

WorkCoverSA

Claims Operational Guidelines

Chapter 7: Rehabilitation and return to work

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Chapter 7: Rehabilitation and return to work

One of the primary objectives of WorkCover, as defined in the *WorkCover Corporation Act 1994*, is to “ensure, as far as practicable, the prompt and effective rehabilitation of workers who suffer work-related injuries”. The objectives of this Act include establishing a worker's rehabilitation and compensation scheme that provides for the effective rehabilitation of injured workers and their early return to work.

For employers who employ 30 or more workers, rehabilitation commences with a rehabilitation and return to work coordinator.

Sections of the *Workers Rehabilitation and Compensation Act 1986* (the Act) relevant to rehabilitation

Section 26(1) of the Act gives the authority for establishing and approving rehabilitation programs for workers suffering from compensable injuries.

Sections 28A of the Act gives the authority for establishing rehabilitation and return to work plans and, in certain circumstances, dictates when a plan must be established. It also defines the guidelines for use of rehabilitation and return to work plans.

Section 28B of the Act provides the review rights of rehabilitation and return to work plans.

Section 28C of the Act provides that rehabilitation programs and rehabilitation and return to work plans must comply with the standards and requirements imposed by regulation. The regulations¹ set out the specific standards and requirements relating to rehabilitation programs and rehabilitation and return to work plans.

Section 28D of the Act gives the authority for the requirement of employers to appoint a rehabilitation and return to work coordinator.

Rehabilitation and return to work coordinators

Section 28D of the Act and the associated regulations set out the requirements for employers who employ 30 or more workers to appoint a coordinator and comply with any training or operational guidelines² published by WorkCover from time to time for the purposes of section 28D.

An employer, who has two or more workplaces at which more than 30 workers are employed, must provide – in addition to the appointed coordinator – a contact person at each workplace to assist the coordinator to perform their functions. The contact person is not required to be a trained coordinator.

A coordinator does not have to be a full-time employee, who is dedicated solely to the functions of that role. However, the employer must ensure that the coordinator is sufficiently capable of, and has sufficient time to carry out the functions listed in subsection 28D (4) of the Act³.

¹ Regulations 22 and 23 of the *Workers Rehabilitation and Compensation Regulations 2010*

² The training and operational guidelines are the *Rehabilitation and return to work coordinator guidelines* (the Guidelines).

³ Refer to *All you need to know about a rehabilitation and return to work coordinator* on WorkCover's website, www.workcover.com

Section 28D(4) states that a coordinator has the following functions:

- (a) *To assist workers suffering from compensable injuries, where prudent and practicable, to remain at or return to work as soon as possible after the occurrence of the injury*
- (b) *To assist with liaising with the Corporation in the preparation and implementation of a rehabilitation and return to work plan for an injured worker*
- (c) *To liaise with any persons involved in the rehabilitation of, or the provision of medical services to, workers*
- (d) *To monitor the progress of an injured worker's capacity to return to work*
- (e) *To take steps to, as far as practicable, prevent the occurrence of a secondary injury when a worker returns to work*
- (f) *To perform other functions prescribed by the regulations.*

Section 28D further states that an employer must appoint a coordinator within six months of the requirement to be registered under part 5 of the Act (or within a later period approved by WorkCover). The coordinator must be:

- an employee of the employer
- based in South Australia.

Section 28D(7) of the Act says that the regulations may exempt an employer of a prescribed class from the requirement to appoint a coordinator for that financial year. An employer, who employs less than 30 workers at the commencement of the financial year, is exempt from the requirement to appoint a coordinator. In addition, an employer, who employs less than 30 workers and is not likely to employ 30 or more workers for a continuous period of three or more months during the financial year, may be granted an exemption from the requirement to appoint a coordinator

An employer may be exempt from the requirement to appoint a coordinator who is an employee, if the employer holds an approval granted by WorkCover on the grounds that the employer is a member of a group or association that shares the services of a coordinator (or a number of coordinators). Employers can apply to WorkCover for an exemption.⁴

Filling a vacancy in the office of coordinator

Section 28D(6) of the Act further says that, if the position of the rehabilitation and return to work coordinator becomes vacant, the employer is required to appoint a new coordinator within the prescribed period of the vacancy occurring. The prescribed period in the regulations⁵ is defined as three months.

Rehabilitation and return to work coordinator training

Subsection 28D(5) of the Act says that an employer must:

- provide the necessary facilities and assistance to enable the coordinator to perform their functions (eg, telephone and access to fax machine)

⁴ The details of the application process can be found in the *Rehabilitation and return to work coordinator guidelines* on the WorkCover website, www.workcover.com

⁵ Regulation 26 of the *Workers Rehabilitation and Compensation Regulations 2010*

- comply with any training or operational guidelines published by WorkCover.

These guidelines state that an employer, who is required to appoint a coordinator, must ensure that the appointed coordinator:

- *satisfactorily completes a training course delivered by a WorkCover-approved training organisation or*
- *satisfactorily demonstrates prior learning through a recognition of prior learning assessment carried out by a training organisation approved by WorkCover.*

The coordinator must complete the training within three months of being appointed or, if a training course is not available in that time, enrol in the next available course.

Small employers who are required to appoint a coordinator must ensure that their co-ordinator attends a one-day coordinator training course with a Registered Training Organisation approved by WorkCover and satisfactorily completes an assessment. An employer with a base premium of less than \$20,000 and/or annual remuneration of less than \$300,000 is considered to be a small employer. All other employers who are required to appoint a coordinator must ensure that their coordinator attends a two-day coordinator training course with a Registered Training Organisation approved by WorkCover and satisfactorily completes an assessment.

RRTWC - Workplace rehabilitation procedures

The training and operational guidelines also say that an employer who is required to appoint a coordinator must develop workplace rehabilitation procedures that describe how rehabilitation will be implemented in the workplace.

An employer's workplace rehabilitation procedures should:

- list the rights and responsibilities of injured workers
- describe the process for the early notification of injuries
- list the functions and the responsibilities of the coordinator and contact person (if applicable)
- describe the roles and responsibilities of managers, supervisors and co-workers in the rehabilitation and return to work process
- be signed off by a person who has the authority to commit the employer to the procedures.

Employers must explain the functions of a coordinator to managers, team leaders, supervisors and workers. They must also display the name and contact details of their coordinator in the workplace.

The role of the rehabilitation and return to work coordinator

The coordinator plays an important role in return to work. They encourage early reporting of injuries, assist injured workers to return to work in a safe and sustainable manner and ensure that the employer's workplace rehabilitation policy and procedures are implemented and monitored.

The coordinator's tasks may include⁶

- To assist an injured worker to remain at or return to work as soon as possible following a work-related illness or injury by:
 - keeping in contact with the injured worker, especially while they are not at work
 - liaising with supervisors and line managers regarding suitable employment for the injured worker (the employer is required to provide safe, suitable employment that an injured worker is fit to perform, unless it is not reasonably practicable to do so)
 - providing information about alternative duties for the injured worker to their doctors (alternative duties are modified duties that are provided for an injured worker who has some ability to work but cannot perform their pre-injury duties – this can form part of a graduated program to return to work)
 - documenting details of the injured worker's ability to work, any restrictions and suitable duties for the purpose of rehabilitation on a suitable duties schedule
 - providing the worker and relevant supervisors/line managers with a copy of the suitable duties schedule
 - reporting any barriers to return to work to the employer and the case manager (see below for more on the case manager).
- To assist the case manager in preparing and implementing rehabilitation and return to work plans
- To communicate with persons involved in rehabilitating or providing medical expert services to workers
- To monitor the progress of an injured worker's ability to return to work
- To take steps to prevent the aggravation or worsening of a workers' injuries when they return to work.

