



Guidelines for workplace return to work programs

These guidelines are made under section 52
of the *Workplace Injury Management
and Workers Compensation Act 1998*.

These guidelines commence on
1 January 2011

September 2010

Difficulties about return to work?

Contact WorkCover Assistance Service on telephone **13 10 50** or email contact@workcover.nsw.gov.au

Do not delay!

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This document replaces the 2003 publication '*Guidelines for Employers' Return to Work Programs*'.

The Guidelines as stated herein are subject to review and may be amended by WorkCover NSW.

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Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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1. INTRODUCTION

We all have a social and economic interest in ensuring that injured workers return to work safely and as soon as possible following a workplace injury or illness. The longer an injured worker has to wait for assistance the less likely it is to be effective and the more likely that the worker will develop long term disability and work loss. Hence, early return to work is a central feature of the workers compensation system in NSW.

Recent research^(1, 2, 3, 4) affirms that the best place to rehabilitate most injured workers is in the workplace. Apart from promoting a quicker recovery, activities undertaken at work have proven to be more therapeutic than prolonged rest or only receiving treatment in a clinic away from the workplace. Having the injured worker at work also allows for the early identification of any issues that may hinder a worker's rehabilitation and the development of strategies to overcome them.

Effective injury management relies on the cooperative efforts of all participants – employers, workers, insurers⁵, doctors and other health practitioners. The key principles underlying the safe, early and durable return to work of injured workers include:

- having systems in place to ensure everyone at the workplace agrees, understands and knows what to do in the event of an injury
- early reporting of injuries and early intervention
- the workplace being the most effective place for the majority of workers to recover from their injury
- key parties working together.

The requirement that employers be involved in the return to work of injured workers was introduced in the *Workers Compensation Act 1987*. In 1998, the *Workplace Injury Management and Workers Compensation Act* was proclaimed and introduced the concept of injury management to include treatment, rehabilitation and retraining of injured workers, claims management and employment management practices. In addition, the new law changed the name of a 'rehabilitation program' to a 'return to work program'. Further regulatory changes in 1999 changed the name of the rehabilitation coordinator to return to work coordinator and allowed for shared return to work coordinator arrangements between employers.

1 Waddell G, Burton AK: Is work good for your health and well-being? Norwich, UK: The Stationery Office, 2006.

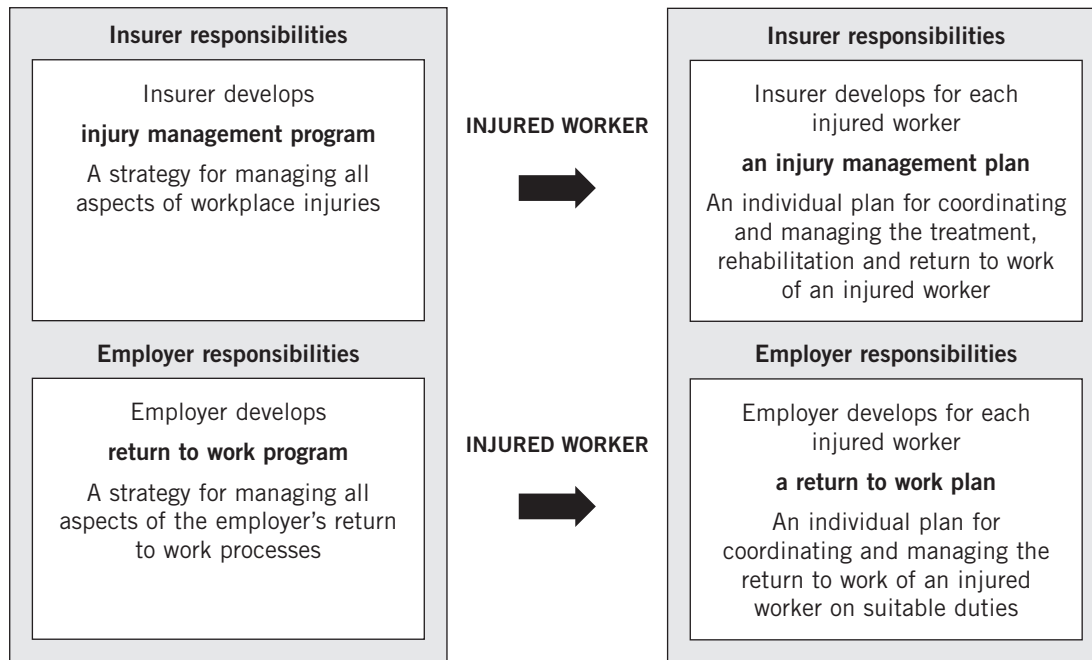
2 Burton AK, Kendall NAS, Pearce BG, Birrell LN, Bainbridge LC: Management of upper limb disorders and the biopsychosocial model. Health Safety Executive RR 596: Norwich 2008.

3 Bevan S. Fit for work: musculoskeletal disorders and labour market participation. The Work Foundation, London, UK, 2007.

4 WorkCover NSW, Improving outcomes: integrated, active management of workers with soft tissue injury, 2008.

5 Insurers include Scheme Agents for the nominal insurer and self and specialised insurers who hold a licence under Division 3 of Part 7 of the 1998 Act.

Employers must document policies and procedures outlining the system to manage workers who suffer a work related injury or illness. This document, called a return to work program, must be consistent with the injury management program of the employer's insurer. The injury management program is the blueprint statement that sets out how treatment, rehabilitation, claims management and employment practices are to be coordinated to achieve a safe and durable return to work for an injured worker.



The *Guidelines for workplace return to work programs* will assist employers to comply with their legislative obligations under the *Workplace Injury Management and Workers Compensation Act 1998*, the *Workers Compensation Act 1987* and the *Workers Compensation Regulation 2003*.

These guidelines apply to Category 1 employers.

A Category 1 employer is an employer:

- with a basic tariff premium exceeding \$50,000 per annum, or
- who is self insured, or
- who is insured by a specialised insurer, and who employs more than 20 workers.

A Category 2 employer is any employer who is not a Category 1 employer.

Guidelines for shared arrangements for return to work coordinators for Category 1 and Category 2 employers and confidentiality guidelines are also contained in this publication.

A checklist *Return to work program content* to assist all employers to comply with the legislative requirements of injury management is contained in section 4.

2. OBLIGATIONS

(i) EMPLOYER

The employer must:

- ensure the health, safety and welfare at work of all workers
- have a workers compensation insurance policy covering all employees
- initiate development of a return to work program with the commencement of business operations and have the program in place within 12 months of becoming an employer
- develop, implement and review the return to work program in consultation with workers and relevant unions at least every two years
- produce the program in printed form
- display a summary of the program prominently in workplaces
- display, at a minimum, a summary in the workplace of the Workers Compensation legislation about giving notice of an injury and the making of a claim
- appoint a trained return to work coordinator with the necessary qualifications, authority and resources to negotiate, develop and implement return to work policies and procedures
- select and nominate approved workplace rehabilitation providers in consultation with workers and relevant unions
- maintain a register of injuries in which workers record details of work-related injuries (refer to Appendix G)
- notify the insurer of all workplace injuries within 48 hours
- repay the insurer the equivalent of one week of the injured worker's weekly compensation if the injury is not notified within five days of the employer becoming aware of the injury
- keep a record of wages paid for at least the previous five years (failure to comply may result in a fine of \$500 or prosecution with a penalty of up to \$55,000 – current at time of printing)
- provide wage information to the insurer within 7 days of request from insurer or receipt of information
- notify WorkCover immediately on **13 10 50** of serious incidents
- not dismiss an injured worker because of the injury within six months of the worker first becoming unfit for employment
- provide workers with adequate information about workers compensation and return to work procedures, including their choice of doctor and rehabilitation provider and how to change providers, if required
- advise the worker's nominated treating doctor and insurer on the requirements of the worker's usual job and availability of suitable duties
- make suitable duties available to injured workers who are certified fit for suitable duties (partially incapacitated) if reasonably practicable to do so
- comply with medical restrictions resulting from the work injury as obtained from the treating doctor

- notify the insurer immediately if unable to provide suitable employment for a partially incapacitated worker and ask the insurer about any impact on premium
- provide a worker with a workers compensation claim form if requested
<http://www.workcover.nsw.gov.au/formspublications/publications/Pages/Workersinjuryclaimform.aspx>
- send an injured worker's claim form to the insurer within seven days of receipt
- participate and cooperate in the establishment of an injury management plan for an injured worker and give effect to that plan at the workplace
- comply with obligations imposed on the employer in the injury management plan written by the insurer
- cooperate with the insurer in engaging assistance from a workplace rehabilitation provider if the worker faces barriers in returning to work
- cooperate with the insurer in providing retraining or different job opportunities to an injured worker who is unable to return to their pre-injury job
- respect the privacy and confidentiality of medical examinations by arranging a separate discussion between the worker, doctor and employer.

(ii) WORKERS

Workers must:

- cooperate with the employer to prevent work-related injuries to self and others
- cooperate with the employer to enable the employer to meet their return to work obligations
- cooperate in workplace changes designed to assist the return to work of fellow workers if injured:
 - notify the employer of a workplace injury as soon as possible after the injury happens
 - specify one nominated doctor or medical practice who is prepared to participate in the development and implementation of an injury management plan
 - give consent for the nominated treating doctor to provide information for the purposes of an injury management plan and return to work plan
 - participate and cooperate in the establishment of the initial and subsequent injury management plans
 - make all reasonable efforts to return to work with the pre-injury employer as soon as possible
 - comply with the activities detailed in injury management plan(s)
 - advise of any difficulties with return to work as soon as practical to prevent delays in addressing any problems.

