

## Submission to State Insurance Regulatory Authority

### Return to Work Assistance Benefits

# Injured Workers Support Network

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## Injured Workers Support Network Submission Consultation Return to Work Assistance Benefits

The Injured Workers Support Network (IWSN) welcomes the opportunity to provide a submission regarding the Injured at work: A workers compensation guide for workers.

Set up in 2011, The Injured Workers Support Network is a not-for-profit organisation whose prime purpose is to assist injured workers trying to navigate the adversarial NSW Workers Compensation system as administered by NSW Government.

### Introductory paragraph:

It has been the Injured Workers Support Network experience that many employers are unwilling to take on an injured worker even if they have the capacity to take them on. We have seen that employers are effectively terminating employees by not providing them with suitable duties even when they do have capacity within the first 6 months of the worker being injured

Any discussion around return to work needs to focus on the requirement of employers to ensure that injured workers make a timely, sustainable and durable return to work to their original workplace if possible but to a workplace with suitable duties.

This is especially true for larger employers such as finance industry, public sector employers, call centres, supermarkets, etc. where the employer have a large range of tasks to perform and flexibility of staffing arrangements. These large employer should face fines if they deny a worker suitable duties if they have the capacity to provide them.

### Executive summary:

**The Injured Workers Support Network believes the new return to work assistance packages should use a broad definition of “work related” moving away from the task-orientated definition suggested by the discussion paper. A broader definition would encompass:**

- **Job Acquisition:** Assistance provided to ensure an injured worker will be successful in acquiring a position including the emotional psychological as well as the technical and practical.
- **Job Adjustment:** Assistance to ensure the injured worker’s return to work is successful. This would include items identified in the legislation such as child care, transport and equipment but would also include items aimed at increasing the skills an injured worker has to broaden the range of suitable duties they can perform within a workplace. This would also include workplace cultural adjustment as well as assistance provided to the injured worker.
- **Job Maintenance:** Assistance provided to ensure the injured worker continued in employment after the initial stages of acquisition and adjustment are finished.

The injured Workers Support Network is also concerned that the money allocated would be subject to insurers “cost -control” business model and urges the regulator to ensure that this does not occur. If this were to occur the Injured Workers Support Network fears the new packages would suffer the same fate as the existing packages and be substantially under utilised preventing the aims of the government in introducing them.

**Focus Question 1 – What are appropriate ‘classes’ of new employment assistance?**

Providing incentives to employers by way of covering the costs of employing injured workers for the first three months would encourage employers to potentially give an opportunity to an injured worker. By costs, we mean covering adjustments to the workplace, providing suitable PPE, covering the costs of any lost time due to the previous injury and other such items.

The Injured Workers Support Network does not consider covering an injured workers full wage to be one of these items. However, by offering a bonus to employers employing an injured worker for 6 months or longer may be a way of encouraging employers to take injured workers on board.

The classes of assistance listed in the act are all of benefit to an injured worker returning to work. What are missing from this list are forms of assistance, which would provide a mechanism to maintain an injured worker in the workforce for a period longer than the initial hiring period (being loosely the first 3 to 6 months). The capacity to maintain a position should be considered equally as important as the acquisition and adjustment stages.

The regulation should make allowances for classes of assistance that provides incentives and initiatives to maintain an injured worker in the workplace. Such classes would include:

- Ongoing professional mentoring
- Disability awareness training for a workplace and
- Advocacy and mediation within a work place where a position is at risk.

There are programs in place within the wider community to provide this assistance making the inclusion of a class of assistance aimed at maintenance viable.

The Federal government provides some assistance for people living with a disability to maintain a position. It is suggested that these classes cover services where the returned worker would not be eligible for the federal government assistance.

The current Retraining, Equipment and Workplace Modification guidelines 2015 provides assistance for many of the necessary elements to ensure an injured worker returns to the workforce.

The Injured Workers Support Network is aware though that there are many practical failings within the current service provision.

