



# Return to Work Assistance

**The State Insurance Regulatory Authority**

**Submission of Unions NSW**

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# Introduction

Unions NSW welcomes the opportunity to make a submission to the State Insurance Regulatory Authority on the issue of "New Return to Work Assistance".

Unions NSW welcomes the extra assistance by the government to make it easier for employers to employ injured workers which has been a missing link in the return to work philosophy adopted by WorkCover.

Unions NSW as the peak council for unions in NSW has 60 affiliates with over 600,000 members. Unions NSW (formerly the Labor Council of NSW) has a proud history of representing injured workers in this state and in the national forum. Unions NSW negotiated a number of changes to the workers compensation legislation from the Workmens Compensation Act 1916 and the Workers Compensation Act 1926 as predecessors to the 1987 Act.

This workers compensation legislation was originally designed to restore workers to the state they would have been if not for injury. Since the 1980s however, these laws have faced ongoing pressure and cuts as governments aim to shift costs to workers, by minimising scheme scope of liability and also benefits available to injured workers.

Since the 1980s, with the 1987 Act and the 1998 Act, the focus has shifted from compensation to returning workers to work. Unfortunately despite the rhetoric much of the responsibility and cost has been placed on the injured workers with minimal support.

The introduction of these changes are welcome and overdue and may assist NSW in meeting the requirements of the ILO Convention 159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

## Existing services and duplication

Section 52 and 53 of the 1998 already provide for similar services under the *"Retraining, equipment and workplace modification guidelines"*.

Problems currently exist for injured workers accessing existing return to work assistance due to:

- Eligibility,
- Lack of access to rehabilitation providers; and
- Insurance company cost reductions.

As an example, a worker must be in receipt of weekly payments. Examples have been reported to Unions NSW when the insurance agent has been preparing to undertake a work capacity assessment, and that the insurance agent has stopped or withheld the worker's application for workplace retraining or vocational assistance. The benchmark of being in receipt of weekly payments provides clear incentives for the insurance company to cut weekly payments through work capacity assessments

in order to reduce overall claim cost, but leave the worker without actual suitable employment or income.

## **Hierarchy of Return to Work**

Whilst Unions NSW welcomes the support for workers returning to work with new employers, we question the eligibility criteria of supporting this form of employment over those higher up the hierarchy (same employer). The hierarchy of return to work in the NOHSC Return to Work Code of Practice<sup>1</sup> clearly has return to work with a separate employer at the lower 3<sup>rd</sup> and 4<sup>th</sup> preferences. Best practice would indicate extending this assistance to same employer return to work options.

## **Insurers**

Insurers appear to be one of the biggest obstacles for return to work and access to the existing return to work assistance and vocational retraining schemes. We have seen a number of self-insurers and scheme agents, who simply refuse to provide authorisation for a vocational assessment by a rehabilitation provider. This denies eligibility and access to the existing scheme vocational and rehabilitation assistance where a vocational assessment is a pre requisite. Unions NSW has seen the withholding of vocational assistance continue the punishment to a worker for making a claim, often ending with a negative work capacity assessment and medical retirement after 6 months. This is the antithesis of good return to work or return to work assistance.

Taking into account these issues Unions NSW has made the following recommendations:

### **Recommendations**

- **Return to work assistance should be broad and guided by the requirement for it to assist the worker return to work at a new employer.**
- **A one year time limit from commencement of employment is appropriate for when the cost is incurred.**
- **Access to a broad non-limited range of assistance should be authorised by a rehabilitation provider after a vocational assessment**
- **Training should be focussed on vocational and industry focussed training with the exceptions noted in this submission.**
- **That all types of employment arrangements should be supported.**
- **Where accepted by the worker, self-employment should be supported.**
- **Training should be primarily focussed on TAFE and University provided AQTF courses with the exceptions of occupational licenses and “learn to learn courses” as described in our submission which may require lesser standard of training provider.**
- **There should be ability for a direct application to SIRA for vocational assessment and return to work assistance.**

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<sup>1</sup> Guidance Note for Best Practice Rehabilitation management of Occupational Injuries and Disease [NOHSC:3021(1995)]