Limitations to the role of the rehabilitation and return to work coordinator

The coordinator's communication with an injured worker's doctor will generally be restricted to work capacity issues related to the work injury.

The coordinator does not have the delegated authority to make any decisions pursuant to the provisions of the Act or to incur expenses on behalf of WorkCover. They should not investigate a claim, request services on behalf of the claims agent, prepare or approve any rehabilitation and return to work plans or attempt to interpret medical reports or claim details.

However, it is important to remember that the role and delegated authority of a self-insured employer's rehabilitation and return to work coordinator may be different to those of a non self-insured employer's coordinator. They will depend on the internal policies and delegations of the self-insured employer.

How can a case manager work effectively with a rehabilitation and return to work coordinator

A coordinator can help a case manager by initiating early intervention and coordinating an injured worker's return to work following an injury. It is therefore important that the case manager involves the coordinator in any decisions that are made regarding an injured worker's rehabilitation.

⁶ Refer to *All you need to know about a rehabilitation and return to work coordinator* on WorkCover's website, www.workcover.com

Examples of how the case manager can work with the coordinator include:

- contacting the coordinator on receipt of the notification of injury to touch base and introduce themselves (if the name or contact details of the coordinator are not known, these details can be sought from the employer contact)
- discussing with the coordinator the availability of suitable duties and strategies to enable the worker to remain at work, return to work or increase capacity
- contacting the coordinator as required to identify key barriers/issues and rehabilitation strategies needed to obtain outcomes
- involving the coordinator in the development of a rehabilitation and return to work plan
- involving the coordinator in the review of rehabilitation programs and/or rehabilitation and return to work plans to ensure all parties are progressing towards the identified goals and that these goals are still relevant
- involving the coordinator when assessing the requirement for medical expert services.

It is important that the coordinator and the case manager work closely together, so that goals are achieved and duplication of effort is avoided. They should both remember that section 27 of the Act encourages the use of rehabilitation facilities and services provided by the employer.

Scheme Compliance Directorate

The Scheme Compliance Directorate has been established by WorkCover to oversee both WorkCover's and employers' responsibilities under sections 28D, 58B and 58C of the Act.

As well as monitoring and enforcing employers' legal obligations under these sections, the Directorate works to build awareness and provide greater support to employers by assisting them to meet their return to work obligations. The unit promotes the proactive workplace rehabilitation of injured workers, leading to safe and sustainable return to work outcomes.

The Directorate also provides a help desk facility that services coordinators, employers, injured workers and training providers. It also monitors and evaluates the training provided to coordinators.

Interaction

The Directorate is responsible for dealing with any potential breaches under sections 28A, 28D or 58B/C reported to them. For instance, if the claims agent identifies that an employer is obstructing a return to work, they must promptly intervene and make all reasonable efforts to address and rectify the matter. Where the employer subsequently fails to comply with their obligations, the matter must be referred to the Directorate, which will intervene and investigate the employer's obligation.

Likewise, any relevant information obtained by the inspectors during the course of carrying out their duties which can assist with the return to work process should be relayed to the case manager.

Aim of rehabilitation

Section 26(1) of the Act states that WorkCover establishes or approves rehabilitation programs with the objective of ensuring that injured workers:

- (a) *achieve the best practicable levels of physical and mental recovery; and*
- (b) *are, where possible, restored to the workforce and the community.*

Workplace rehabilitation framework

In July 2010, WorkCover implemented Heads of Worker' Compensation authorities *Guide: Nationally consistent approval framework for workplace rehabilitation providers* (the Guide). Under this framework workplace rehabilitation providers are required to coordinate services that are designed to achieve a cost effective, safe, early and durable return to work for the worker.

Workplace rehabilitation is delivered on a service continuum of assessment of need, planning, active implementation, review and evaluation. In accordance with WorkCover's commitment to access and equity, workplace rehabilitation providers must ensure all injured workers can access rehabilitation and return to work services regardless of their disability, gender, culture, language and literacy skills.

Role of the claims agent in the rehabilitation process

The claims agent is responsible for:

- assessing the requirement for workplace rehabilitation services
- determining the rehabilitation and return to work goal(s) for the worker
- identifying an appropriate workplace rehabilitation provider
- informing the worker, employer and treating medical practitioner of the referral details for workplace rehabilitation services
- forwarding a referral for the identified workplace rehabilitation service to the principal of the workplace rehabilitation service provider, not individual workplace rehabilitation consultant
- assessing the requirement for medical expert services
- forwarding referral for the identified medical expert service
- identifying the appropriate provider for support services, approving reasonable cost of service identified,
- approving rehabilitation programs and/or rehabilitation and return to work plans
- reviewing rehabilitation programs and/or rehabilitation and return to work plans to ensure they are progressing towards the identified objectives and goal
- reviewing rehabilitation expenditure
- ceasing rehabilitation when the objectives/goal have been achieved or the worker has achieved the best practicable level of physical and mental recovery

Case managers may make referrals to workplace rehabilitation providers for the following services depending on the rehabilitation and return to work goal:

- Return to work pre-injury employer
- Return to work different employer (transition)
- Intensive Job Search Program (IJSP)
- Job placement
- Restoration to the community
- Suitable employment assessment and report.

The *Workplace rehabilitation provider fee schedule and guidelines* can be found on WorkCover's website, www.workcover.com

Role and responsibilities of workplace rehabilitation providers

Workplace rehabilitation providers are engaged to provide specialised expertise in addition to that generally available within the employer's and claims agent's operations. However at all times the responsibility for ensuring appropriate service delivery rests with the case manager.

Workplace rehabilitation providers are required to deliver services to workers and employers that are aligned with the Guide and to deliver these services in a cost effective, timely and proactive manner to achieve a worker's safe and durable return to work.

Principles of a workplace rehabilitation provider's service delivery include:

- A focus on return to work
- The right services provided at the right time
- Effective service provision at an appropriate cost
- Effective communication with all relevant parties
- Evidence based decisions

Rehabilitation prior to claim acceptance

Under section 26(4) of the Act, a worker can be referred for rehabilitation services when the claim is still undetermined.

Any rehabilitation that is established under this section will need to appear on a rehabilitation program.

Assessing the need for workplace rehabilitation services

All claims should be assessed for the need for workplace rehabilitation services. The majority of workers injured at work make a successful recovery without the need for workplace rehabilitation services.

The assessment will also require the case manager to consider the legislative and policy requirements:

- A rehabilitation and return to work plan is required if the worker is receiving income maintenance and '*is (or is likely to be) incapacitated for work by a compensable injury for more than 13 weeks (but has some prospect of returning to work)*' (section 28A(2)(b)).

Workplace rehabilitation services not required

The decision that workplace rehabilitation services are not required is likely to be made when:

- the worker's incapacity is for a closed period and a clearance certificate is pending
- the employer has the return to work process under control and no extra assistance is required
- the worker has returned to work and there is no entitlement to income maintenance.

If it is determined that no workplace rehabilitation services are required to enable the worker's return to work, the case manager must record the outcome of the assessment. If return to work assistance is not required, there is a requirement for the case manager to review the file regularly where circumstances have changed, to determine whether the worker requires a rehabilitation program and/or rehabilitation and return to work plan in accordance with sections 26 and 28A(2) of the Act.

Determining rehabilitation and return to work objectives for the worker

The Act has been developed to assist workers to achieve an early and safe return to work and/or restoration to the community.

