provision of a recovery/ return to work plan (including on a review of a recovery/ return to work plan), on the ground that the decision or the provision is unreasonable;
 - d) a decision as to a permanent impairment matter under Part 2 Division 5;
 - e) a decision on a claim under Section 31 –
 - on receipt of a claim, the Corporation may undertake such investigations and inquiries as are necessary in order to achieve an evidence based decision with respect to the determination of the claim
- (and , if a claim is accepted, will include the calculation of average weekly earnings under section 5 and the amount of pay under Part 4);
- f) a decision to redetermine a claim under section 31;
 - g) without limiting a preceding paragraph – a decision on a claim for compensation costs under section 33 (2);
 - a) The necessary costs of medical services;
 - b) hospitalisation and all associated medical, surgical and nursing services
 - c) approved recovery/return to work services;
 - d) travelling, or being transported, to and from any place for the purpose of receiving medical services, hospitalisation or approved recovery/return to work services (but not where the worker travels in a private vehicle);
 - e) where it is necessary for the worker to be accommodated away from home for the purpose of receiving medical services or approved recovery/return to work services—such accommodation (but not exceeding limits prescribed by regulation);
 - f) attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, where the injury is such that the worker must have nursing or personal attendance;
 - g) the provision, maintenance, replacement or repair of therapeutic appliances;
 - h) medicines and other material purchased on the prescription or recommendation of a health practitioner;

<p>i) other services (or classes of services) authorised by the Corporation.</p>	
<p>h) a decision not to approve the provision of services or the incurring of costs on an application under section 33(17)</p>	<p>Section 97 Section 33(17)</p>
<ul style="list-style-type: none"> • A worker is entitled, in relation to prescribed classes of services, appliances, medicines or materials referred to in subsection (2), to apply to the Corporation for approval to obtain the provision of those services or otherwise to incur costs on the basis that the Corporation will agree in advance to be liable for the relevant costs rather than the worker being required to claim compensation under this section once the costs have been incurred. 	
<p>i) A decision not to approve surgery under section 33(21)(b)(ii)</p> <ul style="list-style-type: none"> • In relation to surgery, any associated medical, nursing or medical rehabilitation services (including the cost of hospitalisation), where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for such surgery to be undertaken at a later time due to the impact (or likely impact) of the work injury on the worker's health and capacity (or future health and capacity) 	<p>Section 33(21)(b)(ii)</p>
<p>or the provision of services under section 33(21)(b)(iii)</p> <ul style="list-style-type: none"> • in relation to prescribed classes of injury, where the Corporation has determined or accepted, on application made before the end of the period referred to in subsection (20), that it is reasonable and appropriate for the services to be provided after the end of that period (and then, in such a case, the services will be compensable to the extent determined by the Corporation) 	<p>Section 33(21)(b)(iii)</p>
<p>j) a decision to review, vary, discontinue or suspend weekly payments under Part 4 Division 4 Subdivision 2, Subdivision 3 or subdivision 4</p>	
<p>k) A decision to suspend weekly payments under section 51(4)</p> <ul style="list-style-type: none"> • If an injured worker leaves Australia without giving the notice required under subsection (1), the Corporation may suspend weekly payments to the worker 	<p>Section 51(4)</p>
<p>l) Without limiting a preceding paragraph, a decision as to the amount payable under Part 4 Division 6 or Division 7 or any decision under Part 4 Division 8 (including on a review under section 60);</p>	
<p>m) A decision on a claim made by the Tribunal made in the exercise of its jurisdiction under Part 7;</p>	
<p>n) A decision declared to be reviewable by regulations made for the purposes of this section.</p>	

South Australian Employment Tribunal Act 2014 (SAET Act)

Division 2—Main objectives of Tribunal

8—Main objectives of Tribunal

The main objectives of the Tribunal in dealing with matters within its jurisdiction are—

- (a) in the exercise of its jurisdiction, to promote the best principles of decision-making, including—
 - (i) independence in decision-making; and
 - (ii) natural justice and procedural fairness; and
 - (iii) high-quality, consistent decision-making; and
 - (iv) transparency and accountability in the exercise of statutory functions, powers and duties; and
- (b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and
- (c) to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and
- (d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- (e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- (f) to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and
- (g) to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

SAPS Practice

- All decisions made by SAPS Agencies as listed in definitions under “Reviewable Decisions” are reviewable by a person who has a direct interest in the decision – usually the injured worker.
- The SAET has been conferred with jurisdiction to deal with such Applications for Review.
- Applications for Review may be made by the applicant to the SAET within one month of receipt of the decision, unless the SAET allows an extension of time. The SAET must only allow an extension of time if it is satisfied that good reason exists for the delay and unreasonable disadvantage does not arise because of the delay. The application is to be made direct to the SAET, which will then forward the application to the relevant compensating authority for reconsideration

Reconsiderations are required under Section 102 of the RTW Act to be undertaken by a “suitable person” (not the decision maker) who has been nominated to the SAET by the SAPS Agency.

- The reconsidering officer should acquaint themselves with the history and relevant circumstances of the decision and if necessary, contact the worker or their legal representative to clarify issues and explore possible avenues for resolution of the matter.
- If on reconsideration it becomes evident that the matter can be resolved by varying the decision, the reconsidering officer should issue a Variation of Disputed Decision to the SAET and relevant parties within 10 business days.
- If the reconsideration outcome is to confirm the decision, a Confirmation of Decision Under Review must be provided to the SAET and relevant parties within 10 business days and an indexed, paginated book of relevant documents must be provided to the SAET within 21 days from receipt of the Application for Review.
- SAPS Agency staff or the Crown Solicitor’s Officer (if referred by the SAPS Agency) must then attend to the listed Initial Directions Hearings, Conciliation Conferences, Pre-Trial Hearings and Trials until the dispute has been resolved and finalised.

N.B Please refer to the process in the Section 18 Practice Note – Employer’s Obligation to Provide Work under ‘Transfer between South Australian Crown Agencies’ if disputes arise relating to transfers between Government agencies.

N.B Clear and open communication in case management may assist in reducing the incidence of disputes. All disputes should be dealt with in an expeditious manner and a conciliatory approach adopted.