If the injured worker unreasonably refuses to comply with their injury management plan, the insurer can suspend weekly benefits. Before suspending benefits, the insurer must write to the worker stating the reasons for suspension and what the worker must do to prevent the suspension.

(iii) INSURER

The insurer must:

- ensure that employers are made aware of their legislative obligations in relation to the insurer's injury management program
- within three working days of being notified that a worker has sustained a significant injury, contact the employer, worker and (if necessary) the nominated treating doctor. Subsequently, the insurer must develop an injury management plan in line with timeframes in the insurer's injury management program
- within seven days of being notified by the employer (or the worker, or another person) that a worker has sustained a significant injury, begin provisional payments of weekly benefits and medical expenses, or advise the worker and the employer why they will not make payments
- consult with the injured worker, employer and nominated treating doctor in the development of an injury management plan
- provide the injured worker, employer and nominated treating doctor with information on the injury management plan initially and as the plan progresses
- inform the worker that their entitlements to weekly benefits can be suspended if they do not reasonably comply with their injury management plan and what they must do to prevent the suspension
- have procedures in place for an injured worker to change their nominated treating doctor and inform the injured worker of these requirements
- consult with the injured worker, employer and nominated treating doctor when referring to a workplace rehabilitation provider. Advise the injured worker that they can choose a rehabilitation provider and inform the injured worker of the process to be followed when changing a rehabilitation provider
- ensure vocational retraining and/or assistance to obtain employment with a new employer is arranged for an injured worker as soon as it is identified that a return to pre-injury duties and provision of suitable duties is no longer possible
- ensure accuracy of payment of weekly benefits in accordance with wage as advised by the employer and legislative requirements
- provide injured worker with information about their weekly benefits and entitlements and how they may change over time.

(iv) NOMINATED TREATING DOCTOR

The nominated treating doctor must:

- complete WorkCover medical certificates
- arrange and monitor appropriate treatment
- specify medical restrictions and advise on the suitability of duties offered by the employer
- provide information to the insurer and employer in relation to injury management and return to work plans for the injured worker
- certify time off only if it is medically necessary
- promote an early and safe return to work of the worker

- review the progress of recovery of the injured worker and revise the worker's medical management as needed
- arrange referral to an approved workplace rehabilitation provider, if required, and if not initiated by the employer or insurer
- advise employer/insurer on availability for discussion about injury management and return to work.

(v) WORKPLACE REHABILITATION PROVIDER

The workplace rehabilitation provider must:

- deliver services to workers, employers and insurers in a cost effective, timely and proactive manner to achieve a safe and durable return to work
- promote an early and safe return to work of the worker
- ensure the needs of the worker and employer are identified by means of adequate and appropriate assessment
- identify barriers to injured worker's return to work and develop strategies to address these
- identify and design suitable duties for the worker to assist the employer to meet their obligations in providing suitable employment
- identify and coordinate rehabilitation strategies that ensure the worker is able to safely perform their duties
- consider workplace industrial relations and human resource matters that may affect the worker's return to work
- focus initially on return to work in the worker's pre-injury employment or, if that is not possible, on other employment in line with the hierarchy of return to work
- arrange appropriate retraining and placement in alternative employment when the worker is unable to return to pre-injury duties
- communicate with relevant parties throughout service provision to ensure progress towards the return to work goal.

3. HOW TO DEVELOP A WORKPLACE RETURN TO WORK PROGRAM

This section outlines the essential elements of a workplace return to work program, with guidelines for its establishment.

A return to work program is a summary of an agreed system that an employer must have in place in readiness for the management of workers who suffer a work-related injury or illness. The return to work program is a system agreed by the employer and worker representatives. It is made up of a series of policies and procedures. The underlying principles of the system and examples of wording are outlined in the following pages. The final wording and format is a decision for each workplace.

The policies and procedures outlined in these Guidelines are a minimum requirement for a return to work program. Employers, in consultation with workers, may add additional policies or procedures that are relevant to their workplace. The return to work program for an individual employer must reflect the business practices, culture and environment of the workplace.

The workplace return to work program forms a component of the overall injury management approach of the insurer and must be consistent with that insurer's injury management program. Insurers' programs may require employers to include specific policies and procedures.

The effectiveness and continued relevance of the return to work program should be reviewed on a regular basis and agreed by the relevant parties. All programs should set specific dates for review appropriate to the circumstances of the workplace. At a minimum reviews should be conducted every two years.

4. RETURN TO WORK PROGRAM CONTENT

A return to work program must cover the following key areas:

- preventing occupational injuries and illness
- how the return to work program was developed and implemented including relevant information and training strategies for the workforce
- consulting with workers and any industrial unions representing those workers
- early commencement of injury management and early return to work
- providing suitable duties and/or vocational retraining/job placement assistance
- returning to work not to disadvantage injured workers.

(i) PREVENTING OCCUPATIONAL INJURIES AND ILLNESS

An emphasis on injury prevention in the workplace will reduce workplace injury and illness.

Principles

- Employers must comply with their obligations under the *Occupational Health and Safety Act 2000* to ensure a safe and healthy working environment and provide for their employees' welfare.
- Employers should understand the requirements regarding identification, assessment, elimination or control of workplace risks to prevent injury and illness.
- The investigation of workplace incidents in a spirit of 'no blame' is an important factor in the development of prevention programs with a focus on identifying safety management system deficiencies.
- Formal consultation procedures between employers and their workers play an important role in helping to provide a safe and healthy working environment. Employers must consult their workers on issues concerning their health, safety and welfare at work.

Example of a policy about preventing occupational injuries and illness:

'This employer is committed to preventing injury and illness through providing a safe and healthy working environment and providing for the welfare of employees.'

Procedures for preventing occupational injuries and illness

- The implementation of a systematic approach to the identification, assessment, elimination or control of hazards which may cause injuries and illness.

Some WorkCover references:

Your guide to workplace health and safety (Catalogue No. WC00425)

Small business safety starter kit (Catalogue No. WC00050)

Subby pack – OHSE contractor management tool (Catalogue No. WC00975)

www.workcover.nsw.gov.au

(ii) HOW THE RETURN TO WORK PROGRAM WAS DEVELOPED AND IMPLEMENTED INCLUDING RELEVANT INFORMATION AND TRAINING STRATEGIES FOR THE WORKFORCE

It is mandatory for Category 1 employers to develop a return to work program, in consultation with their workforce and any industrial unions representing those workers. Category 2 employers can adopt and adapt the standard return to work program available from WorkCover in consultation with workers to better fit their workplace.

Employers can enlist assistance in developing their return to work program from bodies such as a return to work sub-committee of their occupational health and safety committee, an employer association or an approved workplace rehabilitation provider.

Use the WorkCover guidance material that follows. This material sets out the minimum legislative requirements. You may modify the steps in the return to work process to suit your individual organisation but these must comply with the principles set out below.

Principles

- The return to work program outlines a plan of action common to all workers, from early notification of an injury through to return to pre-injury duties, redeployment, retraining or assistance to obtain employment with a new employer, if required.
- The workplace return to work program must be consistent with the insurer's injury management program and be reviewed at least every two years.
- The return to work program is developed in consultation with workers and any industrial unions representing them.
- The return to work program will include the names of nominated workplace rehabilitation providers, selected in consultation with worker representatives or their union.
- The return to work program should include an outline of relevant information and training strategies for the workforce.
- Injured workers can choose their own workplace rehabilitation provider, in consultation with the employer and insurer.
- The return to work program should include procedures that will apply to workers who are returning to work while receiving treatment.
- Treatment by medical practitioners and other health professionals is intended to facilitate return to work, not impede it. Workers need to nominate a medical practitioner to be involved in managing their treatment and providing advice on return to work activities.
- The return to work program should reflect management commitment to the rehabilitation of injured workers and should be signed or otherwise endorsed by senior management and by senior worker representatives involved in its development.

Example of a policy for developing and implementing the return to work program

'This employer has, through consultation and agreement with worker representatives, developed a return to work program for the management of workers who are injured at work. This program forms part of the operating procedures of the organisation, is consistent with the insurer's injury management program and will be reviewed every two years.'

Procedures for developing and implementing the return to work program

- Write the return to work program in plain English and consider making it available in other languages where required.
- Divide the return to work program into sub-headings:
 - notification of injury
 - first aid, medical treatment
 - early contact with worker and their treating health practitioners
 - identification and role of the return to work coordinator
 - nomination and role of the approved workplace rehabilitation provider
 - provision of suitable duties
 - arrangements with the insurer for vocational retraining and job placement assistance when required
 - arrangements for dispute resolution
 - administrative arrangements.
- Appoint an appropriately trained return to work coordinator, and list the name and contact details on the return to work program. The return to work coordinator has a central communication role as the link with all of the key players. More information about the role of the return to work coordinator can be found in section 5 of these Guidelines. The initial role of the return to work coordinator is to develop a return to work program in consultation with the workforce. The return to work coordinator needs to have the appropriate authority and resources to effectively negotiate, develop and implement the program.
- Nominate preferred workplace rehabilitation providers in the return to work program. Consideration should be given to the fields of expertise that a particular workplace may require. For example, a financial institution may need a rehabilitation provider who is familiar with occupational overuse injuries and/or management of critical incidents. Following consultation, the selection of nominated providers will be agreed between the employer and workers or their representatives. Management will facilitate reasonable access to the workplace by a rehabilitation provider involved in rehabilitation at that workplace. The program should also outline the procedure for changing workplace rehabilitation providers.
- Arrange discussions/meetings with worker representatives to draft the return to work program and to agree on steps to be taken to return injured workers to work as soon as possible.