Utilising these new packages to cover the practical costs of employment should be within the scope of these packages as long as these are in addition to those required to perform the tasks associated with a successful undertaking of the new employees duties, given the acquired disability of the injured worker. One example of this would be the purchase of prescription safety goggles or ear muffs that can accommodate a hearing aid. These may not be considered “work related” products or services in a limited definition. Examples could be mentoring programs, stress management or work management counseling programs, gym membership close to the workplace ext, the purchase of a mobile phone for private use (especially pertinent for on-call casual employment).

The Injured Workers Support Network recommends that the definition of “work related” be expanded to include products or services that can assist an injured worker:

- Acquire a new position
- Adjust to a workplace and duties and
- Maintain their position within the workplace

**Recommendations:**

1. That the regulator broadly defines “class” to include acquisition, adjustment and maintenance of work by the injured worker. In particular the maintenance of work.
2. That the equipment class bridges the gap between these standard equipment and equipment required to accommodate an injury.
3. That the regulator includes “classes” which would meet the needs of social/cultural adjustment within a new workplace such as disability awareness training.

**Focus Question 2 – What circumstances, if any, should limit the types of costs that can be claimed under this benefit?**

The Injured Workers Support Network believes there should be no dollar limit on what the employer/employee can claim in order to have an injured worker return to their workplace but it must be work related (given the broader definition of a work related expense as submitted in question 1), actively support that worker in fulfilling their duty and a justifiable expense.

**Recommendations:**

1. That no dollar limit be utilised but that it must comply with a work related, supportive and justifiable clause in the regulation.

**Focus Question 3 – Should there be a time limit on when a cost was incurred and, if so, what timeframes should be reasonable?**

In most circumstances the injured worker's adjustment to a workplace will not be fully realised till after a settling in period at the new workplace. It may also be that the injured worker has an opportunity to progress in the new workplace but might require additional assistance to achieve this progression. As such required equipment, training or additional assistance may not be fully known till after any arbitrary timeframe is regulated (if this is regulated). The Injured Workers Support Network would therefore like the new packages to not have a time limit placed on them rather that the assistance be available until the money allocated to that injured worker is spent.

Note: The Injured Workers Support Network is not supportive of either a time limitation or a monetary limitation as both are arbitrary and can not reflect the true needs of the injured worker to access and maintain employment.

**Recommendations:**

1. Given the pre-imposed monetary limitation, that there be no imposed time limit on when costs are incurred.

**Focus Question 4 – What type of employment arrangements (e.g. ongoing employment, casual, short term contract work, or self-employment) should be considered?**

All employment types should be considered. More focus should be given to those that are willing to offer ongoing employment arrangements but as not all injured workers can sustain ongoing employment due to their injury, this needs to be looked at on a case by case basis.

The Injured Workers Support Network submits that there should be no limit as to the form of employment, which would attract the new support. Self-employment, contractual employment, Business start up, commission payment ect are legitimate income streams and should be included in any regulation as a legitimate “class” of employment.

The Injured Workers Support Network views volunteer employment as a legitimate form of employment. It is common practice for volunteers to be reimbursed for incidentals such as travel, meals and resources devoted to undertaking volunteer employment. The Injured Workers Support Network also acknowledges that this form of employment is not an income stream in and of itself but is an active way to assist someone to be “job ready” in what is usually a caring environment. We would therefore submit that Volunteer employment be considered as part of these new “classes” but that these costs be in addition to the current package so that the money available within these new packages is not diminished when the injured worker moves from volunteer work to income generating employment

**Recommendations:**

1. That there be no arbitrary form of employment excluded, rather a definition of sustainable and durable be used.
2. That volunteer work be included but that money allocated as a reimbursement cost and be in addition to the package for an income-generating job, which may follow volunteer work.

**Focus Question 5 – With reference to the information provided in Table 1 of this discussion paper, should limitations be considered in the classes of education and training?**

The Injured Workers Support Network believes that all levels of training should be included and no limitations imposed. As with our submission of a broad definition of work related imposing limitations on “classes” of education would be arbitrary and block capacity for an injured worker to diversify or improve their acquisition, adjustment and maintenance of employment. The Injured Workers Support Network makes an acceptance to prevocational training courses as will be discussed below.