Workplace rehabilitation services will have as one of its objectives:

- Return to work with pre-injury employer, same job
- Return to work with pre-injury employer, different job
- Return to work with different employer, same job
- Return to work with different employer, different job
- Restoration to the community.

Assessment and referral to a registered workplace rehabilitation provider to achieve objectives

If it is decided that a workplace rehabilitation provider is needed, the referral should be linked to the above objectives.

To achieve an identified objective, rehabilitation must be a managed process involving timely intervention with appropriate and adequate services based on assessed need, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.

All referrals must go through the principal of the workplace rehabilitation provider who, in consultation with the case manager, will decide on the most appropriate workplace rehabilitation consultant to manage the case.

- Referrals will be made for a specific objective and ordered from Cúram using the relevant standard letter service provider. The referral types are detailed on the *Workplace rehabilitation provider fee schedule and guidelines*.

It is important to note that it is a reasonable expectation that a suitable employment assessment would have already been conducted as part of normal workplace rehabilitation service delivery. Therefore, in compiling a suitable employment report for an existing client with a provider, only the report itself will attract a fee. Suitable employment referrals are not required in cases where only the report is needed.

Refer to WorkCover's *Workplace rehabilitation fee schedule and guidelines*.

Referral for medical expert services to enable a worker's return to work

There are a number of medical expert services that may be required to enable a worker's rehabilitation and return to work. For further information about these services and for a definition of the role of the medical expert please refer to the psychology, physiotherapy and occupational therapy fee schedules and guidelines. (These can be found on WorkCover's website, www.workcover.com)

If a case manager refers a worker for a service with a medical expert they must supply the medical expert with a written referral as per the relevant fee schedule and guidelines. Medical expert services are:

- Activities of daily living
- Worksite assessment
- Job Analysis
- Functional capacity evaluation
- Graded return to work program
- Vocational assessment

Other rehabilitation support services required

The case manager should seek to clarify the worker's circumstances in relation to home duties, child care etc during the initial discussions preferably at claim determination. If appropriate, the case manager should discuss the availability and/or requirement of any of these support services with the injured worker in detail. It should be noted that both men and women may require such services. (For further information refer to Gender, Workplace Injury and Return to Work: A South Australian perspective, February 2005 which can be found on WorkCover's website.)

Home help – refer to chapter 11A for guidelines

Child care – refer to chapter 11A for guidelines

Home nursing and personal attendance

Home nursing

This service must be delivered by an enrolled nurse, registered nurse or specialist nurse.

Service description	Assessing requirement	Approval and duration
<p>Includes but is not limited to:</p> <ul style="list-style-type: none"> • case liaison and management • nursing and health assessment • provision of general nursing care • personal hygiene (including bowel and bladder care) • mobility and transfers • fitting and use of aids and appliances, hearing and communication devices • provision of intravenous therapy • participation in a pain management team • wound management (acute and chronic) • medication oversight and administration • carer's needs (assessment and support). 	<p>Based on the recommendation of the treating medical practitioner, any treatment provided by the nurse is under the direction of the treating medical practitioner.</p> <p>Workplace rehabilitation consultants may also identify the need for home nursing.</p>	<p>Claims agent approves home nursing after considering recommendations and assessments.</p> <p>Home nursing can be included as part of a rehabilitation program or rehabilitation and return to work plan.</p> <p>The duration of the service will be under the direction of the medical practitioner.</p>

Personal attendance

Delivered by community care workers, nurse assistants and personal attendants.

NB: Family members should only be considered in exceptional circumstances (Refer to chapter 11).

Service description	Assessing requirement	Approval and duration
<p>Includes assistance with one or more of the following:</p> <ul style="list-style-type: none"> • laundry • eating and drinking • showering, bathing, dressing, grooming – ongoing basis • meal preparation/cooking • bed making • essential ironing (for the injured worker only) • banking, shopping/bill paying and recreation activities • personal hygiene/care (including bowel and bladder care) • fitting and use of aids and appliances, hearing and communication devices • mobility and transfers • respite for carers • other services directly related to personal attendance. <p>NB: It does not include lawn mowing, gardening etc.</p>	<p>Injured worker can request personal attendance services at any time, however, the claims agent can actively consider use of services eg, after surgery.</p> <p>Prior to approval, an assessment needs to be carried out as to the suitability, type and duration of the services. The assessment must be undertaken by:</p> <ul style="list-style-type: none"> • treating medical practitioner • occupational therapist, physiotherapist or other allied health professional • rehabilitation provider. 	<p>The case manager approves personal attendance services, the suitability of the person who is to deliver the service and the costs of the service.</p> <p>The delivery of personal attendance must have a time frame and be re-evaluated at regular intervals.</p> <p>The review timeframes can be incorporated as part of a rehabilitation program or rehabilitation and return to work plan. If not part of a program or plan, the case manager must incorporate a review every three months as part of managing the claim.</p>

The case manager is required to make evidence based decisions about what is reasonable and necessary.

WorkCover recommends that commercial agencies deliver the services. The agent should ensure that the service provider is properly qualified or registered by an appropriate body, as required.

The use of rehabilitation programs and rehabilitation and return to work plans

Workplace rehabilitation service delivery is managed through the use of programs and plans. A program and plan can co-exist and each is binding on all parties for their duration.

The circumstances listed below indicate when a program or plan should be used.

Circumstance	Result
Undetermined claim	program
No capacity and at the time of assessment no prospect of a return to work	program
Serious injury claims where restoration to the community is the goal	program
In all other cases where there is a certified capacity and/or the prospect of return to work	plan

Rehabilitation programs

WorkCover establishes and approves programs with the aim of:

- achievement by the worker of the best practicable levels of physical and mental recovery
- restoration, where possible, of the worker to the workforce and the community
- other specific objectives (not inconsistent with the objectives referred to above) appropriate to the circumstances of the worker specified for the purpose in the program.

In accordance with section 26(1) rehabilitation programs are established in relation to:

- a particular worker
- workers of a particular class
- workers suffering from injuries of a particular class.

Any program must meet the needs of the individual worker. Factors that may be considered include the worker being from a non-English speaking background, having child care responsibilities, the worker's level of literacy skills, their adaptability to employment or non-compensable injuries, etc. (Refer to section 26(2) of the Act.)

A program should be established when:

- the claim is undetermined (section 26(4) of the Act)
- the worker is unable to return to work and requires assistance to return to the community.

Rehabilitation program standards and requirements

The regulations⁷ set out the standards and requirements of a program. If a program does not conform with the following, it may be considered invalid. The program must:

- be in writing
- specify:
 - the worker's full name
 - the worker's date of birth
 - the claim number
 - the employer's name
 - the nature of the injury
 - the date the injury was suffered
- specify the action that worker and employer must undertake
- specify the services to be provided to and accepted by the worker
- specify the completion and commencement dates of the program (these can be the same as the first action and last action on the program)
- specify how and when WorkCover will review the program
- contain the important notice to employers and important notice to injured workers' statements as specified in the regulations, setting out the consequences for non-cooperation or non-participation (There is no legal requirement for a worker to sign the program. The program becomes binding when established or approved by the claims agent, section 26(1) of the Act.)
- specify when and how the worker's capacity for work and suitable employment options will be established when it becomes practicable.

Consultation required when establishing rehabilitation programs

Consultation should occur with both the worker and the employer/employer's rehabilitation and return to work coordinator if appointed. Where possible, the treating medical practitioner should also be consulted when preparing a program. Medical reports and WorkCover medical certificates should also be used. The worker and employer should be given copies of the completed approved program and the actions and obligations should be clearly explained to them. If required, an interpreter must be used to ensure that the worker and employer clearly understand their obligations.