(iii) CONSULTING WITH WORKERS AND ANY INDUSTRIAL UNIONS REPRESENTING THOSE WORKERS

Under the *Workplace Injury Management and Workers Compensation Act 1998*, the employer is required to consult with the workers and any industrial union representing those workers in developing a return to work program.

Workers must be informed of their rights and obligations regarding return to work and workers compensation. It is in the employer's interest to provide them with clear information to avoid misunderstandings and uncertainty. An open communication policy encourages cooperation and participation in the return to work process.

The form of consultation taken should be noted on the return to work program.

Principles

- Consultation with workers can be facilitated through workplace occupational health and safety committees, unions or other agreed consultative mechanisms.
- The particular needs of workers who do not speak English must be accommodated.

Example of a policy to consult with workers

'This return to work program was developed by... (management representative) in consultation with... (worker representatives).'

'Workers will be regularly informed of their rights and responsibilities and of company policies on return to work through for example workers' induction programs, training courses, staff meetings, newsletters and notice-boards.'

'Workers will be consulted through a range of mechanisms such as formal consultation with workers and unions, occupational health and safety committees, tool box sessions and staff meetings.'

Procedures for consulting with workers and any industrial unions representing those workers

- The return to work program must be displayed at all workplaces.
- Mechanisms for consulting workers can include:
 - a formal consultation mechanism with workers and unions
 - occupational health and safety committees where committee members have the appropriate skills and knowledge.
- Information about employer's requirements in relation to return to work processes can be communicated by for example worker induction programs, training courses, staff meetings, newsletters and notice-boards. A system for use of interpreters for workers who speak languages other than English is to be established. (Refer to Appendix B of this publication for information about interpreters and language services).

(iv) EARLY COMMENCEMENT OF INJURY MANAGEMENT AND EARLY RETURN TO WORK

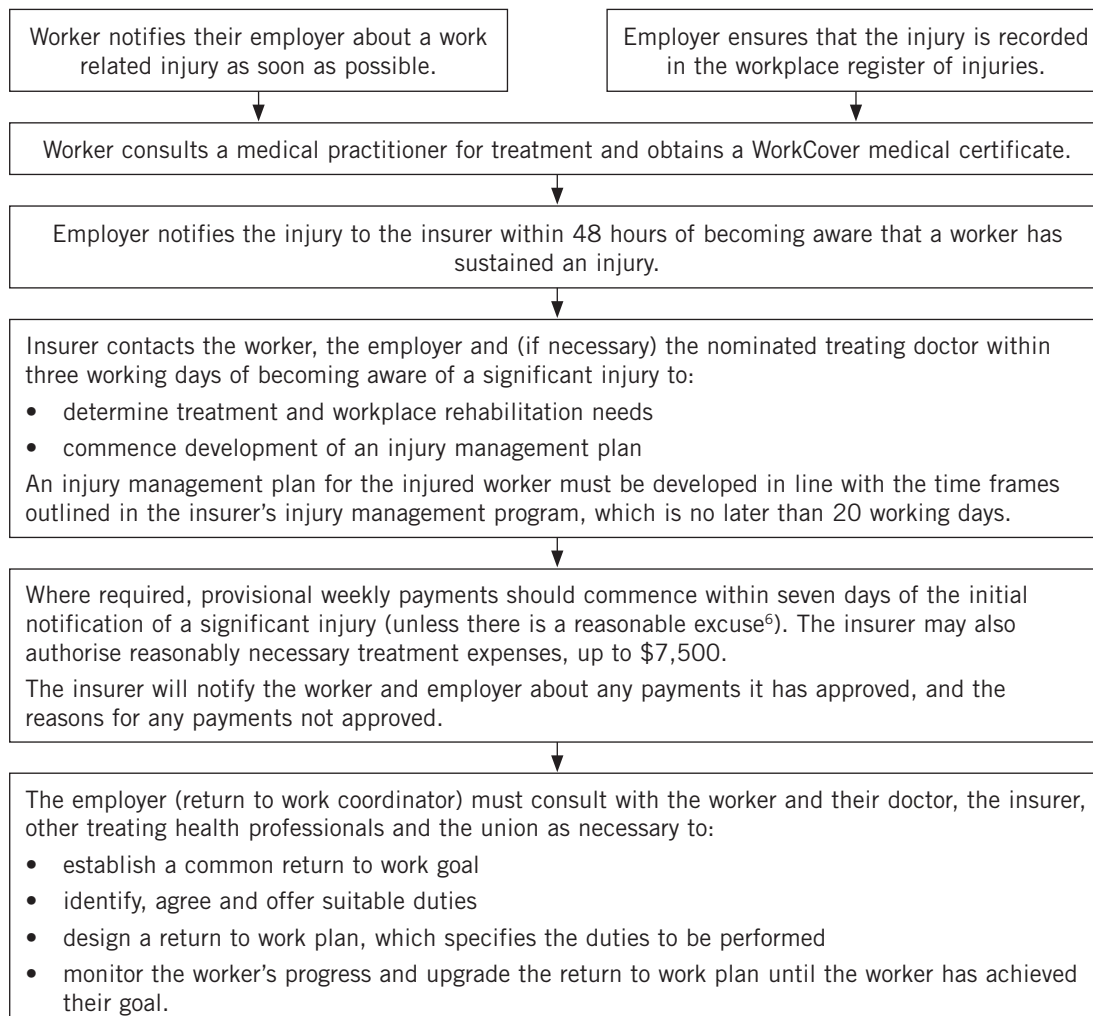
The prospect for return to work is greatest when the process commences as soon as possible after an injury occurs. The longer an injured worker has to wait for appropriate assistance, the less likely it is to be effective.

Employers are required to notify all injuries to their insurer within 48 hours of being aware of the injury. The insurer has the responsibility to contact the worker and employer within three working days of notification of a significant injury, and to contact the treating doctor if necessary. The purpose of this insurer contact is to gather and provide information to all parties, identify needs, implement appropriate strategies and commence injury management planning.

The employer must participate and cooperate in the development of an injury management plan by the insurer for every worker with a significant injury. This plan will outline all the return to work activities and treatment services for the individual injured worker. The employer and the worker must comply with obligations imposed on them under the injury management plan – the insurer will advise on obligations and potential penalties.

The workplace is the most effective place for the majority of workers to recover from their injury, through the provision of duties consistent with the worker's current work capacity. A constructive relationship between the employer and worker is the key to successful return to work.

The initial steps in injury management



⁶ WorkCover Guidelines for claiming compensation benefits, part 1, clause 7.

Principles

- Employers need to foster a workplace culture, which promotes early return to work.
- There should be immediate treatment of the injury or illness in order to facilitate early management of the injury.
- The recovery period away from the workplace should be as short as possible.
- Priority should be given to an early, safe return to suitable duties following injury or illness, in a manner that takes account of all relevant factors including medical input.
- There should be a staged return to pre-injury duties.
- Training for another job with the current employer, or with a different employer, should be considered as soon as it is known that the injury will prevent a worker from permanently returning to pre-injury duties.

Example of a policy for the early commencement of injury management and early return to work

'This employer will ensure that the return to work process is commenced as soon as possible after an injury in a manner consistent with the worker's medical fitness for work.'

'This employer is committed to ensuring that early return to work by an injured worker is a normal practice and expectation.'

Procedures for the early commencement of injury management and return to work

- The employer will develop a system for early reporting by workers of injuries they sustain, and inform the workforce of their obligations to follow these procedures.
- The employer must have a system for notification of injuries to the insurer within 48 hours of becoming aware of the injury.
- Serious incidents involving a fatality, a serious injury/illness or an immediate threat to life, must be immediately notified to WorkCover's Information Centre by telephoning **13 10 50**.
- A system for regular and supportive contact with the worker and the worker's treating doctor should be developed.
- The employer will assist the insurer to develop an injury management plan, inclusive of suitable duties, as soon as possible after notification of the injury.
- The times at which the worker will attend for treatment will be included in return to work plans and will be negotiated between the worker and the employer. Consideration needs to be given to, for example, the location of work and treatment, work routines, productivity and worker responsibilities while at work and at home.
- Treatment should be obtained by workers out of working hours taking into account the worker's circumstances for example:
 - if a worker is fit for reduced hours, treatment appointments would be out of working hours; or
 - if a worker is fit for pre-injury hours but would normally have child care responsibilities out of work hours, it is reasonable some treatment appointments can be made during work hours.

- When it is clear the injured worker is not able to be accommodated at the original workplace, assistance is to be provided to the worker to obtain new employment as early as possible. The insurer, employer and the injured worker should discuss how these arrangements are best managed⁷.
- A confidential return to work file on each injured worker will be established and maintained. The individual files will be held by the return to work coordinator, and access to the worker's own file will be granted, if requested. (Refer to confidentiality guidelines in Appendix C of this publication.) Coordinators will provide assistance to workers who speak languages other than English to understand the correspondence in the files. This may include arranging interpreter services. (Information about the provision of interpreter services and bilingual community resources is available in Appendix B.)

