

Consultation on the draft guidelines for workplace return to work programs – submission form



State Insurance
Regulatory Authority

Consultation no. WCR 2016/6

Please complete this submission form to ensure the prompt and accurate receipt and processing of your feedback. All submissions should be sent by email to consultation@sira.nsw.gov.au no later than 15 November 2016.

Name of organisation or individual making this submission

New South Wales Business Chamber

Contact person/authorised delegate

Authorised delegate/contact person

Ms Elizabeth Greenwood

Position

Policy Advisor, Workers Compensation, WHS and Regulation

Postal address

Locked Bag 938

Suburb

North Sydney

State

NSW

Postcode

2059

Telephone number

[REDACTED]

Mobile number

[REDACTED]

Email

[REDACTED]

Publication of submissions

Following processing, submissions may be published on the SIRA website. Copyright in submissions resides with the author(s), not with SIRA. Please note below if you do NOT want your submission or any part(s) of it published on the SIRA website.

Publication of submissions will usually include your name and the name of the organisation, if relevant. We will remove contact details such as email addresses, postal addresses and telephone numbers. At our discretion we may not publish certain submissions (or part of submissions) due to our assessment of length, content, appropriateness or confidentiality.

For more information, read the SIRA submission procedure at www.sira.nsw.gov.au/about-us/have-your-say

I have read the SIRA submission procedure

Do you want your content to be confidential?

No, my submission is not confidential

Yes, my submission is completely confidential

In part (please indicate confidential areas)

Summary of feedback and/or comments provided

Line number	Feedback/Comments
	Please refer to attached document

Summary continued over...

Summary of feedback and/or comments provided

Line number	Feedback/Comments

Email your feedback to consultation@sira.nsw.gov.au no later than 15 November 2016.

If your feedback doesn't fit in the allocated table you can attach another page to your submission.

Line number	Feedback/Comments
165	The Chamber requests that supplementary guidance material be included to explain what is meant by " <i>leadership and commitment</i> " as it is unclear how this relates to developing a return to work program (which is already a statutory obligation).
178 to 179	In relation to ensuring compliance and the comment that " <i>Employer associations or approved workplace rehabilitation providers can help to develop a program. . .</i> ", the Chamber seeks clarification as to whether or not the additional guidance material that is contained in the 2010 guidelines will be reproduced as an appendix to these new guidelines.
203	Clause 20 of the regulations refers to functions of return to work coordinators and does not refer to nominating approved workplace rehabilitation providers. This reference to the regulations needs to be amended so the correct regulation clause can be identified.
407 to 408	The Chamber submits that this sentence should be amended in the following way " <i>All employers, other than those who are exempt from these regulations, must have a return to work program in place within 12 months of starting a business becoming a category 1 employer or a category 2 employer</i> ".
409	The Chamber submits that the reference to clause 15(2) is not correct and needs to be rectified.
429	The Chamber notes that the nomenclature used throughout these guidelines when referring to the regulations is that of "clauses" rather than "sections", yet reference uses the word "section" when referring to regulations.
436	<p>The Chamber submits that the requirement to "<i>consult the workforce before proceeding</i>" with the appointment of a return to work coordinator under a shared arrangement should be deleted as it is unduly onerous.</p> <p>It is the Chamber's submission that the interests of workers are sufficiently addressed by the requirement that category 2 employers ensure that "<i>the arrangement will not disadvantage workers</i>".</p> <p>The Chamber requests however that supplementary guidance material be included to clarify what is meant by "<i>the arrangement will not disadvantage workers</i>" as it is difficult to see how the appointment of a return to work coordinator could disadvantage workers.</p>
446 to 447	The Chamber submits that this sentence should be amended as follows: " <i>Category 2 employers can meet their obligations by <u>adopting or customising</u> SIRA's standard return to work program (see page 19) for their workplace</i> " as the statement in its current form is misleading.
451	Please refer to the submission relating to line 429. In addition, the correct sub-clause is 13(2).
467	Please refer to the submission relating to line 429.
563	The Chamber submits that the requirement to " <i>contact the worker regularly throughout their recovery</i> " needs clarification as it may represent an unduly onerous obligation upon category 2 employers.