- **Refusal for access to vocational assessments or return to work assistance should be required to be reported to SIRA, who will be required to report these statistics to the public annually.**
- **The existing guidelines should be re-written in consultation with unions to include the new provisions.**
- **The existing disputes/appeals process contained on page 4 of the existing guidelines should be reviewed for effectiveness and extended to the new return to work assistance.**
- **Insurance Agents are provided with positive performance incentives to approve return to work assistance or have the responsibility removed.**
- **Injured Workers to apply directly to SIRA for access to vocational assessment and return to work assistance.**
- **That SIRA establish a tripartite consultative forum to monitor these and other workers compensation programs.**

We answer the specific focus questions below.

**FOCUS QUESTION 1: What are appropriate ‘classes’ of new employment assistance?**

Unions NSW states that these classes should not be limited, as every worker’s situation may differ. Instead the request for assistance should be vetted by a rehabilitation provider who can perform a vocational assessment.

By allowing the appropriate type of assistance to be provided for each class of assistance which is then vetted by the rehabilitation provider, will allow the worker’s circumstances to be taken into account.

For example a worker requiring to move work locations, who is a shift worker and can no longer rely on close public transport. The worker may need to purchase extra petrol, may need to purchase a car, use cabs or maybe even purchase a bicycle to get from a train station to a suburb some distance away in the dark hours of night without connecting transport.

Other examples for each category in the discussion paper demonstrate the variety of options that limiting will preclude.

**Education & Training:** This may include safety tickets such as white cards, fork lift tickets or tickets of competency and traffic control authorisations. This may also include human interest courses such as art used to reduce stress for psychological injuries such as encouraged by WorkCover through the Rape Crisis Centre case study.

**Transport:** This has a range of varied situations that should be assisted without limitation.

**Child care:** Child care is complicated due to the limited supply of vacancies in parts of New South Wales and long waiting lists. Child care is also limited by the large expense of several centres charging in excess of \$150 per day per child. Additionally

it can take several weeks before Centrelink:Family Assistance authorises the child care rebate. This assistance should be provided for whole or part for whatever the out of pocket expenses. May also need to include after and before school care and incidental care by family members.

**Clothing:** This should include whatever type of clothing is appropriate to the job regardless of whether a uniform or PPE is required. E.g. if a worker does make the transition from a manual job to an office or white collar job, as is recommended in many work capacity assessments, they may be required to buy a whole new work wardrobe. This may require new suits, shirts, trousers, smart skirts, blouses, jackets etc. depending on gender, industry and taste. This may easily require more than \$1000 but will not be specified as a required uniform, but necessary for social norms and adjusting workplaces.

**Equipment:** There are already provisions for equipment in the existing guidelines. Ergonomic equipment should be provided, or potentially items such as prescriptive safety glasses, back braces etc. through this scheme also.

**Any similar service or assistance:** This is wide and varied and could involve paying for someone to pick up the worker's child from school and take them to piano or swimming class because the new job has different hours of work.

As with all of these categories a rehabilitation provider should assess the circumstance of the worker allowing the worker to make some estimation of the difficulties of the transition to the new workplace.

#### **Recommendation:**

**Return to work assistance should be broad and guided by the requirement for it to assist the worker return to work at a new employer.**

**FOCUS QUESTION 2: What circumstances, if any, should limit the types of costs that can be claimed under this benefit?**

The costs should not be limited and should be approved by a rehab provider capable of vocational assessment.

The following positions address the criteria provided in the discussion paper:

**When products or services are not specifically work related:** As per the Rape Crisis Centre WorkCover Case Study stated above there may be a link between the workplace and the need for non-work related training or hobby, or to purchase an assortment of a different style of clothes not required as uniform but required for social workplace normative.

**When products or services are purchased by the worker that the new employer has a legal obligation to provide (such as personal protective equipment, or orientation training) –** Generally this should be provided as is required under the WHS legislation by the employer. An exception may be prescription safety glasses when engaged on a short term basis between multiple employers where the glasses would take longer than the term of engagement.