(v) PROVIDING SUITABLE DUTIES AND/OR VOCATIONAL RETRAINING/JOB PLACEMENT ASSISTANCE

The fact that a worker is injured does not usually mean they cannot work at all. The most important aspect of an employer's commitment to helping an injured worker to return to work in a timely and safe manner is to provide suitable duties.

At the workplace the employer, designated return to work coordinator or an approved rehabilitation provider is to identify the availability of suitable duties. The successful identification of these will ultimately be determined by the quality of information collected with regard to:

- the worker's capacity for work
- the demands and nature of tasks within the workplace
- how readily these tasks can be matched to help upgrade and improve the worker's capacity to return to pre-injury duties.

Principles

- Employers must comply with section 49 of the 1998 Act, which requires that:
 - an employer will provide suitable employment (as far as is reasonably practicable) when an injured worker is able to return to work, either on a full-time or part-time basis
 - the suitable employment provided will be (as far as is reasonably practicable) the same as or equivalent to the work being performed at the time of the injury.
- Careful individual assessment of such duties is required. Such assessment should address the possible duties, the workplace and the worker's medical restrictions and physical capacity and be in accord with occupational health and safety practice.
- Duties provided must be suitable as defined in section 43A of the 1987 Act (copy of section 43A is attached in Appendix F).

⁷ Section 52 and 53 of the 1998 Act.

- An individual return to work plan must be developed for each injured worker who is to return to work on suitable duties. A return to work plan can be developed by a trained return to work coordinator or an approved workplace rehabilitation provider. It must be developed in consultation with all the relevant parties, including the nominated treating doctor.

Copies of the agreed return to work plan should be distributed to the injured worker, employer, treating doctor and any other relevant signatories.

- A return to work plan should be in writing and contain:
 - the job title and location
 - agreed purpose or goal of suitable duties (for example, to return to pre-injury job, or an interim measure to assess capacity to return to pre-injury duties, or to an alternative job)
 - the supervisor
 - hours/days to be worked
 - duties, including capacity, restrictions or specific duties to be avoided
 - arrangements to attend treatment or medical appointments
 - commencement date
 - length of program
 - review dates
 - documented agreement by injured worker, employer representative, nominated treating doctor and, if applicable, union representative.
- In developing return to work plans, consideration should be given to:
 - the special needs of individual workers, for example, the communication needs of workers who speak languages other than English
 - the personal circumstances of injured workers that may impact on suitable duties, for example, child care arrangements
 - industrial issues in the workplace
 - impact on the workload of other workers
 - whether the worker may require training in the suitable duties tasks prior to the return to work plan being implemented.

Example of a policy to provide suitable duties

'...This employer offers suitable duties to partially incapacitated workers. The officer responsible for arranging suitable duties for this workplace is...'

Procedures to provide suitable duties

- No duties shall be offered without approval from the nominated treating doctor or, in exceptional cases, other medical advice. The employer will develop a system for communication with the worker's nominated treating doctor to confirm medical restrictions and the suitability of duties.

Examples of communication strategies to enhance effective communication include:

- *sending the doctor a copy of the injured worker's signed consent form*
- *asking the receptionist about the best time to phone the doctor*
- *sending a letter or fax to the doctor if unable to speak to them*
- *providing the doctor with information about available suitable duties through for example, a list of demands of the tasks, photographs or video, a workplace visit by the doctor*
- *notifying the doctor that they can charge for communication with the employer at the AMA and WorkCover agreed rate*
- *keeping the conversation as short as possible*
- *limiting discussions to the worker's functional abilities*
- *faxing a weekly summary of the worker's progress on suitable duties.*

- The following (in line with section 43A of the 1987 Act) will be considered when determining whether a job for a partially incapacitated worker is suitable:
 - the nature of the worker's incapacity and pre-injury employment
 - details of restrictions given in the medical certificate supplied by the treating doctor
 - the worker's age, education, skills and work experience
 - where the worker resides
 - the provisions of any injury management plan for the worker
 - any suitable employment for which the worker has received rehabilitation training
 - the length of time the worker has been seeking suitable employment
 - suitable duties must be productive and meaningful (not token), and not demeaning to the worker
 - other relevant matters.
- Suitable duties may be provided in many different ways – at the same or different workplace, the same job with different hours, modified duties, a different job altogether, training opportunities or a combination of these options. The first option to consider, however, is the duties closest to the worker's pre-injury duties.

The following return to work framework outlines possible return to work outcomes for injured workers. If the first option of return to work to the pre-injury job is not possible, the remaining options should be explored in accordance with the circumstances of the worker and the employer.

The following tables combine return to work outcomes with possible work hours, as a guide to developing return to work plans.

Same employer/same job

When return to work with the same employer, on the same job is likely, a return to work plan may include one or more of these options that address changes to duties or hours:		
Duties	Hours	Goal
suitable duties	normal hours	upgrade to pre-injury duties
pre-injury duties	reduced hours	upgrade to normal hours
suitable duties	reduced hours	upgrade to pre-injury duties and hours

Same employer/different job

When return to work with the same employer, on a different job is likely, a return to work plan may include one or more of these options:		
Duties	Hours	Goal
suitable duties for different job	normal hours	upgrade to normal duties of different job
normal duties of different job	reduced hours	upgrade to normal hours of different job
suitable duties for different job	reduced hours	upgrade to normal duties and hours of different job

Different employer/similar job

When return to work with a new employer, in a similar job is likely, a return to work plan may include one or more of these options:		
Duties	Hours	Goal
suitable duties	normal hours	upgrade to normal duties
normal duties	reduced hours	upgrade to normal hours
suitable duties	reduced hours	upgrade to normal duties and hours

Different employer/different job

When return to work with a new employer, in a different job is likely, a return to work plan may include one or more of these options:		
Duties	Hours	Goal
suitable duties for different job	normal hours	upgrade to normal duties of different job
normal duties of different job	reduced hours	upgrade to normal hours of different job
suitable duties for different job	reduced hours	upgrade to normal duties and hours of different job

- Suitable duties need to be time limited, monitored closely and regularly upgraded towards pre-injury hours and duties where appropriate.
- All offers of suitable duties should be in writing, clearly listing the duties to be performed, working hours, physical/medical restrictions, dates and times of treatments and review.
- All appropriate parties should be consulted in the development of, or changes to, suitable duties. Consultation on suitable duties should include, where applicable:
 - the return to work coordinator
 - the worker
 - the worker's line supervisors, usual and proposed
 - the nominated treating doctor
 - the approved workplace rehabilitation provider
 - any industrial union of employees representing that worker (current and potential)
 - the insurer.
- Return to work plans will be negotiated between the employer and worker. The plan will follow arrangements described in the return to work program and will be endorsed by the nominated treating doctor.
- Rehabilitation providers and return to work coordinators need to work cooperatively with the nominated treating doctor, that is, the doctor nominated by the injured worker to participate in the development of, and arrangements under, an injury management plan.
- Referrals to approved workplace rehabilitation providers should be considered when the return to work plan is complex and beyond the ability of the coordinator to develop. These referrals should be discussed with the insurer and worker and made as early as possible.
- If there are disputes about the suitability of duties an injury management consultant can be engaged to assist in resolution. Details of injury management consultants are available from the WorkCover website or the insurer. The Workers Compensation Commission has powers to resolve disputes about the suitability of duties offered.
- When suitable duties cannot be identified at the workplace, WorkCover's Work Trial Program can be used to provide suitable duties with another (host) employer. Details can be obtained from the rehabilitation provider involved in the case, WorkCover's Provider Services Branch and from WorkCover's website www.workcover.nsw.gov.au (refer to Appendix B of this publication).

(vi) RETURNING TO WORK NOT TO DISADVANTAGE INJURED WORKERS

An injured worker should not be disadvantaged while participating in the process of return to work. The overall objective of the legislation is to ensure successful return to work. Employers and workers should act collaboratively to ensure the success of the system as it is to their mutual benefit.

The spirit of the legislation is one of workplace cooperation between all the parties on all aspects of injury management. The successful return to work of the injured worker should be the paramount concern of all parties at the workplace.

When it is clear the injured worker is not able to be accommodated at the original workplace, assistance is to be provided to the worker to obtain new employment as early as possible. The insurer, employer and the injured worker should discuss how these arrangements are best managed (reference section 52 and 53 of the 1998 Act).

Principles

- Employers should advise injured workers of their entitlements and their rights and obligations under the *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987*.
- Employers need to include information about dispute prevention and resolution resources in their return to work programs, particularly in relation to problems about suitable duties.
- Sections 240-250 in Part 8 of the *Workers Compensation Act 1987* provide that an employer shall not dismiss an injured worker for six months (or the duration of any accident pay specified in the award or agreement that can be accessed by the injured worker) after the worker becomes unfit for employment as a result of a work-related injury. If an injured worker is dismissed because they are not fit for employment as a result of the injury received, the worker can apply to the employer for reinstatement. Application for reinstatement may be made up to two years from dismissal. During this time, the employer must inform any worker who has been engaged to replace the injured worker that the injured worker may be reinstated to the position.
- The Industrial Relations Commission may, on application by the worker, order reinstatement to employment for which the worker is fit (refer to sections 240-250 in Part 8 of the *Workers Compensation Act 1987*).