Line number	Feedback/Comments
74	The obligation imposed upon category 1 and category 2 employers to have a return to work program in place is contained in sub-clause 11(1) and sub-clause 11(2) respectively. It is not contained in sub-clause 15(2).
94 to 103	<p>The Chamber notes that the Authority wishes to replace the requirement to complete a particular course with a requirement to have "relevant training skills and experience" and provides a list indicating the general nature of the type of training, skills and experience that is required.</p> <p>The Chamber submits that, notwithstanding the information that is contained under the heading "Transitional provisions" (lines 105 to 114) more detailed information needs to be provided to enable an employer to understand whether or not it is compliant with this aspect of the guidelines. One example of such information could be including a list of particular occupations.</p>
104	This line should be referring to paragraph (a) of sub-clause 19(1) instead of sub-clause 23(1).
105 to 114	This section needs to be more obvious to the reader - for example, it could be contained in a break-out box.
137	The guidelines should cross-reference the material relating to the release and exchange of personal information that is contained in the appendix to the guidelines.
145 to 146	The Chamber submits that this sentence should be deleted as recruiting decisions are best made by employers and not by regulators. In addition, given that the Authority requires all return to work coordinators to have been adequately trained and to possess a certain level of skill and experience, the Chamber is of the view that it is inappropriate for the Authority to tell employers whether or not they should be appointing a return to work coordinator from an existing pool of employees.
151	<p>The Chamber submits that the requirement to "<i>consult the workforce before proceeding</i>" with the appointment of a return to work coordinator under a shared arrangement should be deleted as it is unduly onerous.</p> <p>It is the Chamber's submission that the interests of workers are sufficiently addressed by the requirement that category 2 employers ensure that "<i>the arrangement will not disadvantage workers</i>".</p> <p>The Chamber requests however that supplementary guidance material be included to clarify what is meant by "<i>the arrangement will not disadvantage workers</i>" as it is difficult to see how the appointment of a return to work coordinator could disadvantage workers.</p>
152 to 153	<p>The Chamber disagrees with the requirement for a category 1 employer to consult with its workforce before proceeding with the outsourcing or engaging of a return to work coordinator as it is of the view that this is too restrictive and unduly interferes with the employer's recruitment or engagement process.</p> <p>The Chamber submits that this requirement be removed from the list.</p>

Line number	Feedback/Comments
17 to 19	<p>As a principle of statutory interpretation the word "should" and "must" indicate mandatory statutory or contractual requirements.</p> <p>It is for this reason that the Chamber considers that the statement contained in the guidelines that the use of the word "should" as an indicator of SIRA's "expectations" where there is "no specific legislative intention" is misleading and will lead to confusion.</p> <p>The Chamber submits that consideration should be given to finding an alternative method for identifying best practice as opposed to statutory requirements. One way in which this could be done is contained in the Chamber's submission relating to lines 145 to 146.</p>
21 to 24	<p>This paragraph is misleading and needs to be amended as its contents are incorrect in two ways:</p> <ul style="list-style-type: none"> • First of all, the obligation imposed upon employers to have a return to work program in place is contained in sub-clause 11(2) (not clause 15) of the 2016 regulations. • Secondly, the obligation is to have a return to work program within 12 months of becoming a category 2 employer (and not within 12 months of having started a business).
25 to 27	<p>The table of criteria situated immediately beneath line 27 insofar as it relates to category 2 employers needs to be amended as it is incorrect and misleading in that, instead of containing the correct criteria for a category 2 employer as per the definition in sub-clause 3(1) of the 2016 regulations, it re-states paragraph (d) of the definition of a category 1 employer.</p>
28 to 38	<p>It is submitted that the exceptions should be relocated to immediately under line 24 (to make it clear that the exempted employers do not need to have a return to work program in place).</p> <p>In addition, it is submitted that the text should be re-formatted into a table so it is easier to follow.</p>
45 to 48	<p>The Chamber is concerned that the additional guidance material that is contained in the current 2010 guidelines and not included in the draft guidelines (that are proposed to replace the 2010 guidelines) will not re-produced and therefore will no longer be available for employers.</p> <p>It is submitted that the content of the 2010 guidance material should be re-produced as a separate guide as its contents are essential for helping employers understand their statutory obligations.</p>
62 to 66	<p>The Chamber submits that this information should be formatted in a way that makes it more obvious (such as in a break-out box) for those employers wanting to know where to find further information.</p>
72 to 73	<p>This paragraph needs to be amended as it is misleading. It states that the obligation to have a return to work program in place is dependent upon the commencement of a business. It should state that the obligation is dependent upon a business becoming a category 1 or 2 employer.</p>