

# **Submission: Regulation of return to work assistance**

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## **Focus question 1: What are appropriate 'classes' of new employment assistance?**

National Disability Services believes that the employment of people with disabilities should be a major focus to reduce overall costs to the community and to ensure inclusion of all people in the workforce. After a significant work-related injury, where a person is unable to resume work with their pre-injury employer, assistance may be needed in relation to a range of needs to allow the person the best opportunity to gain productive employment. This assistance starts with appropriate medical and other support to reach full functional potential. Assistance may then be required for job seeking. Where there are ongoing disabilities as a result of the work injury which can impact on employability these needs should be met to give the person the opportunity to return to the workforce. The person may need to retrain or gain new work skills and assistance should be provided in this area. Ongoing effects of the injury may require assistance with personal care as well as transport, and reasonable costs associated with any workplace modification or equipment to compensate for deficits. Support to deal with the psychological impact of resuming work may also be needed. Another consideration is the issues related to regional as opposed to metropolitan employment access. Supporting infrastructure is not as widespread in rural and remote locations and so transport and general cost of support items such as cost of uniforms and equipment is higher. There should be no disadvantage for rural workers i.e. we do not want injured workers limited due to cost of travel etc but employers in rural areas should not pay higher premium costs due to their location.

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

Costs should be based on the degree of disability and the benefits of resuming work and should be determined based on objective assessment. They should not include costs normally incurred by an employer for a new recruit unless a job has been specifically developed for the injured worker and is above previous staffing estimates to provide employment for the injured worker. New employment should only be considered with one employer (not 2) as the ability to ensure a safe work environment can become compromised if the worker resumes in more than one environment.

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

This would be dependent on the nature of the injury and the likelihood of any deterioration which may lead to further needs being identified down the track. Where needs are directly related to a

compensable work injury, services and supports such as those offered under the NDIS should not be accessed. There may be ongoing personal care or other needs as well as the need for replacement equipment from time to time which is specifically required for the injury. A new employer may need a guarantee of these aids being provided in order to offer the employment in the first place. Timeframes for training assistance will obviously be dependent on the type of education program and length of such training. Course timeframe extensions should only be approved exceptional circumstances as if it is needed due to difficulty with completion of work etc. This may indicate a lack of motivation or poor suitability of the course itself.

**Focus question 4: What type of employment arrangements (eg ongoing employment, casual, short term contract work, or self-employment) should be considered?**

The type of employment arrangement should be the same as what they were doing when injured whenever possible e.g. full-time or part-time. Generally costs should be related to employment with a new employer and for a certain number of hours of work to justify the cost benefits. Costs related to volunteer work should only be covered where the volunteer work is being used as a part of a work trial and the costs relate to developing fitness for work or training. If only short-term work is accessed there may be the need for ongoing employment support depending on the barriers present to independent job seeking e.g. need for ongoing workplace modifications which will need a rehabilitation provider to organise.

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

It is noted that training support requires the person to have been in receipt of workers compensation payment for an aggregate period of 78 weeks. This goes against early intervention principles and the RTW Guidelines which indicate that a decision should be made at an early stage if the person is unlikely to be able to resume their pre-injury role. This should be amended in the regulation to allow earlier commencement. The level of training assistance should be determined by both the degree of injury and the pre-injury salary level of the injured worker as the person should be retrained to move to a similar level position in most cases. Training assistance should be looking at the shortest course possible to allow the person to resume productive employment at a similar level of salary. It may be worth making a direct payment to the person to cover the course costs and then they will be responsible for completion of all course requirements and any costs incurred if they do not complete or pass particular subjects. If the worker chooses to pay to complete a higher level course this should not impact on their ability to resume productive work and they should not continue to receive benefits in such cases. Leisure and wellbeing courses should not be supported when not directed to employment and all training should be provided by accredited bodies with measurable quality outcomes.

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

To ensure acceptance in open employment, an industry recognised qualification is essential from any training provider other than on-the-job type training such as is offered by disability employment providers. Certificate courses over 1 year should be conducted at TAFE rather than an RTO due to the guarantee in organisational sustainability and infrastructure that accompanies the TAFE system.

**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?**

Under current workers compensation legislation a medium to large employer is liable for any wages lost for up to 3 years after an injury at premium renewal. This is a massive cost impact for employers and the cost of education and training assistance should not be included in premium costs. If they were the employer should be directly involved in the retraining decisions. If the costs are included there should be exemptions for employers who cannot offer alternate employment due to the nature of the business or the circumstances of the injured worker and/or if they can demonstrate efforts to support the injured worker. Where a course is extended because of the failure to complete a subject or subjects satisfactorily the employer should not be liable.

**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?**

It would appear that the assistance programs outlined replicate and extend on the current section 53 programs and should be designed as such, otherwise a range of difficulties and misunderstanding as well as administration costs will occur.

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

An employer may choose to provide suitable duties to an injured worker for a 3 year period after an injury to reduce premium impact knowing that these duties cannot be sustained and that the worker will be unable to resume their substantive role. It would be preferable that the injured worker commences retraining/redeployment at an earlier stage than this. However the disincentives imposed by premium cost impact if performing pre-injury hours currently exist and these should be addressed to reduce the risk of long-term disability and dispute. A review of the administrative processes required by rehabilitation providers including who can perform different functions to minimise costs and time delays is also suggested.

**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?**

The regulation should not rewrite what has been in place but enhance this to ensure better outcomes. Removing disincentives to early retraining would be a first point. Also including the work trial system in the regulation is essential as this allows injured workers to maintain or develop work fitness. Currently work trials are frequently only used to test out a new role but would be better utilised at an early stage in the recovery process when it is identified that an injured worker is unable to undertake suitable duties with their pre-injury employer. This would require better advertising of the system, reduce red tape requirements and improve benefits for injured worker and host employer. It would also require changing the legislation so that participation in a work trial is considered as a resumption of work duties and therefore not impact the premium of the pre-injury employer if a work trial or re-education is organised.

**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?**

As mentioned above work trials have not been addressed. To meet the standard of recovery at work and reduce the impact of lost time, better use of work trials at an early stage of injury would be ideal and may reduce the need for retraining. NDS has investigated implementing a MOU between disability service providers to facilitate the undertaking of work trials utilizing the services of our Shared RTW Coordinator for the disability sector but have been restrained from doing this due to the need to use external rehabilitation providers and the impact on the pre-injury employer's premium. A work trial within the sector would minimise the retraining costs and time lost. Retraining if needed should also start at an early stage to reduce the impact of long-term absence from work. Inclusion of provisions for industry specific work trial systems would be suitable to include in the regulation if such restraints can be removed.