Example of policy returning to work does not disadvantage injured workers

'This employer is committed to ensuring that participation in a return to work plan will not, of itself, disadvantage an injured worker. All efforts will be made to resolve disagreements about the company's return to work program, or its components, through discussions and in a spirit of cooperation.'

Procedures for returning to work does not disadvantage injured workers

- The employer may permit workers access to their sick leave as per award arrangements, if they provide a medical certificate. If the medical condition is subsequently accepted as a compensable injury, the worker's sick leave entitlements will be adjusted.
- Injured workers are able to access certain leave entitlements in addition to workers compensation (refer to relevant industrial instruments).

- All monies that the worker is entitled to under the workers compensation legislation will be passed on to that worker as soon as practicable after the insurer notifies the employer of those monies. (Note: it is an offence to refuse or to delay passing on monies with a fine of up to \$5,500 – current at time of printing.)
- The employer may allow a worker who is injured and had been scheduled for higher duties or a training program, to continue to do so, provided that the tasks of the higher duties or training program are consistent with medical restrictions.
- The employer may allow a worker who is injured and who is scheduled for a performance appraisal, to continue with that appraisal.
- Every endeavour should be made to resolve any disagreement about the return to work program through discussions amongst the key parties. These could include the return to work coordinator, the injured worker, the treating doctor, the insurer and the supervisor/manager. The discussion may require informal consultation, involvement of the workplace occupational health and safety committee, or it could require the creation of a new workplace consultative arrangement.
- An approved workplace rehabilitation provider, if not already involved, can be utilised to assist in resolving disagreements.
- If there is disagreement about suitable duties or fitness for work, referral to an injury management consultant can be organised through the insurer.
- Disputes regarding the treatment provided, including the need for ongoing treatment, can be referred for a second opinion. Independent consultants assess, for example physiotherapy, osteopathy, chiropractic, psychological and remedial massage treatment and independent doctors can assess medical treatment being offered or provided.
- If the parties are unable to reach agreement, advice can be sought from the WorkCover Assistance Service on **13 10 50**.
- If a worker's compensation claim is disputed, the worker or employer may seek resolution through the Workers Compensation Commission. This includes disputes relating to an injury management plan, a return to work plan and suitable duties (see Appendix H).

Example of an in-house policy for solving problems about return to work

Where return to work problems arise all parties will work towards resolution and a mutually acceptable outcome using strategies such as:

- *negotiation between the return to work team including the injured worker, their union representative, employer representative, nominated treating doctor and insurer*
- *contact with the insurer for advice on other available resources such as injury management consultant, workplace rehabilitation provider, WorkCover vocational programs*
- *involvement of a person eg injury management consultant, workplace rehabilitation provider, mediator to assist in liaison between the parties and problem solving.*

Where resolution cannot be achieved the worker and employer may seek further assistance by contacting:

- *WorkCover's Claims Assistance Service telephone **13 10 50***
- *their union or Unions NSW*
- *an employer association.*

(vii) CHECKLIST FOR A WORKPLACE RETURN TO WORK PROGRAM

The following checklist will assist employers to ensure they are meeting their obligations under the *NSW Workplace Injury Management and Workers Compensation Act 1998*. It reflects the key policies and procedures outlined in this guideline.

Evidence that the systems or processes are actually used in the workplace may be verified through:

- documents
- records
- discussion with personnel.

Key elements

The return to work program describes procedures for:

1. Preventing occupational injuries and illness

- a) Information about the OHS policies and systems in place in the workplace to identify, assess and control hazards and the strategies to review them.
- b) Strategies to consult with workers about OHS issues eg a workplace OHS Committee is established.
- c) Strategies to inform and update all staff about workers compensation, return to work and OHS policies and procedures eg induction training, 'toolbox' talks, intranet, staff development and training programs.
- d) Strategies to regularly monitor data and identify potential links between injury management data and OHS policy and review procedures.

2. Developing and implementing the return to work program

- a) The return to work program is:
 - i) written, displayed in each workplace and reviewed every two years
 - ii) consistent with the insurer's injury management program and contains insurer contact details.
- b) The return to work program provides information about:
 - i) the appointment of an appropriately trained return to work coordinator and their contact details
 - ii) responsibilities of the return to work coordinator
 - iii) responsibilities of the insurer
 - iv) the agreed workplace rehabilitation providers
 - v) procedures to ensure access to interpreters when necessary
 - vi) rights and obligations of injured workers
 - vii) procedures for confidentiality in record keeping and privacy
 - viii) information and training strategies for the workforce about the program.

3. Consulting with workers and, where applicable, unions

- a) Strategies to develop the return to work program in consultation with workers and any union representing those workers.
- b) Strategies to ensure injured workers are informed about their rights and obligations.
- c) Evidence of consultation and agreement eg signatures of senior management and senior worker representatives.

4. Early commencement of injury management and return to work

- a) The return to work program describes procedures for:
 - i) workers to report injuries as soon as possible to their employer
 - ii) employer to notify the insurer of injuries within 48 hours of employer becoming aware of the injury
 - iii) return to work coordinator to gain written consent from injured worker to obtain, use and disclose injury management information
 - iv) return to work coordinator to make contact with nominated treating doctor and injured worker to assist in the development of the injury management plan and return to work plan.

5. Providing suitable duties (for more details, see section 4. (v) of these Guidelines)

- a) The return to work program describes the employer's policy and procedures for identifying and providing suitable duties including for example:
 - i) suitable duties are consistent with the injured worker's capacity and medical restrictions
 - ii) suitable duties are meaningful and productive
 - iii) suitable duties are agreed with all relevant parties and written in an individual return to work plan
 - iv) suitable duties are time limited and include review dates, representing a graded return to pre-injury hours/duties
 - v) changes to suitable duties are initiated in consultation with all parties
 - vi) circumstances under which suitable duties cannot be provided.
- b) The return to work program describes procedures to assist an injured worker find alternative employment if they cannot return to their pre-injury job.

6. Returning to work not to disadvantage injured workers

- a) The return to work program describes procedures to ensure that workers are not disadvantaged.
- b) Workers are not to be dismissed within six months of becoming unfit for employment as a result of a work-related injury.
- c) The return to work program describes strategies for preventing and resolving disputes regarding suitable duties including the use of rehabilitation providers, injury management consultants and the WorkCover Assistance Service.

For more information please contact the WorkCover Provider Services Branch by telephone 1800 801 905 or email provider.services@workcover.nsw.gov.au

5. RETURN TO WORK COORDINATORS

The return to work coordinator is a key person in the return to work process and acts as the link with all of the parties involved. The role involves identifying the needs of the injured workers, understanding any constraints on the employer, and facilitating teamwork between the worker, employer, insurer and treating health professionals to develop and implement a return to work plan. To fulfil this role the coordinator should be familiar with, and have regular access to, all areas of the workplace, and to staff and supervisors with whom it may be necessary to discuss suitable duties.

Every Category 1 employer must designate a return to work coordinator, who must attend WorkCover approved training. The coordinator is to be someone employed by the employer, or someone engaged specifically for that purpose. Employers can enter into shared arrangements for employing a return to work coordinator.

Employers with multiple workplaces often designate staff at the sites to assist the return to work coordinator with the planning of return to work, including the provision and monitoring of suitable duties. These personnel should be assisted to carry out their functions through a formal system of advice and training.

The return to work coordinator must hold:

- a WorkCover certificate of attendance at the WorkCover approved two-day course *Introduction to return to work coordination*
or
- a WorkCover certificate of attendance at a two-day WorkCover approved training course for rehabilitation coordinators that was conducted prior to February 1995
or
- a letter from WorkCover's Provider Services Branch agreeing to exempt the return to work coordinator from the requirement to participate in WorkCover approved training.

The role of the coordinator in return to work planning and management of injured workers is to be outlined in the employer's return to work program. Duties should include:

- developing and implementing the return to work program, educating the workforce, keeping injury and return to work statistics and developing policies to improve systems
- providing information on the return to work process and associated workers compensation benefits to injured workers
- obtaining or sighting the injured worker's consent before obtaining or releasing information about the worker's return to work
- determining the injured worker's needs by discussion with the worker, the nominated treating doctor and other treatment practitioners
- working with the insurer as they develop an injury management plan for the injured worker
- identifying suitable duties and assisting the injured worker to return to work as soon as possible
- preparing a return to work plan (see template at Appendix E of these Guidelines) in consultation with key parties that documents suitable duties and work restrictions
- referring to an approved workplace rehabilitation provider as needed

- being the focal point for all contact relating to the injured worker. Most contact will be with the worker, their supervisor, nominated treating doctor, insurer, rehabilitation provider and union
- coordinating and monitoring progress in treatment, rehabilitation provider services and return to work plans
- assisting in the redeployment of injured workers (either internally or externally) into suitable employment when an injured worker cannot return to pre-injury duties
- collecting information on locally based resources in the community, including bilingual resources, and making this information available to injured workers where necessary
- maintaining and managing confidential case notes and records in line with relevant legislation and guidelines (refer to *Guidelines for confidentiality of injury management information* at Appendix C).

The role does not include decision making about claim liability or treatment as this is the insurer's responsibility.