⁷ Regulation 22 of the *Workers Rehabilitation and Compensation Regulations 2010*

Obligations and consequences under a rehabilitation program

Worker obligations and consequences

- A worker must participate in an approved program. The worker must not participate in a way that frustrates the objectives of a program and must comply with actions specified in the program. The worker must also undertake suitable employment or take reasonable steps to find such employment and not unreasonably discontinue suitable employment.
- If the worker fails or refuses to participate in – or participates in a way that frustrates – the program, the worker will have breached mutuality and their weekly payments may be discontinued (refer to sections 36(1)(f) and 36(1a)(d) of the Act).
- If a worker refuses or fails to undertake work that has been offered to them or refuses or fails to take reasonable steps to find or obtain suitable employment, the worker will have breached mutuality and their weekly payments may be discontinued (refer to sections 36(1)(f) and 36(1a)(f)).
- If a worker refuses or fails to participate in assessments of the worker's capacity, rehabilitation progress or future employment prospects, including by failing to attend such assessments, the worker will have breached mutuality and their weekly payments may be discontinued (refer to sections 36(1)(f) and 36(1a)(fa)).

Employer obligations and consequences

- An employer must cooperate with the implementation of the approved program (S28A) and must under section 58B of the Act provide suitable employment for the injured worker, as far as is reasonably practical. The employer must also carry out the actions that are listed in the program.
- Where an employer fails to provide suitable employment, the imposition of a supplementary payment under section 72C of the Act may be applied. (A prosecution for breach of section 58B(1) maximum penalty of \$25,000.)

Where a program has been established and approved under section 26(4) of the Act, the obligations and consequences for workers and employers do not apply because there is no entitlement to compensation.

Review rights under a rehabilitation program

Section 89A(1)(b) of the Act states that a worker or employer can apply for a review of a decision relating to the nature of rehabilitation services provided - or to be provided in the future. A decision to establish or not to establish a program is also reviewable. (Refer to *WorkCover/Royal and Sun Alliance v Miller [2002] SAWCT 5*.)

If an employer is dissatisfied with the imposition of a supplementary payment, they can apply to have that decision reviewed under section 72M of the Act.

Rehabilitation and return to work plans

Under section 28A of the Act, the claims agent has the delegated responsibility to establish a plan for a worker who is incapacitated for work by a compensable injury. It is for the claims agent to decide how they will implement this process. The claims agent should consider the following:

1. A rehabilitation and return to work plan must be established if a worker is receiving compensation by way of income maintenance and is likely to be incapacitated for work by a compensable injury for more than 13 weeks, and has some prospect of returning to work. However, a plan can still be prepared earlier for high risk claims or where the need is identified.
2. In preparing the rehabilitation and return to work plan, the workplace rehabilitation consultant must consult with the worker and the employer out of whose employment the injury arose, and must consult with the relevant rehabilitation and return to work coordinator (if appointed) under section 28D of the Act.
3. In preparing the rehabilitation and return to work plan, the workplace rehabilitation consultant must review medical records relevant to the worker's condition, or consult with any medical expert who is treating the worker for the compensable injury.
4. A rehabilitation and return to work plan may impose obligations on the worker and employer.
5. The claims agent must objectively review the rehabilitation and return to work plan to ensure the rehabilitation goal will meet the return to work objectives.
6. Once approved by the claims agent, the plan is binding on the worker and the employer.
7. A copy of the approved rehabilitation and return to work plan must be given to the worker and the employer.

Objectives of rehabilitation and return to work plans

The objective of a plan should be to return the injured worker to suitable, safe employment with a level of remuneration as close to the worker's pre-injury notional weekly earnings as possible⁸. The primary focus should be on returning the injured worker to the pre-injury employer and pre-injury employment. Where this is not possible, the hierarchy of return to work objectives as defined in the regulations⁹ should be followed:

- the worker's return to pre-injury employment with the pre-injury employer
- the worker's return to different employment with the pre-injury employer
- the worker's return to the pre-injury employment but with a different employer
- the worker's return to different employment with a different employer.

The objective identified on each plan should be the expected outcome of rehabilitation. This means that where a worker is returning to modified duties as part of the rehabilitation process, with the objective of being able to return to pre-injury employment in a few weeks, the return to work objective should be listed as return to pre-injury employment with the pre-injury employer.

Where a return to work with the pre-injury employer is not possible, the plan should take into account the requirements of section 3 of the Act:

'suitable employment', in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:

- (a) the nature of the worker's incapacity and previous employment

⁸ Regulation 23(c)(i) of the *Workers Rehabilitation and Compensation Regulations 2010*

⁹ Regulation 23(c)(ii) of the *Workers Rehabilitation and Compensation Regulations 2010*

- (b) the worker's age, education, skills and work experience
- (c) the worker's place of residence
- (d) medical information relating to the worker that is reasonably available, including in any medical certificate or report
- (e) if any rehabilitation programs are being provided to or for the worker
- (f) the worker's rehabilitation and return to work plan, if any.

Consultation when establishing a rehabilitation and return to work plan

When preparing the plan, the case manager **must**, in accordance with section 28A(3) of the Act, ensure that consultation occurs with the worker, the pre-injury employer, the relevant rehabilitation and return to work co-ordinator, if appointed, and should, where practicable ensure that any medical records are reviewed or the worker's treating medical practitioner is consulted. The consultation with the worker, pre-injury employer, return to work co-ordinator and the treating medical practitioner should include:

- informing them that the claim is to be referred for rehabilitation services
- obtaining their comment and suggestions about the terms of a proposed plan before it is drawn up
- informing them about the roles and responsibilities of all involved in the rehabilitation process eg, case manager, workplace rehabilitation provider, worker, employer, certifying doctor and other treating professionals
- informing them that the case manager is the final authority on all matters concerning rehabilitation and return to work plans, and that any concerns they have about the content of a rehabilitation and return to work plan should be raised with the case manager, who will listen and work through their concerns.

Where a pre-injury employer advises that they do not wish to be involved in the development of a plan, a copy of the approved plan **must** still be sent to the employer (as well as the worker), as required by section 28A(5) of the Act. The employer is still bound to comply with any obligations contained in the plan. Where a pre-injury employer has had the termination of the injured worker's employment approved under section 58C of the Act, consultation should still occur and a copy of the approved plan **must** be given to the pre-injury employer.

Actions under a rehabilitation and return to work plan

The regulations¹⁰ require that actions to be undertaken by the employer and worker must be listed on the rehabilitation and return to work plan.

Because the actions are binding, the actions to be undertaken need to be specific enough for the worker or employer to understand what they are required to do to meet the return to work objective identified on the plan as well as considering the particular circumstances/factors of the worker:

¹⁰ Regulation 23(e) of the *Workers Rehabilitation and Compensation Regulations 2010*

The Workers Compensation Appeals Tribunal decision of *Porter v Bridgestone A.180/1996* found that what is to be included in the rehabilitation program or plan is dependent on whether it will meet the objective. This decision also highlights the need to consider the particular circumstances of the worker when developing a rehabilitation program or plan. Factors include whether the worker has a non-work related injury (see *Workers Compensation Tribunal decision JD 3/1997, Adams v WorkCover (NZI) and WB and SM Doser*), or whether there are cultural or religious issues to be considered. If these factors are not identified and considered when developing a rehabilitation program or plan, it may make the rehabilitation program or plan inappropriate. This would mean that the actions identified could be seen as being unreasonable.