Table 5 identifies 8 levels of training/education:

- Leisure and wellbeing courses are erroneously labelled as not return to work related. Though this may be true if a narrow definition of work related is used but these courses can be vital for injured workers to gain confidence in completing further study and in adjusting and maintain future employment. These courses should be considered part of a treatment regime, if appropriate to the workers injury, rather than part of education and training assistance.
- Occupational licences are evidently necessary, as the lack of these will block injured workers from employment opportunities.
- Pre-vocational courses are essential for assisting long-term unemployed injured workers to acquire a position. The Injured Workers Support Network believes that some forms of pre-vocational courses should be excluded from the list.
- Forms of pre-vocational courses such as job hunting, interview skills and resume writing should be excluded as these should form a standardised part of a rehabilitation program.
- Pre-vocational courses such as computer literacy, English and general literacy skills should be included as these are gateway courses for employment and are generally not currently provided by rehabilitation services.
- Certificate level courses are evidently a basis for most employment categories and should be included.
- Diploma level courses are evidently a basis for most employment categories and should be included.
- Undergraduate degrees should also be included for similar reasons as diploma level courses. They form the basis of a significantly wide variety of employment where physical disability can be overcome.
- Post-graduate courses again should also be included as these provide capacity to move employment, in particular for injured workers who have obtained undergraduate qualifications.
- Excluding university level education from the list in various industries would be the same as excluding occupational licences as in some professions if significant time is taken away from the workplace a “makeup” course is required to reobtain professional accreditation (nursing for instance).

- On-the-job training provides capacity for an injured worker to maintain and improve their position if provided. This form of training is particularly of note in services industries such as retail and community service and travel industries where there is a relevant on the job training structure in place and this can lead to a broadening of suitable duties within a workplace and/or industry.

Missing from this list is Apprenticeships. This category is not adequately identified in diploma or certificate level courses as it involves both on-the-job and traditional education. The Injured Workers Support Network believes that apprenticeships should also form a “class” within the regulation.

**Recommendations:**

1. That all classes of education be included in the regulation as accessible with the addition of apprenticeships and with limitation on pre-employment.
2. That pre-vocational courses currently provided by rehabilitation services should be excluded.

**Focus Question 6 – With reference to the information provided in Table 2 of this discussion paper, should limitations be considered in the classes of training provider?**

Regulations should be inclusive of all classes of classifications of training provider, given the broad definition of “work related” the Injured Workers Support Network is advocating in this submission.

Non-registered training programs are more likely to provide the leisure and wellbeing level of training identified previously in this submission as a necessary component in ensuring the adjustment and maintenance of an injured worker in a new role.

The Injured Workers Support Network believes that workers do need to be provided with quality training, which is recognised by employers. The Injured Workers Support Network would therefore advocate that when an injured worker is utilising this new package to obtain or improve a position (excluding on the job training), registered training organisations, higher education providers and specialist disability employment training providers should be given preference.

**Recommendations:**

1. That no limitation is placed on the “class” of trainer beyond the implementation of the “Work related” definition where they are providing job ready/education ready or job maintenance training to injured workers.
2. That this be delineated against the need to provide accredited and recognised industrial qualifications, which must be provided by suitably qualified and accredited training providers.



**Focus Question 7 – What circumstances, if any, should be considered in which an employer should not be liable to pay the cost of education and training assistance?**

It is prudent to have an appropriateness test for the approval of education and training. Given the Injured Workers Support Networks advocacy throughout this submission of a system that is as open as possible to the needs of injured workers when acquiring, adjusting and maintaining a new position this requirement should be paramount. It is just as important that the decision for approval not be left with the insurer, as their driving force is to limit costs by not allocating money. It is the experience of the Injured Workers Support Network that insurers will not pay for education and/or training prior to that injured worker obtaining employment. This situation is counterproductive to an effective return to work. The appropriateness test should therefore have a level of appeal to the regulator either directly or through a conciliation process, which is binding on the insurer.