**When products or services are purchased by the worker that the employer usually provides to new employees at no costs to the employee (for example, uniforms, mobile phones etc.) – This is to help the injured worker adjust and not solely be a subsidisation of the employer, as there are other forms of assistance to do this.**

**When products or services are purchased outside specified time limits from the date of commencement of employment with a new employer-**

There is the opportunity although restricted to access retrospective claims under the existing guidelines. It makes sense to provide one year within which to make the claim as the injured worker would find it difficult to undertake the necessary administrative provisions as well as adjusting to work.

**Type of employment – self-employment, casual, part-time, volunteer • employment with more than one employer – See answer to question 4**

**Where it is an additional eligible new employer (i.e. used with multiple new employers – up to \$1,000) – This is to assist the worker with returning to work. The injured worker should be able to use up the \$1000 even if with multiple employers for same or different purposes.**

**When a cost is incurred – for example, three months after commencing employment.**

See answer to question 3.

**Recommendation:**

**Access to a broad non-limited range of assistance should be authorised by a rehabilitation provider after a vocational assessment.**

**FOCUS QUESTION 3: Should there be a time limit on when a cost was incurred and, if so, what timeframes would be reasonable?**

One year is an appropriate cut off when the worker would have been able to adapt to the changed work circumstances in a full work year cycle.

**Recommendation:**

**A one year time limit from commencement of employment is appropriate for when the cost is incurred.**

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

The return to work assistance is to assist the worker. If adopting the theory of the health benefits of good work, and the advantages of a return to work for ongoing recovery, the act of returning to work will be adequate to reduce the costs to the scheme. Therefore any type of work that the workers make an attempt at, should see the worker compensated for the adjustment that they are seeking.

There are occasions where for highly skilled workers that a vocational assessment recommends establishing a small business/consultancy and the worker accepts this course. If this is encouraging workers to regain meaningful employment and income, with less dependency on workers compensation, then the worker should be reimbursed for doing so.

**Recommendation:**

**That all types of employment arrangements should be supported.**

**Recommendation:**

**Where accepted by the worker, self-employment should be supported.**

**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?**

Unions NSW submits that there should be a preference for vocationally focussed, industry recognised training with the exceptions noted below.

The exceptions noted may be to provide the injured worker with courses that provide the capacity to “*learn to learn*” in a subject matter that is more comfortable with the workers interests. This is often necessary for workers who have not been required to learn new skills for some time.

Another exception is that the worker should also be able to seek training courses for diversion therapy such as the example provided by WorkCover in the Rape Crisis Centre Case Study for psychological wellbeing.

**Recommendation:**

**Training should be focussed on vocational and industry focussed training with the exceptions noted in this submission.**

**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?**

Yes, the training provider should be limited to TAFE or University courses for all vocational, industry recognised training with the listed exceptions below. Accredited specialist disability employment training providers should be considered if there is a genuine high needs disability only.

There has been too much corruption identified in the private vocational training industry. We have seen training companies break the rules with AQTF, with government agencies such as Centrelink and Job Placement Companies, and also with migration agents close association with a number of these companies. There is too much incentive with government subsidised training to “game the system” without quality outcomes and real job readiness by the worker. Injured workers should not be disadvantaged by being forced to work with unscrupulous operators

that will take their allotment but not improve their job readiness. The integrity of the training will ensure that the whole program continues.

Government corruption rules govern SIRA, Icare and TAFE and can ensure that there are not ongoing negative consequences for what is a well-intentioned public policy proposal.

### **Exceptions**

Occupational Licenses that are a pre-requisite for the worker to work in certain occupations, should be allowed but with a more relaxed selection of training provider. Due to the undercutting in industry there are very few TAFE training suppliers of courses such as white card, or traffic control courses.

Other courses such as “learn to learn” leisure courses or for “diversion therapy” should be allowed with lesser structured registered organisations at reasonable advertised market rates. These should be limited with a lower expense and proportion of the \$8000.

### **Recommendation:**

**Training should be primarily focussed on TAFE and University provided AQTF courses with the exceptions of occupational licenses and “learn to learn courses” as described in our submission may require lesser standard of training provider.**

**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?**

This question appears out of context with the discussion paper content.