Return to work coordinators require the following skills:

- ability to develop and review a return to work program consistent with workplace requirements and the insurer's injury management program
- ability to implement policy and procedures of the return to work program and coordinate the training of staff
- excellent written and verbal communication skills, including negotiation and listening skills
- conflict resolution skills
- ability to implement and explain the *Workplace Injury Management and Workers Compensation Act 1998*, the *Workers Compensation Act 1987* and any relevant regulations and guidelines
- ability to identify suitable duties, consistent with section 43A of the *Workers Compensation Act 1987*
- ability to develop and implement return to work plans for individual workers
- decision making skills
- ability to effectively disseminate information to all relevant parties
- case and caseload management skills
- organisational and time management skills
- ability to assess personal strengths and weaknesses and identify when professional provider services are required.

For employers who wish to employ a return to work coordinator with formal qualifications the following are recommended:

- health professionals such as occupational therapists, physiotherapists, rehabilitation counsellors, exercise physiologists, nurses or psychologists with workplace rehabilitation experience
- individuals with human resources or occupational health and safety qualifications who have workplace rehabilitation experience and an understanding of the role and expertise of health professionals involved in workplace rehabilitation.

6. ENGAGED RETURN TO WORK COORDINATOR ARRANGEMENTS

The following guidelines cover situations where the return to work coordinator is not an employee of the Category 1 employer but has been engaged for that purpose. Engaging a return to work coordinator can include:

- A shared arrangement between two or more employers who establish a single return to work program and engage a person to be a return to work coordinator on a shared basis for the members of the group.
- The return to work coordinator is not an employee of the employer but has been engaged under another type of work arrangement (eg through a labour hire company or contract arrangement). For all intents and purposes the return to work coordinator will be like an employee, apart from the hiring arrangement.

Employers wishing to engage a return to work coordinator (either as an alternative hiring arrangement or on a shared basis) need to provide WorkCover with a copy of their return to work program and be able to demonstrate that:

- Workers will not be disadvantaged.
- The return to work coordinator has appropriate qualifications and experience.
- In a shared arrangement, the employers have a common interest. An example of common interest could be employers in the same industry, or in the same geographical location such as an industrial park or office complex.
- The shared or engaged arrangements will provide improvements in the provision of return to work services.
- The return to work program is formally reviewed every two years, with the amended program lodged with WorkCover.

Qualifications, experience and role of the engaged return to work coordinator

When a Category 1 employer engages a return to work coordinator under shared arrangements, or through another type of work arrangement, it is essential that injured workers and employers receive a service that is equal or superior to the usual arrangements for employers. For this reason, an engaged return to work coordinator must have the knowledge and skills to fulfil all the duties of a return to work coordinator as outlined in these Guidelines. They must have significant experience in workplace rehabilitation preferably as a return to work coordinator and have completed training in a WorkCover approved *Introduction to Return to Work Coordination* course. It is preferable that they have tertiary qualifications.

The cost of an engaged return to work coordinator is not a claims cost.

Employers will need to obtain WorkCover approval prior to entering into a shared arrangement or engaging a return to work coordinator who is not an employee. For more information, phone the WorkCover Provider Services Branch on 1800 801 905.

Shared return to work coordinators for Category 2 employers

There is no requirement for Category 2 employers to appoint a return to work coordinator, however, employer associations and unions may establish shared return to work coordinator arrangements to assist smaller employers (Category 2 employers) to fulfil their obligations.

Where a shared return to work coordinator is used by a Category 2 employer they must:

- Have training and experience as specified in these Guidelines for shared return to work coordinators.
- Undertake the duties specified in these Guidelines for return to work coordinators.
- Be registered with WorkCover to undertake these duties for a specific industry or geographical area. For more information, phone the WorkCover Provider Services Branch on 1800 801 905.

7. APPENDICES

APPENDIX A – GLOSSARY OF INJURY MANAGEMENT TERMS

Approved medical specialists

Approved medical specialists are senior specialists with a sound knowledge of the NSW workers compensation system and workplace-based injury management. They are appointed by the Workers Compensation Commission to assess disputes about medical issues.

There are two types of approved medical specialists:

- Those who help to resolve disputes about general medical issues regarding the worker's condition, such as cause, treatment options or fitness for employment.
- Those who help resolve disputes about the evaluation of permanent impairment.
(Refer to the Commission's website www.wcc.nsw.gov.au)

Approved workplace rehabilitation provider

An organisation approved by WorkCover to provide injured workers with specific rehabilitation services to assist them in return to work. Rehabilitation providers are staffed with occupational health professionals such as occupational therapists, physiotherapists, rehabilitation counsellors, exercise physiologists, psychologists and nurses with occupational health experience (refer to WorkCover's publication *Nationally consistent approval framework for workplace rehabilitation providers guide and Supplement to the guide: Nationally consistent approval framework for workplace rehabilitation providers guide*).

Injury management consultant

Injury management consultants (IMCs) are registered medical practitioners experienced in occupational injury and workplace-based rehabilitation. IMCs are facilitators who will assist insurers, employers, workers and treating doctors find solutions to the problems in complex return to work plans and injury management. IMCs are not involved in the treatment of an injured worker, nor do they provide any opinion on the current treatment regime.

Referral to an IMC should be considered when the following situations arise: confused goals, complexity of injury or workplace environment; poor communication between insurer/ employer and nominated treating doctor; perceived conflict between the nominated treating doctor's recommendations and the workplace requirements; disagreement about the suitability of duties offered to an injured worker (refer to WorkCover publication *Guidelines for the appointment and functions of injury management consultants*).

Independent medical examiner

An independent medical examiner is a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury but who is not in a treating relationship with the worker. A referral for an independent medical examination is only appropriate when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent and where the referrer has been unable to resolve the problem directly with these practitioners (refer to WorkCover publication *Guidelines on independent medical examinations and reports*).

Injury management plan

Section 42 of the *Workplace Injury Management and Workers Compensation Act 1998* states that:

‘An injury management plan is a plan for coordinating and managing those aspects of injury management that concern the treatment, rehabilitation and retraining of an injured worker, for the purpose of achieving a timely, safe and durable return to work for a particular worker.’

Within three days of notification of a significant injury to a worker, the insurer will contact the worker, the employer and the treating doctor. In the time set out in the insurer’s injury management program, the insurer will subsequently develop an injury management plan (which should be completed no more than 20 working days after notification).

Injury management program

An injury management program is a coordinated and managed program that integrates all aspects of injury management including treatment, rehabilitation, retraining, claims management and employment management practices. The purpose of injury management is to achieve a timely, safe and durable return to work for the injured worker.

Section 43 of the 1998 Act states that each insurer must have an injury management program. The insurer must ensure that each employer is aware of this program and the employer’s obligations under the program. The employer’s return to work program must be consistent with their insurer’s injury management program.

Return to work plan

When a worker is to return to work on suitable duties with restrictions, the employer/return to work coordinator or rehabilitation provider must develop and document a return to work plan in consultation with all parties. This plan must be regularly monitored and reviewed by the return to work coordinator or provider. Medical restrictions, suitable duties, hours worked, supervision arrangements, treatment times and review dates must be clearly outlined in the return to work plan.

Return to work program

Section 52 of the *Workplace Injury Management and Workers Compensation Act 1998* states that:

‘An employer must establish a return to work program with respect to policies and procedures for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer. An employer’s return to work program must not be inconsistent with the injury management program of the employer’s insurer and is of no effect to the extent of any such inconsistency.’

Therefore a workplace return to work program only satisfies the requirements of the 1998 Act where there is no inconsistency with the insurer’s injury management program. Any return to work program must be in accordance with these Guidelines.

The Act requires that employers develop their return to work programs in consultation with their workers and any industrial union of employees representing them. Return to work programs must be in writing and be displayed in the workplace. Experience has shown that successful return to work requires all parties to follow the procedures agreed to by employers, their workers, and where applicable, any relevant unions.

Serious incidents

Some examples of a serious incident as listed under clause 344 of the *Occupational Health and Safety Regulation 2001* are:

- an incident where there has been a fatality
- an incident where there has been a serious injury or illness, such as when a person:
 - has a limb amputated
 - is placed on a life-support system
 - loses consciousness
 - is trapped in machinery or a confined space
 - has burns
- an incident where there is an immediate threat to life such as major damage to machinery or buildings, or the collapse of an excavation.

Significant injury

Significant injury means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both (refer to section 42(1) of the 1998 Act).

Vocational retraining

Retraining under section 53 is considered when the injured worker is unable, because of their injury, to return to the same or a similar job with either the pre-injury employer or a different employer. Retraining is considered when assessments conducted by the rehabilitation provider/return to work coordinator have determined that the worker has no marketable transferable skills to seek and secure suitable alternative employment. It provides opportunities for workers to gain qualifications to enable them to continue in productive employment (refer to WorkCover publication *Guidelines for retraining, equipment and workplace modification*).

The cost of retraining injured workers under section 53 of the *NSW Workplace Injury Management and Workers Compensation Act 1998* is excluded from the worker's claim cost for the purpose of premium calculation.

Work trial

The Work Trial Program is a voluntary agreement between a host employer, an injured worker, a rehabilitation provider and WorkCover NSW. It involves short-term placement of an injured worker with an employer other than the employer responsible for his/her injury. The purpose of this placement is to either provide a suitable work environment for increasing work capacity or to increase the worker's transferable skills with a view to gaining permanent employment.

The maximum period of time in a work trial available to an injured worker is 12 weeks. Under exceptional circumstances WorkCover can approve an extension of time where there is a probability of placement in durable employment at the completion of the work trial (refer to WorkCover publication *Work trial guidelines*).