Obligations under a rehabilitation and return to work plan

A plan can impose obligations on the worker and employer under section 28A(4) of the Act. These obligations would be listed on the plan as actions that the worker and employer must undertake to meet the objectives. The plan is binding on the worker and employer and continues to be binding until it expires. A completed copy of the approved plan must be provided to both the worker as well as the employer and the consequences of non-compliance with the plan must be explained. If required, an interpreter and/or translator must be used to ensure that the worker and the employer clearly understand their obligations. If a dispute arises, the onus will be on the claims agent to demonstrate that the obligations and consequences were understood, that they were reasonable and that the worker or employer knew the actions that they had to undertake.

Worker obligations and consequences

- A worker must comply with any reasonable obligations specified in an approved plan (section 28A(4)). The worker is obliged to undertake actions specified in the plan even when the action is the subject of a review application (section 28B(3)).
- Under section 36(1)(f) of the Act, a worker's payments can be discontinued if the worker breaches mutuality and under section 36(1a). A worker breaches the obligation of mutuality in the following circumstances:
 - Failing to comply with an obligation under a plan (section 36(1a)(e)).
 - Refusing or failing to undertake work within their capacity that they have been offered, or to take reasonable steps to find suitable employment. This also applies where a worker, having obtained suitable employment, unreasonably discontinues that employment (section 36(1a)(f)).
 - Refusing or failing to participate in assessments of their work capacity, rehabilitation progress or future employment prospects – including failure to attend (section 36(1a)(fa)).

When assessing whether a discontinuance of weekly payments is appropriate, the case manager will need to determine whether:

- the objective is appropriate
- the actions reasonable and
- both the worker and the employer understood their obligations under the plan.

(The onus of proof will be on the case manager.)

The case manager should also consider whether the employer has undertaken their obligations and, if not, whether this has been a factor in the non-compliance of the worker, or whether there are any other reasonable causes.

Employer obligations and consequences

- An employer must undertake the obligations listed under an approved plan, by providing suitable alternative duties to assist the worker in their recovery from their injury (section 58B(1)). This obligation is only binding if it is reasonably practicable (see reasons listed in section 58B(2)). However, if the employer fails to comply with their obligation, it may impact on the worker's capacity to comply (eg, it may be unsafe for a worker to perform the alternative duties without having been suitably trained by the employer).
- According to section 58B(3), an employer is liable to pay an appropriate wage or salary to a worker who is incapacitated for work because of their compensable injury and who is either undertaking alternative or modified duties with the pre-injury employer or performing duties that fall outside the worker's contract of service with the pre-injury employer.
- Where an employer fails to comply with their obligations under a plan (see section 28A(4)) or to provide suitable employment in accordance with section 58B of the Act, a referral to WorkCover for a possible breach of this obligation must be made.
- While the onus is on the employer to establish that it is not reasonably practicable for them to provide suitable employment, the case manager must demonstrate that the employer has failed to fulfil their obligations and that the employer understood what was required. It is also necessary to consider whether there was some reasonable cause for the employer to not undertake their actions.

For further information refer to 'Sections 58B and 58C – return to work' below.

Rehabilitation and return to work plan standards and requirements

The standards and requirements of a plan are set out in the regulations¹¹. If a plan does not conform with the following requirements, it may be considered invalid:

- The plan must be in writing
- The plan must specify the following:
 - the worker's full name
 - the worker's date of birth
 - the claim number
 - the employer's name
 - the nature of the injury
 - the date the injury was suffered
- The plan must specify at least one of the return to work objectives

¹¹ Regulation 23 of the *Workers Rehabilitation and Compensation Regulations 2010*

- Where the worker is returning to different employment, the plan must specify the nature of the suitable employment
- The plan must specify the action that the worker and pre-injury employer must undertake in order to meet the objectives of the plan, including:
 - training or job search functions the worker should undertake
 - workplace or employment modifications the employer should provide or undertake
- The plan must specify the rehabilitation services to be provided to, and accepted by, the worker
- The plan must specify the date of commencement and completion of the plan
(These dates can be the same as the first and last action on the plan – this may eliminate the need to draft a new plan just to extend the final date when one of the last actions is dependent on a medical report etc.)
- The plan must specify how and when the case manager will review the plan
- The plan must contain the statements, namely the Important Notice to Employers and Important Notice to Injured Workers as specified in the regulations¹² which sets out the consequences for non-cooperation or non-participation.
(There is no legal requirement for a worker to sign the plan. The plan becomes binding when established by the claims agent (section 28A(1) of the Act.)
- The plan must contain the review rights under section 28B.

Review rights under a rehabilitation and return to work plan

Under section 28B of the Act workers and employers may apply for a review of:

- a decision to establish or to not establish a plan
- a provision of a plan

on the grounds that the decision or provision is unreasonable.

If a worker or employer applies for a review of the plan, one possible outcome may be that the plan is modified or amended to the extent necessary to ensure that it does not impose unreasonable obligations on a worker or employer.

Review proceedings do not suspend the obligations imposed by the plan on the worker or employer.

Where a review application is lodged under section 28B of the Act, the onus of proving that a decision or provision of the plan is unreasonable lies with the party seeking the review. The test of reasonableness will be determined by reviewing the worker's capacity and the suitable employment options identified. If these are held to be reasonable, the next step will be to examine whether the actions identified are reasonable. It is important to demonstrate that appropriate services have been provided that will meet the defined objective. It will be necessary to establish that other parties subject to the plan have carried out their obligations.

¹² Regulation 23(i) of the *Workers Rehabilitation and Compensation Regulations 2010*

The test of whether or not a plan is reasonable will depend on whether the particular circumstances of the worker have been taken into account when preparing the plan. In *Alexander v WorkCover* [1998 SAWCT 95 (17 December 1998)] the Full Tribunal found (final paragraph) that:

...a plan is not rendered unreasonable simply because it requires the performance of work duties that the disabled worker does not find stimulating or because it does not accord with her career aspirations.

In *Hines v WorkCover* [2000] SAWCT 171 (31 October 2000) it was noted (paragraph 52):

In determining the reasonableness of a rehabilitation and return to work plan or its provisions, consideration must be given to the personal circumstances of the worker. They are not paramount, but they must be taken into account.

For discussion concerning the differences between a rehabilitation program and a rehabilitation and return to work plan see *Dunstan v State of SA and WorkCover* [1998] SAWCT 48 (28 July 1998).

Reasonableness of rehabilitation and return to work plans and rehabilitation programs

In *WorkCover/Royal and Sun Alliance v Miller* [2002] SAWCT 5 (referred to above), it was decided that it was reasonable to provide TAFE accountancy studies as part of a program. This case may be contrasted with that of *WorkCover/Allianz Aust (Stephen Nelson Adelaide Electrical Services P/L) v Nelson* [2002] SAWCT 47, ('Nelson's case') handed down on 29 April 2002.

Tertiary arts/law studies commencing in early 1998 were approved for Nelson, an electrician before his accident, as part of a series of programs. A further program continuing the studies was not approved at the end of 1998, and the Full Tribunal on appeal decided that, on balance, it was not reasonable to continue to provide tertiary study of the type previously approved.

The 'reasonableness' in *Miller* was characterised by the finding that little attempt had been made to do anything other than job-seeking, and the proposed retraining was to better equip the worker to find work in the field in which he had previously worked and was still seeking work.