The question should be answered in much the same manner as the current guidelines deal with training expenses. Standard industrial frameworks should apply, and encouragement of the beneficial nature of the legislation should guide the payment by the scheme to workers for expenses they have incurred. Payment should only be made in exceptional circumstances for training where the training is for:

- For an employer RTO
- For an employer specific training package with limited to no transferability.

**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?**

There are currently too many obstacles for workers to access the current vocational rehabilitation programs, if the insurer is set on reducing the cost of the claim. The obstacles that must be met include:

- That the injured worker is on weekly payments,
- Was a vocational assessment approved?,

- Does a vocational assessment that is conducted, approve a course of training or workplace adjustments that are suitable to the worker,
- Currently requires different parties to authorise the expenditure depending on the program or the size of the expenditure, and insurance arrangements; and
- Has a range of monitoring milestones where the worker may be unable to complete the training due to external factors?

By reducing the requirement for the insurer to approve, this will reduce the expense of the system, and only require a vocational assessment prior to undertaking return to work assistance that could be triggered from the application to SIRA/Icare.

The disputes process should be reviewed and continued to the new return to work assistance.

In the long term, the guidelines should be re-written to include all types of assistance.

**Recommendation:**

**There should be ability for a direct application to SIRA for vocational assessment and return to work assistance**

**Recommendation:**

**The existing guidelines should be re-written in consultation with unions to include the new provisions.**

**Recommendation:**

**The existing disputes/appeals process contained on page 4 of the existing guidelines should be reviewed for effectiveness and extended to the new return to work assistance.**

**FOCUS QUESTION 9: What operational and administrative arrangements should be considered in relation to the two new return to work assistance benefits?**

The new provisions are very similar to the old vocational assistance, and the experience is that the insurance agents are reluctant to pay for rehabilitation providers to undertake a vocational assessment. The majority of the existing Guidelines encourage good governance and require a vocational assessment prior to approval.

Insurers through the work capacity decision process can deem alternate occupations suitable employment without actually acquiring a vocational assessment, yet can delay approval of rehabilitation provider allocation or a vocational assessment. As the insurers have limited incentives to authorise vocational assessments or retraining at present, it would be worthwhile to incentivise retraining in scheme agents' performance contracts.

Additionally it is feasible to allow the injured worker to initiate the application through their request for a vocational assessment and their choice of return to work, to make

application directly to SIRA/Icare. This will allow SIRA to assess the commitment to return to work of the insurance agent and employer, and also allow Icare to remove several stages of approval, thus reducing costs. This would also reduce the ability of self-insurers from unfairly resisting their workers' pursuit of return to work outcomes.

The denial of vocational assessments and return to work assistance is an indicator of non genuine attempts to assist workers back to work currently. Refusals should be reported to SIRA and reported in the Annual Report or Annual Statistical Bulletin.

**Recommendation:**

**Insurance Agents are provided with positive performance incentives to approve return to work assistance or have the responsibility removed.**

**Recommendation:**

**Injured Workers to apply directly to SIRA for access to vocational assessment and return to work assistance.**

**Recommendation**

**Refusal for access to vocational assessments or return to work assistance should be required to be reported to SIRA, who will be required to report these statistics to the public annually.**

**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?**

Workers should be allowed to make an initial application themselves. This will allow the worker to make an assessment of their own requirements, and reduce the need for insurance agents to review the documents, hence reducing administration costs. This may also allow the worker to take ownership of the application and return to work decisions.

SIRA currently lacks tripartite consultation on a range of their roles. The new Board appears to lack any direct representation from workers. In compliance with the ILO Convention 144 Tripartite Consultation it is appropriate to have a consultation forum that manages the effectiveness of this and other SIRA programs.

**Recommendation:**

**That workers be permitted to make an application themselves for return to work assistance.**

**Recommendation**

**That SIRA establish a tripartite consultative forum to monitor these and other workers compensation programs.**

**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 dispute/appeals process unlike in the current *Retraining, equipment and workplace modification guidelines* appears absent. It is also unknown how effective the current appeals process is.

**Recommendation:**

**The existing appeals process is reviewed for effectiveness and extended to new return to work assistance.**