WorkCover Claims Assistance Service

The Claims Assistance Service (CAS) provides assistance to injured workers and employers with enquiries about workers compensation and injury management. The service provides information about injury and accident notifications, making a claim, entitlements and the dispute resolution process. The aim of the service is to prevent an issue from turning into a dispute that needs to be addressed by the Workers Compensation Commission.

The telephone number of the WorkCover Assistance Service is **13 10 50**.

Workers Compensation Commission

The Workers Compensation Commission is an independent statutory tribunal within the justice system in New South Wales to resolve workers compensation disputes between injured workers and employers, eg disputes about weekly compensation for loss of income, payment of medical expenses and compensation for permanent impairment/pain and suffering. It provides a single place to help parties come to agreement about a dispute (conciliation) or, when needed, will make a decision about a dispute (arbitration).

APPENDIX B – WORKCOVER CONTACTS AND INFORMATION

A variety of publications, brochures and information is available from WorkCover NSW, either in hard copy via the Publications Hotline, Information Centre, or electronically via the website.

Website: www.workcover.nsw.gov.au

WorkCover Information Centre: **13 10 50**

WorkCover Information Centre: contact@workcover.nsw.gov.au

Provider Services Branch: 1800 801 905

Provider Services Branch: provider.services@workcover.nsw.gov.au

Publications Hotline: 1300 799 003

Advice about injury management and workers compensation may also be obtained from any of WorkCover's regional offices whose addresses are listed on WorkCover's website.

Interpreters/language services

Access to communication assistance for people who speak languages other than English is through:

NSW Community Relations Commission and Interpreting Service:

Phone: 1300 651 500

Department of Immigration and Citizenship, Translating and Interpreting Services:

Phone: 13 14 50

Access to communication assistance for people who are deaf, or have a hearing impairment or speech impairment is through the National Relay Service:

- TTY users phone 13 36 77 then ask for **13 10 50**.
- Speak and listen users phone 1300 555 727 then ask for **13 10 50**.
- Internet relay users connect to the NRS then ask for **13 10 50**.

APPENDIX C – GUIDELINES FOR CONFIDENTIALITY OF INJURY MANAGEMENT INFORMATION

Introduction

These Guidelines have been developed with a view to balancing the employer's and insurer's need for information with the injured worker's right to privacy. They establish policy and procedures for return to work coordinators and approved workplace rehabilitation providers in relation to the confidentiality of injury management information involving injured workers.

What is injury management information?

Injury management information is any information that involves the treatment, rehabilitation, retraining, claims management and employment management practices that are directed to assisting an injured worker to return to work.

It includes:

- file notes, letters, faxes and return to work plans completed by the return to work coordinator
- treating doctor assessment and reports
- specialist doctor assessment and reports if the injured worker was referred to the specialist by the treating doctor
- approved workplace rehabilitation provider documents such as:
 - referral/approval for workplace rehabilitation service
 - approved rehabilitation provider plans
 - approved rehabilitation provider progress reports
 - invoices for workplace rehabilitation services
 - return to work plans
 - injury management consultant reports.

Injury management information does not include:

- section 40 assessments
- copies of independent medical examiner reports initiated by the insurer
- insurance company print-outs of claims estimates and premium costs
- common law and legal proceedings.

Policy

Confidentiality of information

All injury management information concerning an injured worker is confidential. Staff with access to such information are to be made aware that it is confidential and should not be discussed with or shown to or read by anyone who is not directly involved in the worker's return to work.

Section 243 of the 1998 Act, the *Federal Privacy Act 1988*, the National Privacy Principles and the *NSW Health Records and Information Privacy Act 2002* apply to the information collected and used for the purposes of handling a worker's claim. In relation to workers compensation claims, medical advice must be kept confidential and information released to other parties only on a 'need to know' basis eg medical information would only be released by an insurer to an employer if it was relevant to an injured worker's return to work.

Procedures

1. Access to the return to work file

- a) It is recommended that return to work coordinators maintain a case file on all workers who require assistance to return to work. The case file is a record of the case management of an individual injured worker. Employers should ensure that access to an injured worker's return to work file by people within their organisation is restricted to those with a legitimate need to know. Access should be confined to relevant documents on the case file and limited to:
- those who have a direct responsibility for coordinating, monitoring or providing return to work services to the injured worker, and
 - those involved in providing clerical and administrative support to these personnel.

Examples of people with a legitimate need to know may therefore include the:

- return to work coordinator
 - worker's immediate supervisor
 - supervisor of the area in which suitable duties have been identified
 - occupational physician/workplace medical officer
 - occupational health nurse
 - worker's compensation case manager or personnel officer handling workers compensation claims.
- b) Most private sector employers are subject to the *Federal Privacy Act 1988*. State and Commonwealth government organisations are also subject to Freedom of Information legislation. These Acts are to be read in conjunction with these Guidelines.
- c) Employers should ensure that access to selected documents on the case file by people who need to know is limited to information that is relevant to their area of responsibility for the worker. For example, the worker's immediate supervisor may need information relating to the worker's return to work plan but would not need detailed medical information.
- d) The employer should give the worker access to the return to work file and a copy of any injury management information on request unless there is an exception as outlined in the *Federal Privacy Act 1988*.

These exceptions include, for example, that the information relates to existing or anticipated legal proceedings between the organisation and the individual, contains information about or from others, or would prejudice an investigation of possible unlawful activity (fraud).

National Privacy Principle 6.5 in the *Federal Privacy Act 1988* provides that if a person establishes that the personal information is not accurate then the organisation must take reasonable steps to correct the information.

- e) If an employer receives a request from the worker for a health report, the author of the report should be contacted before it is released (refer to the National Privacy Principle 6.1(b) in the *Federal Privacy Act 1988*).

2. Obtaining or releasing injury management information

- a) The WorkCover medical certificate includes a section for the worker to sign, giving consent to the nominated treating doctor, the employer, the insurer, other treating practitioners, rehabilitation providers and WorkCover NSW to exchange information for the purpose of managing the worker's injury and compensation claim.
- b) The employer is a party to this consent and can release information to the relevant parties as specified on the medical certificate.
- c) In the context of the workplace, however, it is appropriate for the employer to review and discuss the relevance and nature of information to be exchanged with the injured worker. This facilitates communication and ensures a clear understanding by all parties.
- d) To ensure the informed consent of the injured worker and that all parties involved in the return to work are included, consent should be obtained by having the worker sign an 'Information Consent Form' (see Appendix D). If necessary, interpreter services may be used to assist the injured worker.
- e) The worker's consent to the employer obtaining or releasing information may be withdrawn at any time. However, workers should be advised that, if consent is withdrawn, return to work may not proceed and it may affect the worker's entitlements to workers compensation benefits.
- f) Employers and providers may only release information concerning individual injured workers for research purposes with the prior written permission of both the worker and WorkCover NSW. For more information, phone the WorkCover Provider Services Branch on 1800 801 905.

3. Management of records

- a) Employers should protect return to work files, including electronically stored information, from unauthorised access, interference, misuse, loss and theft. Consideration should be given to lockable filing cabinets, password secured computer systems, and secure arrangements for any transfer of files.
- b) An employer should keep workers' return to work files separate from other personnel records, as personnel records are often accessed by people other than those specified in point 1(a) above.

4. Storage of closed records

The confidentiality of information in files where return to work is completed and the case/claim is closed, should also be protected. It is recommended that these records be properly stored, secured and retained for a minimum period of seven years.

5. Transmission of information

Where information is transmitted electronically (eg by fax) care should be taken to protect the confidentiality of the information. For example, prior to faxing information, telephone the recipient to arrange for its collection immediately after transmission.

APPENDIX D – INFORMATION CONSENT FORM

Claim No. _____

I _____ (name) authorise _____ (name)
_____ (title) of _____ (name of employer/provider) to:

OBTAIN information either verbal or written, in relation to my injury management from
(insert specific names):

a) Doctor _____

b) Hospital _____

c) Rehabilitation provider _____

d) Employer _____

e) Other _____

I _____ (name) authorise _____ (name)
_____ (title) of _____ (name of employer/provider) to:

RELEASE information concerning relevant aspects of my injury management to,
and discuss that information with, representatives of the agencies nominated below
(insert specific names):

a) Rehabilitation provider _____

b) Employer _____

c) Doctor _____

c) Union _____

c) Worker's solicitor _____

d) Employment service _____

e) Other _____

The information provided will be of a factual nature concerning injury management.

I understand that I may change or cancel this authority at any time, however my injury management and/or Workers Compensation benefits could be affected.

Signature _____ Date ____/____/____

Signature of interpreter _____ Name _____

Some organisations are legally entitled to receive injury management information about an injured worker who is claiming workers compensation – insurers and their legal advisers, the WorkCover Authority, a NSW Court of Law and the NSW Workers Compensation Commission.