Nelson, in contrast, involved (among other matters) WorkCover's right to establish the contents of a program and in the reasonableness of doing so. The Full Tribunal decided that the test of 'reasonableness' required an examination of the nature and purpose of the proposed tuition, the costs associated over time and any alternative measures that could have applied. Also, the rehabilitation outcome for both the worker and WorkCover needed to be considered. This implies some comparison of the skill levels and income potentials that would apply post-training. Nelson's study was in a field quite different (and with the potential to provide higher earnings) to his prior employment.

'Reasonableness' is not a concept that can be prescribed or defined. What is reasonable in any one case will depend on the circumstances of that case. The onus of demonstrating that a proposal for a program or plan is reasonable lies with the worker (see *Miller*, paragraph 34). What is reasonable in a particular set of circumstances may include factors such as:

- the characteristics of the worker such as age, prior work history, level of motivation
- prior educational qualifications, existing skills, the capacity to undertake further education, and the consequent ability to apply skills gained in retraining
- the nature, duration and extent of the injury

- the nature, duration and extent of the retraining regime and any physical requirements that would have to be met prior to commencement
- the nature and duration of any current medical treatment, and the impact on this of any retraining regime and vice versa
- the physical location of the worker in relation to the proposed retraining facilities
- the likelihood of work being available of the type for which the worker is being retrained
- the worker's capacity to undertake the work for which retraining is being considered or requested
- the costs of the retraining when compared to the current and likely future costs of the claim
- whether or not the worker will be given an advantage over other workers, and which is not reasonable in the circumstances ('will the retraining place the worker unreasonably in a situation that is above and beyond where they would have been but for the injury')
- the nature, extent and scope of previous return to work plans and whether they have achieved their intended outcomes in the past and, if not, the reasons for the failure
- the alternative steps that could be taken now to place the worker in suitable employment.

For further information on training and retraining refer to section below titled 'Training'

Rehabilitation program or rehabilitation and return to work plan amendments

Where the objective or any specific action to be undertaken by the worker or employer needs to be changed, the claims agent will need to ensure that a new program or plan is developed taking into account the changes. A new program or plan is not required where only the cost of a service has changed.

Reviewing progress towards the rehabilitation and return to work (RRTW) objective

The case manager must review progress to ensure that the identified return to work objective is still relevant and actions to date and required further actions will achieve this objective.

If during the review the case manager identifies that the rehabilitation and return to work objective is no longer relevant, a new rehabilitation and return to work objective must be selected. Ideally, this would be identified through the consultative process. The new rehabilitation and return to work objective and actions are agreed on by all relevant parties and who have been consulted.

The case manager should record the reasons for the change and communicate this to the registered workplace rehabilitation service provider, worker and employer. If the new objective identified is 'different employer', refer to *Sections 58B and 58C – return to work* below.

The case manager will review the rehabilitation and return to work objective at all relevant mandatory claim file review points.

Rehabilitation program and rehabilitation and return to work plan reviews

Under the regulations¹³, the case manager is responsible for reviewing each program or plan. When and how the review will take place, must (where practicable) be stated on the program or plan.

The case manager must review the program or plan at least once during its life. This does not remove the obligation of the workplace rehabilitation consultant reviewing the program or plan, as appropriate.

It will be necessary for the case manager and the workplace rehabilitation consultant to communicate prior to the plan ceasing to determine next steps eg, whether a new program or plan is required.

The case manager cannot modify a plan before its completion date without approval from both the worker and employer (see *Sutton v SA Water [2002] SAWCT 6 (5 February 2002)*).

Co-existence of rehabilitation program and rehabilitation and return to work plan

In *WorkCover/Royal and Sun Alliance (P & J Hurley t/a Hotel Royal) v Miller [2002] SAWCT 5*, delivered on 1 February 2002, the Tribunal considered the following questions:

- Is there a statutory impediment to the establishment of a program where a series of plans have been prepared and implemented in the past?
- The reasonableness of providing retraining as part of either a plan or a program.

This case examined a series of plans that had been established and implemented for the worker, which all focused specifically on return to work, and then considered whether or not a program could be established concurrently with the latest plan. The Tribunal found that the thrust of sections 28A, 28B and 28C is directed at return to work, and these sections introduced the concept of 'obligation' to maximise the chances of return to work. However, there is nothing in these sections that limit the operation of section 26, and there is no impediment to a program and a plan – or plans – running concurrently.

Section 26 is broader in its scope, and 'rehabilitation' as envisaged by this section can encompass any of the options contained in section 26(3). Thus, a section 26 program could include specific rehabilitation services that are complementary to, but different from, workplace rehabilitation services that specifically focus on return to work that are prepared under a section 28A plan. The program and plan could run concurrently – each with a different focus, but building towards a common end.

In this case the Tribunal found that the retraining provided for the worker (consisting of tertiary/TAFE study in accountancy) was reasonable because it would materially assist his chances of obtaining work in the field in which he had been seeking work. Provision of retraining could have been considered as part of a plan as far back as 1998 when the worker first proposed it because, even though the plans were focused on return to work via job-seeking in the field in which he had been working, the broader scope of section 26 could have been invoked to retrain him to better equip him to find such work. The Tribunal found that because there is no bar to the concurrent operation of a plan and a program, the worker could have retraining approved as part of a program and workplace rehabilitation return to work services provided under a plan.

¹³ Regulations 22(g) and 23(h) of the *Workers Rehabilitation and Compensation Regulations 2010*

NOTE: This does not mean that you cannot have training/retraining and return to work services in a plan.

Case conferences

Refer to the section on case conferences in Chapter 6.

Training

The Act and the Regulations provide that a rehabilitation program and rehabilitation and return work plan may include training and retraining to assist a worker to remain at work or return to suitable employment.

Training refers to:

- formal training or retraining where a worker is undertaking an approved course, or
- work training with an employer, where a worker is placed in a realistic work environment to refresh or update existing skills or acquire new skills for suitable employment

Various forms of training may be occurring concurrently, and a graded return to work program may form part of the training arrangement.

Recommended training courses must be provided in a safe environment and by an appropriate training provider, and where possible:

- provide additional skills to enable a worker to obtain and/or maintain suitable employment
- result in a qualification recognised by the relevant industry
- be cost effective in relation to the weekly payments being made to the worker and the expected return to work outcome.

The case manager will approve training for a worker when:

- The training is part of an approved rehabilitation program or rehabilitation and return to work plan.
- The training being considered has a clear return to suitable employment objective. ('suitable employment' as defined under section 3 of the Act).
- The worker's treating medical practitioner has certified the worker fit to undertake all aspects of the proposed training, and the employment for which the training will qualify the worker, including any necessary travel.

Provision of training submission by workplace rehabilitation provider

The workplace rehabilitation provider must complete a formal training submission to be lodged with the claims agent that should be based on the assessed needs of the worker.

Cost associated with training must accompany the training submission.

The claims agent will

- evaluate the training submission in relation to the suitable employment and rehabilitation objective
- indicate on the training submission their decision to approve or otherwise and
- return the submission to the workplace rehabilitation provider.

If training is not approved, the reasons why will be documented on the submission. At the same time, the claims agent will advise the worker in writing of the reasons for not approving the training. The worker may seek to dispute this decision pursuant to section 28B - refer to 'Review rights under a rehabilitation and return to work plan' in this chapter.

WorkCover has obtained public liability insurance in respect of work training arrangements with host organisations¹⁴. In particular, the policy will cover host organisations for their liability to third parties (ie, everyone except the host organisation itself) to a maximum of \$20 million for personal injury to a third party and property damage of a third party that is the result of the acts or omissions of a worker when performing work for a host organisation in the course of a work training arrangement). Further information relating to this is available on WorkCover's website.