The Injured Workers Support Network would also see as prudent that a re-training program be part of a return to work plan. Training and education does not necessarily mean a new position at a new company but can mean a move towards retraining the worker into a position where the inherent duties are more suitable to the recovery from their injury and/or acquired disability.

New employer should be shouldering the cost of education and training assistance where they have chosen to employ an injured worker with the necessary skills to do the job.

Previous employers should be shouldering the cost for education and training where they have dismissed the injured worker or been unable to provide suitable duties for the injured worker to perform. In each of these cases education and training should include retraining and/or up-skilling so the injured worker has a wider skill range to meet enable them to perform suitable duties that they may not pre-injury have the qualifications or training to perform.

It is also vital that all monies available for education and retraining should be allocated whether or not an injured worker has obtained employment. Even in this circumstance the employer (i.e the insurer) should be liable for the cost of education and training.

**Recommendations:**

1. That if the broader definition of “work related” as suggested by the Injured Workers Support Network is adopted an appropriateness test including provisions for job/education readiness related training and job maintenance be adopted.
2. That an appeals process be enacted within this regulation to ensure injured workers can have an independent review of a denied training program that is separate from the insurer who has denied this.
3. That a retraining component be included in a return to work plan as this may provide access to a broader range of suitable duties to the injured worker.
4. That regulation includes provision to prevent new employers redoing training for new hires who would qualify for the position without such training.
5. That regulations ensure previous employers pay for retraining and up-skilling of injured workers they have fired or are refusing/unable to provide suitable duties to as this training would broaden the range of suitable duties that injured worker could perform.

6. That monies allocated through this and all training packages available to the injured worker through this regulation and all other guide lines and laws do not have the requirement that the injured worker has obtained work in that related field prior to the money being allocated.

**Focus Question 8 – What considerations might be necessary in relation to the interaction between two new return to work assistance benefits and the existing vocational rehabilitation (section 53) programs?**

The Injured Workers Support Network has previously identified that the new allocations should be in addition to and not a replacement for the existing work assistance packages. Except in the case of direct training currently provided by rehabilitation providers which should be excluded from accessing the new packages.

Both employment assistance packages are extremely underfunded and could not hope to replace the existing package if the government is serious about ensuring injured workers return to the workforce.

The Injured Workers Support Network would also like to see the removal of the insurer as the body that decides what education or training is appropriate, as they through experience will only usually approve the cheapest of options.

**Recommendations:**

1. That the new return to work assistance packages be in addition to the existing return to work assistance packages without accommodation except to remove the capacity of rehabilitation providers from double dipping into the new packages for training they currently provide under existing arrangements.

**Focus Question 9 – What operational and administrative arrangements should be considered in relation to the two new return to work assistance benefits?**

Remove the insurer from being the final decision maker on the courses provided. The injured workers requests for training should be the only consideration except where their nominated treating doctor has excluded this due to the nature of the injured workers injuries or acquired disability.

Regulation is required to force the insurer to spend the money allocated for the injured worker preventing the withholding of this money from their “cost control” business model.

Ensure a fair and independent review procedure available to injured workers where there is a dispute between them and their insurer regarding the allocation of the new package.

We are aware that insurers and employer groups have now established rehabilitation panels and have contracted service level agreements with rehabilitation providers. The reality of this practice is that rehabilitation providers are under the same “cost control” business model employed by the insurers. This practice is likely to reduce the effectiveness of the new benefits packages this regulation seeks to enhance.

It also prevents the Injured Workers Support Network from advocating the idea that rehabilitation providers be given a greater role in the decision making process with regards to appropriate education and training for injured workers as a regulation that did this would provide an abhorrent level of power to the insurers.

The Injured Workers Support Network advocates strongly for the dismantling of this skewed system to ensure the existing and new packages are effective and are utilised.

In the supporting discussion paper provided by the regulator for this consultation there is no mention of the need for support to maintain the physical & psychological functioning of an injured worker after they obtain employment. There is also no mention of the utility of training to provide a broader range of suitable duties to injured workers. The regulations should encompass both these aspects of an injured workers reality within the final regulations.