APPENDIX F – WORKERS COMPENSATION ACT 1987 – SECTION 43A

43A Suitable employment

- (1) For the purposes of sections 38, 38A and 40: suitable employment, in relation to a worker, means employment in work for which the worker is suited, having regard to the following:
 - (a) the nature of the worker's incapacity and pre-injury employment,
 - (b) the worker's age, education, skills and work experience,
 - (c) the worker's place of residence,
 - (d) the details given in the medical certificate supplied by the worker,
 - (e) the provisions of any injury management plan for the worker,
 - (f) any suitable employment for which the worker has received rehabilitation training,
 - (g) the length of time the worker has been seeking suitable employment,
 - (h) any other relevant circumstances.
- (2) In the case of employment provided by the worker's employer, suitable employment includes:
 - (a) employment in respect of which:
 - (i) the number of hours each day or week that the worker performs work, or
 - (ii) the range of duties the worker performs, is suitably increased in stages (in accordance with a rehabilitation plan or return-to-work plan or otherwise), and
 - (b) if the employer does not provide employment involving the performance of work duties suitable training of a vocationally useful kind provided:
 - (i) by the employer at the workplace or elsewhere, or
 - (ii) by any other person or body under arrangements made with the employer, but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends the training concerned.
- (3) However, in any such case, suitable employment does not include:
 - (a) employment that is merely of a token nature and does not involve useful work having regard to the employer's trade or business, or
 - (b) employment that is demeaning in nature, having regard to subsection (1) (a) and (b) and to the worker's other employment prospects.
- (4) A worker is to be regarded as suitably employed if:
 - (a) the worker's employer provides the worker with, or the worker obtains, suitable employment, or (b) the worker has been reinstated to the worker's former employment under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

APPENDIX G – REGISTER OF INJURIES

Form 2 Workers Compensation Regulation 2003

Particulars _____

Name of injured worker _____

Address _____

Age _____ Occupation _____

Industry in which worker was engaged _____

Operation in which worker was engaged at time of injury _____

Date (or deemed date) of injury ____ / ____ / ____ Hour _____ am/pm

Nature of injury _____

Cause of injury _____

Remarks _____

(Signed) _____

(Address) _____

(Date) ____ / ____ / ____

(Entries in this book should, if practicable, be made in ink.)

Note: The employer's full name and address, together with the name of the employer's insurer and the insurer's address, should be written up in ink on the inside of the cover of the book.

APPENDIX H – DISPUTES ABOUT RETURN TO WORK

Once all ‘in house’ attempts to resolve problems about return to work have been exhausted, a dispute can be referred to the Workers Compensation Commission (section 306 of the 1998 Act).

Such an action must be considered in the context of the objectives of the Commission, in particular the obligation to provide a timely and effective dispute resolution service in relation to the worker’s entitlements under the workers compensation legislation, including, return to work disputes.

Registrar’s powers to deal with return to work disputes

Paraphrasing the legislation, the Registrar may deal with the dispute:

- a) by conciliating in connection with the dispute (to bring the parties to agreement) having proper regard to relevant entitlements and obligations under the Workers Compensation Acts), or
- b) by directing that an injury management consultant or other suitably qualified person (paid for by the employer) conduct a workplace assessment in connection with the dispute, or
- c) by referring the dispute to the Authority, or
- d) by making a recommendation.

The Registrar may refer the dispute to the Commission (that is an Arbitrator) for determination if a party rejects any recommendation made.

Employer’s safeguards

Section 309 provides an employer with some safeguards at a Registrar’s hearing of all work injury management disputes, including return to work disputes, so that the best solution can be reached:

- an employer may admit liability without breaching the terms of its insurance policy, and
- whatever the employer admits or says at work injury management or return to work teleconferences cannot be used against the employer in any other matter before the Commission.

Steps in the Commission for commencing and conducting all work injury management disputes, including return to work disputes

Step 1 – Application to the Commission

A worker, employer, or insurer/scheme agent can commence proceedings in the Commission by lodging an Application to Resolve a Workplace Injury Management Dispute (Form 6).

Step 2

Complete the Application (Form 6) and attach to the Application the following documents:

- name of contact person and telephone number for the teleconference
- a document setting out the relief sought

- a detailed statement by the Applicant setting out the history and full details of the following, so far as they are relevant to the return to work dispute:
 - the alleged failure to provide or perform work duties
 - how the injury management plan has not been followed
 - how the return to work plan has not been followed
- all injury management plans
- all return to work plans
- all workplace assessment reports
- medical certificates certifying the worker's limitations for work duties and the period of incapacity
- all medical reports about the worker's capacity for work duties including reports from injury management consultants
- any other information pertinent to the dispute and which is to be relied on
- any investigative report relevant to the return to work dispute.

Do not lodge any X-ray, ultrasound or MRI films or scans with the Commission (Rule 14.1(4)).

Step 3

The Applicant lodges only one (1) Application with all the documents attached in the Commission. The Commission does not issue sealed copies.

Step 4

On the same day as lodging the Application in the Commission, a copy of the Application with all the documents must be sent to the other party.

- If the worker is lodging the Application against the employer, the worker must send a copy of the Application and attached documents not only to the employer but also the employer's insurer (except a self insurer);
- If the employer/insurer is lodging the Application it must send a copy of the Application and attached documents to the worker.

Step 5 – The Reply

The Respondent has 7 days after receiving the Application to lodge a Reply with the Commission and to send a copy to the Applicant. While there is no specified form for a Reply, the Commission's Form 1B can be adapted.

The following documents must be attached to the Reply if they are not already attached to the Application:

- name of contact person and telephone number for the teleconference
- a detailed statement by the Respondent setting out the history and full details of the following, so far as they are relevant to the return to work dispute
- the alleged failure to provide or perform work duties
- how the injury management plan has or has not been followed
- how the return to work plan has or has not been followed

- all injury management plans
- all return to work plans
- all workplace assessment reports
- medical certificates certifying the worker's capacity for work and the period of incapacity
- all medical reports about the worker's capacity for work duties including reports from injury management consultants
- any other pertinent information that is to be relied on
- any investigative report relevant to the return to work dispute.

Step 6 – Procedure in the Commission

When the Registrar receives a Form 6 Application it will be registered and given a matter number and sent to one of the Registrar's Delegates for action. The parties are to contact the Registry on tel: 1300 368 040 to obtain the matter number.

Prescribed procedures for the production of documents under the *Workers Compensation Commission Rules 2006* do not have application to these disputes.

Step 7 – Teleconference

The Registrar will usually schedule a telephone conference within 14 days of receipt of the dispute Application and will notify all the parties of the scheduled date and, if the Registrar thinks it is necessary, will request further information from the parties.

The employer, the insurer and the worker, must attend and participate in the teleconference.

Step 8

When the Respondent is notified of the teleconference the Reply must be lodged as a matter of urgency, if not already lodged.

Step 9 – What happens at the teleconference

All the parties will be connected by phone by the Registrar on the telephone numbers supplied.

All the parties present, irrespective of the presence of legal representation, will be encouraged to participate in a full and frank discussion of all the issues in dispute, any relevant background to the dispute and to make suggestions about how the dispute can be resolved to achieve a return to work.

Referral to an Injury Management Consultant or other suitably qualified person

If the dispute cannot be resolved between the parties at the teleconference the Registrar may, on the Registrar's own motion, or at the request of either or both parties refer the dispute to a WorkCover approved injury management consultant (IMC) or other suitably qualified person, who will conduct a workplace assessment and an assessment of the worker's capacity for work.

Both parties will be given an opportunity to make submissions or raise specific questions to be sent to the IMC or other assessor by the Registrar.

Rule 9.7 of the *Workers Compensation Commission Rules 2006* sets out the information that will be contained in the Registrar's Direction to the IMC. The Registrar will choose the IMC, make the arrangements for the workplace assessment in consultation with the parties, and send the Direction to the IMC with all the documents lodged by both parties together with any submissions. The parties will be advised of the date and place of the assessment and the medical examination.

Step 10 – Time frame for workplace assessment – rule 9.7 of the Commission Rules

The IMC must contact the parties and arrange the assessment as soon as practicable, but not more than 7 days after receiving the Registrar's Direction.

After conducting the workplace assessment and examination of the worker the IMC will submit a detailed report and recommendation, as soon as practicable, but not more than 7 days after the assessment.

The Registrar will forward the IMC's report to all parties and give the parties an opportunity to make any submissions as to why the Registrar should not issue a Recommendation in the terms stated by the IMC.

Step 11

If referral is made to an IMC, or other suitably qualified person, a further teleconference may be scheduled to consider any recommendations contained in the report before the Registrar issues the final Recommendation.

Step 12 – Registrar's recommendations after the telephone conference (refer to rule 9.7(7))

After a teleconference and/or an IMC report the Registrar may:

- make a recommendation in the terms of the IMC's recommendation
- make a recommendation that a party take a necessary or desirable specified action to remedy any failure causing the dispute having regard to section 49 of the 1998 Act for the provision of suitable employment
- refuse to make a recommendation
- refer the matter to the Authority, or
- refer the dispute to the Commission.

Step 13 – Compliance with recommendations of Registrar

A party has 14 days (or such longer period as the Registrar may allow):

- a) To comply with the recommendation, or
- b) Request the Registrar to refer the dispute to the Commission for determination

If a worker fails to comply with the Registrar's recommendation the worker is not entitled to receive weekly benefits during any period of that failure.

If an employer fails to comply with the Registrar's recommendation the insurer may recover from the employer the amount of weekly benefits paid to the worker during the period of the employer's failure to comply.

Step 14 – Referral of the dispute to the Commission

The Registrar may refer a return to work dispute to the Commission (ie an arbitrator) for determination:

- If the matter was not resolved following the recommendation of the Registrar
- On the Registrar's own motion
- At the request of either party within 14 days of the recommendation and if the Registrar thinks fit.

Step 15 – Powers of the Commission

If the dispute is referred to the Commission for determination, the Commission may make orders with respect to any matter that can be the subject of a recommendation by the Registrar.



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