Cessation of worker training

Approved worker training will cease if the following circumstances arise:

- The worker has successfully completed the training course
- The worker refuses or fails to participate in a rehabilitation program or participates in a way that frustrates the objectives of the program or does not comply with the obligations under a rehabilitation and return to work plan, thereby breaching the obligation of mutuality (refer to sections 36(1)(f), 36(1a)(d) and 36(1a)(e) of the Act)
- The worker does not complete the agreed training requirements ie, does not pass each module/unit. (Note that additional support mechanisms may need to be explored as a first option to enable the worker to successfully complete the training eg, literacy skills, short term tutoring etc.)
- The worker secures paid employment. (Note that training may continue to be supported where the training/retraining is relevant to the secured employment and / or will increase the employment for which the worker is suited.)
- The worker's entitlement to weekly payments ceases (eg, the worker is earning at or above their notional weekly earnings, the worker reaches the end of the third entitlement period and after work capacity assessment ceases to have an income maintenance entitlement). (Note that the case manager may agree to continue to pay for the worker's retraining course if this will contribute to durable employment for the worker and / or will increase the employment for which the worker is suited.)
- The worker's claim for weekly payments is redeemed. (Note that current WorkCover policy does not support the redemption of weekly payments.)

Breach of mutuality

Breaches of mutuality by workers are to be treated in accordance with the Act and relevant Regulations. Breach of mutuality is identified in section 36 of the Act as a reason for discontinuing weekly payments. Section 36(1)(f) provides the basis and sections 36(1a)(d), 36(1a)(e), 36(1a)(f) and 36(1a)(fa) provide the statutory breaches of mutuality for the purpose of the Act.

¹⁴ Host organisation in this context refers to an employer (not the pre-injury employer) who provides work training.

Before a breach of mutuality can be established in the context of rehabilitation, the case manager or the workplace rehabilitation consultant (if there is one involved) should work through the following steps:

- Ensure that a rehabilitation program or plan is established in accordance with the Act and Regulations.
- The program or plan should clearly describe the actions the worker is to undertake, and the worker should be given the opportunity of discussing, and agreeing with, those actions.
- Draw the attention of the worker and the worker's employer to the 'Important Notice to Employers' and 'Important Notice to Injured Workers' section of the program or plan and obtain the signature of both to indicate that they have read the Important Notice. (If any party declines to sign this section, this will not affect the party's obligations to comply with the program or plan, provided they have been consulted.)
- The worker should be provided with clear instructions as to the rights and responsibilities of all parties and the provisions of sections 28B, 36(1)(f) and 36(1a) of the Act.
- The program or plan should be reviewed as regularly as the case manager or workplace rehabilitation consultant believes is appropriate and any refusal or failure to comply brought to the worker's attention.

The workplace rehabilitation consultant or case manager may identify an action or omission of the worker that may constitute a breach of mutuality. The worker's action or omission may be deliberate or unintentional. If the worker's action or omission was unintentional, income maintenance payments should not be discontinued. The case manager must establish which is the case.

If:

- a decision is made to discontinue income maintenance payments, and
- the worker seeks a review of the decision within the relevant period (one month), and
- the worker then applies to the WorkCover Ombudsman for a review of the decision to discontinue their weekly payments,

the weekly payments may not be discontinued if the WorkCover Ombudsman suspends the operation of the decision to discontinue weekly payments on the basis that it was not reasonably open to the case manager to make that decision. (Refer to section 36(15) of the Act and to chapter 10 for further information about the authority of the WorkCover Ombudsman to suspend a decision to discontinue weekly payments).

Section 36 only allows for weekly payments to be discontinued. The claims agent must continue to pay compensation for medical expenses and other under section 32 if they continue to be reasonably incurred in consequence of the compensable injury.

For further information regarding discontinuance of weekly payments and breach of mutuality, refer to the section in chapter 10 about review of weekly payments.

Cessation of active rehabilitation where return to work is the objective

On completion of the rehabilitation process, the desired objective is for the worker to return to pre-injury or different employment with the pre-injury employer; otherwise, the objective is for the worker to return to safe, suitable employment with a different employer. Even if these objectives have not been achieved, once the worker - in the terms of section 26 of the Act – has achieved the best practicable level of physical and mental recovery, the need for continuing workplace rehabilitation service should be reviewed.

The cessation of a rehabilitation program or rehabilitation and return to work plan on reasonable grounds does not render the worker ineligible for rehabilitation in the future.

The worker may, of course, voluntarily withdraw from rehabilitation, but this action brings with it the potential for weekly payments to be discontinued.

Active rehabilitation should, therefore, cease when the worker:

- successfully returns to pre-injury employment with the pre-injury employer or other employer
- successfully takes up some other form of suitable employment that maximises the worker's earning capacity
- is considered by medical and vocational experts to be unable ever to return to any form of work as a result of the compensable injury
- the worker's claim for weekly payments is redeemed. (Note the current policy does not support the redemption of weekly payments.)
- is no longer incapacitated as a result of a compensable injury
- has no identifiable vocational rehabilitation objectives.

A program or plan may be suspended if the worker requires significant treatment for a non-work related condition, or if the worker is temporarily absent from South Australia. Once the decision to suspend rehabilitation has been taken, any outstanding matters should be finalised and the rehabilitation file closed.

Workplace rehabilitation services may also be suspended if circumstances are such that there is no foreseeable objective to be achieved by continuing these services.

Meaning of return to work

A worker has returned to work when they are:

- a settled or established member of the wage-earning workforce
- undertaking real work ie, work that is of value to the employer
- being paid the appropriate wage by the employer for the work that they are doing
- undertaking specific work tasks on a full or part time basis, and having a settled and established pattern of work
- earning wages at or about the rate of their notional weekly earnings.

To distinguish a return to work from a trial or graded return to work program, the intention of any period of employment must be clearly spelt out in the rehabilitation and return to work plan ie, trials or graded return to work programs are usually for specific periods and subject to review, while a return to work is an ongoing arrangement.

Notification of return to work – employer and worker

An employer must notify the claims agent whenever:

- a worker who has been receiving weekly payments on the basis of no current work capacity returns to work

- there is a change in the weekly earnings of a worker who is receiving weekly payments on the basis of a current work capacity
- there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity on the basis of a current work capacity.

(Refer to sections 3(10) and 58A(1) of the Act.)

Section 58A(2) provides that a worker is required to notify their employer if they return to work with another employer ie, an employer other than the employer from whose employment the injury arose.

Notice of a return to work under section 58A(1) or (2) must be given within 14 days of the notifiable event. If either party fails in their obligations under this section without reasonable excuse, they are guilty of an offence and a penalty up to \$1,000 applies.

Payment of rehabilitation costs

The services that can be provided to a worker in relation to rehabilitation are outlined in section 26(3). These services cannot be paid unless they are part of approved rehabilitation. This means that the services must appear on the rehabilitation program or rehabilitation and return to work plan that has been approved by the claims agent. This requirement is also stated in the regulations¹⁵ for programs and plans.

Under sections 26 and 32 of the Act, rehabilitation costs cannot be incurred by approved service providers without the approval of the claims agent.

According to section 32(1) of the Act, a worker is entitled to be compensated for costs incurred by them, as described in section 32(2) if incurred as a consequence of approved rehabilitation. Any costs submitted for services that do not appear on a program or plan cannot be paid unless they fall within the kind of costs listed under the rest of section 32(2). Therefore, it is important for all rehabilitation services to appear on the program or plan so that they can be paid under the Act.