**Recommendations:**

2. That the regulator looks beyond the current regulation process and works to disrupt the collusion between the insurers and certain rehabilitation providers to ensure the full utilisation of the new return to work assistance packages.
3. That the regulator includes as goals within this regulation the need for maintenance of an injured worker while at work through training.
4. That the regulator includes the goal of skill acquisition to broaden the range of suitable duties an injured worker can perform at their current workplace or at a future workplace.

**Focus Question 10 – Do you have any innovative ideas that might be incorporated into the return to work assistance regulation or otherwise enhance the regulation?**

Return to work requires a holistic approach, not just a cut and paste from a recruitment agency business plan.

The Injured Workers Support Network has provided several ideas that given the content of the discussion paper may be considered innovative but are logical, practical and present within the reality of any injured worker seeking to return to the workforce or maintain their position within their current employer.

These ideas include:

1. That the regulator broadly defines “class” to include acquisition, adjustment and maintenance of work by the injured worker.
2. That there be no arbitrary form of employment excluded, rather a definition of sustainable and durable be used.
3. That the regulator looks beyond the current regulation process and works to disrupt the collusion between the insurers and certain rehabilitation providers to ensure the full utilisation of the new return to work assistance packages.
4. That an appeals process be enacted within this regulation to ensure injured workers can have an independent review of a denied training program that is separate from the insurer who has denied this.

The Injured Workers Support Network would further advocate a stronger representation of federal government assistance in the return to work assistance programs. Workplace adaptations and job assistance are offered by the federal government to assist workers with a disability. The qualified definition to receive support applies to a number of workers within the NSW workers compensation system but little or no information is provided by the regulator or the insurer to employers on accessing these available benefits. We would not classify the provision of this information as being innovative but the Injured Workers Support Network would advocate that this information provision is done.

Another idea which is not innovative but may be considered so under the NSW system would be the imposition of penalties on employers and insurers who do not actively pursue suitable duties options for workers injured at their workplaces. This would encourage suitable duties and discourage the current practice of effectively firing injured workers by not providing suitable duties.

A greater emphasis on the recovery from an injury and/or an adaptation to an acquired disability within the workers compensation system would also improve return to work outcomes. Injury Management Plans need to be implemented for all injured workers, implemented earlier and need to be in control of the treating doctor, not the insurer or rehabilitation provider though we acknowledge the professional skills of rehabilitation providers to create and maintain an injury management plan. Injury Management Plans should be looking at what treatment is necessary to get the worker back to work, not what hoops the injured worker needs to jump through to keep their benefits going.

**Recommendations:**

1. That the regulator reviews the current reality of intervention by insurers in the successful outcomes of return to work

**Focus Question 11 – Are there any other matters relevant to the return to work assistance regulation that have not been addressed elsewhere in the SIRA discussion paper or your submission?**

The Injured Workers Support Network is aware that the regulator does not have access to accurate statistics of successful return to work outcomes. It is known to us that insurers mislabel people exited from workers compensation as having “returned to work” using a skewed definition that includes returned to the job market and not the more conventional and accepted usage that the injured worker is in receipt of an income from employment.

The regulator must insist upon that the insurers provide accurate statistics on the number of conventionally defined people who have returned to work and those who have not been returned to work but sent to the job queues or centrelink for their income support.

It needs to be understood that injured workers will sometimes plateau in their recovery even while they are still receiving treatment. It has been the experiences of many members in the Injured Workers Support Network that when this occurs, the insurers cease or delay treatments. Maintenance treatments are a necessary thing for injured workers as it may help them in being able to continue on with their life and in many cases return to some form of work, even if it was less than their original work. We can understand that insurers may see this as a waste of money, but many injured workers see this as a way to keep going on with their lives even though it may only help a small amount. This is especially relevant for workers with chronic conditions, like mental illnesses and joint disorders, that may not reach over the TPI thresholds to keep medical benefits going.