The cost of approved rehabilitation under section 32(2)(c) should be cross referenced with the definition of approved rehabilitation, which is provided by section 32(8). This states that approved rehabilitation is a reference to programs or services provided by a person who has an agreement with WorkCover for the provision of those programs or services. 'An agreement with WorkCover' refers to those service providers, are registered with WorkCover under section 27(3) of the Act. The product descriptions and service standards outlined in the *Workplace rehabilitation providers fee schedule and guidelines*. Account standards for service providers are also contained in these guidelines.

Transferring workplace rehabilitation cases

It is important that all discussions and investigations, along with the decision made regarding transferring a case, be clearly documented on both the claim and workplace rehabilitation files. If the case manager is considering transfer of a workplace rehabilitation case to another consultant evidence of consultation with relevant parties prior to a decision being made must be available.

¹⁵ Regulations 22(e) and 23(f) of the *Workers Rehabilitation and Compensation Regulations 2010*

Transfer of workplace rehabilitation cases to another rehabilitation consultant within the organisation may be required when a workplace rehabilitation consultant exits a company. The principal should contact the case manager to discuss the ongoing need for rehabilitation, confirmation of immediate actions required, and suitability of the new consultant within the organisation.

Transfer of workplace rehabilitation cases may be required due to a breakdown in the relationship between the workplace rehabilitation consultant, worker, employer or case manager. In such an event, the case manager should discuss a decision for case transfer with their supervisor. Provider performance, relationship breakdown or other issues, in the first instance, the case manager should discuss this with the consultant in an effort to reach a resolution. If the case manager considers that the issue is not resolving, they may proceed to discuss transferring the file with all parties, including their supervisor

Having considered whether the likelihood of a return to work objective would be enhanced by continuing a relationship with the workplace rehabilitation consultant, the case manager may refer the case for a new service.

Transfer decision complaints

If any party does not agree to a case transfer decision, in the first instance, the matter is to be discussed with the claims agent in an attempt to reach a negotiated outcome. If a negotiated outcome cannot be reached, a complaint should be managed through the claims agent and WorkCover complaints management processes.

Re-employment Incentive Scheme for Employers (RISE)

RISE provides a monetary benefit to employers (including all self-insured employers) who can offer safe and suitable employment to a worker who has suffered a compensable injury, has a capacity to undertake work and is no longer employed with their pre-injury employer. Provided the employers are registered with WorkCover and provided they are making the appropriate premium payments, all employers are eligible to participate in RISE, including interstate and government agencies. Interstate employers must be appropriately registered as required in the State where the employment is to be provided.

Under the RISE scheme WorkCover provides a financial incentive to an employer who employs an eligible injured worker.

The claims agent:

- manages the process for handling RISE queries from employers and workers
- notifies workplace rehabilitation providers of work placement opportunities, vacancies and potential RISE employer details
- pays all RISE wage subsidy incentive payments to the new employer.

The workplace rehabilitation providers promote RISE, source vacancies, refer injured workers to vacancies, help the employer complete the RISE forms and provide post-employment integration support for the worker and employer.

Sometimes RISE employment may eventuate as a result of a graded return to work or on the job training with a host organisation but RISE should not be implemented until it meets the criteria below.

Where suitable employment (a job vacancy) is publicly advertised or found in some other way by the worker or their assigned workplace rehabilitation provider, the RISE incentive can be proposed to the employer by the worker or their assigned workplace rehabilitation provider.

Complementing this scheme are further items under section 26(3) that might assist the worker in their rehabilitation (eg, training allowance or workplace modifications, including equipment).

In September 2010, changes to RISE were introduced including a change to the incentive structure, from a stepped % to a flat 40% wages subsidy incentive for up to 12 months, and the introduction of an employment integration support service.

RISE

Current incentives

RISE benefits to employers who provide suitable full-time, part-time or casual employment for eligible workers with a current work capacity include the following:

- Reimbursement of 40% of gross wages for up to 52 weeks of employment.
- Employment integration support for up to 13 weeks by a workplace rehabilitation provider.

- The provision of equipment, workplace modifications and training may be approved by the case manager as necessary in order to better enable the worker to perform the duties of the job. For example, the case manager may approve the recommendations from a worksite assessment or job analysis performed by an occupational therapist or a physiotherapist.
- Additional support may be provided where issues arise that need attention; as assessed on a case-by-case basis with prior approval.

In addition:

- Regulations¹⁶ exempt an employer participating in the RISE scheme from the liability to pay the first two weeks income maintenance if the worker suffers an aggravation of the pre-existing compensable injury and is incapacitated for work.

When calculating gross wages for the purpose of receiving RISE incentives, employers must exclude allowances, over-time, superannuation, commissions and recoverable compensation. Note: 'Recoverable compensation' refers to a circumstance such as where:

- a worker employed under the RISE scheme sustains a compensable injury with their RISE employer – if the employer claims reimbursement for income maintenance paid to the worker for that claim, that income maintenance amount must not be included in the calculation of the worker's gross wages for the purpose of the RISE incentives
- the employer is receiving another form of incentive from a Government apprenticeship or traineeship scheme etc for the worker – the amount of the incentive must not be included in the calculation of the worker's gross wages for the purpose of the RISE incentives.

Current RISE criteria

Eligibility – employers	<p>The following employers who can offer safe and suitable employment to a worker who has suffered a compensable injury are eligible for RISE:</p> <ul style="list-style-type: none"> • Employers registered with WorkCoverSA, providing they are making appropriate premium payments • South Australian employers not required to register under section 59(2) • South Australian self-insured employers • South Australian government agencies • Interstate employers providing they are registered in the State where the employment is provided <p>An employer declaration has been added to RISE application forms and appropriate checks should be put in place to ensure only appropriate employers are approved for RISE.</p>
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¹⁶ Regulation 41 of the *Workers Rehabilitation and Compensation Regulations 2010*

	<p>Employers excluded from receiving RISE incentives:</p> <ul style="list-style-type: none"> • Employers who have an extremely poor claims record or a history in failing to maintain accepted safety standards • Employers whose conduct in the past has been found by WorkCover to be inconsistent with the intent of RISE • Employers who have been prosecuted for a breach of section 58B OR had a supplementary payment (or prior to 1 July 2012, supplementary levy) imposed in the last 12 months • The pre-injury employer
Eligibility – workers	<ul style="list-style-type: none"> • Any worker who has suffered a compensable injury, is not employed by their pre-injury employer (NET process has been completed – see sections 58B and 58C below), has been entitled to income maintenance for less than 130 weeks and has a current work capacity.* <p>*If the RISE subsidised employment does not allow the worker to maximise their earning capacity, it is vital that the worker understands:</p> <ul style="list-style-type: none"> ○ the requirements under the Act with regard to weekly payments over entitlement periods ○ the assessment which will take place at 130 weeks of entitlement and <p>that they will need to demonstrate that they are maximising their weekly earnings at that point or risk having their top-up weekly payments cease.</p> <ul style="list-style-type: none"> • A worker who has been entitled to income maintenance for more than 130 weeks and: <ul style="list-style-type: none"> ○ has not had a work capacity assessment determination made on their claim <p>or</p> <ul style="list-style-type: none"> ○ has had a determination that their payments continue <p>may also be eligible for RISE with the claims agent's senior manager approval.</p>
Eligibility – types of jobs	<p>Full-time, casual and part-time positions</p> <p>Types of jobs not eligible for RISE:</p>

	<ul style="list-style-type: none"> • Where employment stems from a family or personal relationship between the worker and the employer • Where the company is seeking to employ a working director that has a vested interest • Where the worker will receive a share of take or commission • Where the worker wants to use RISE benefits to set up their own business (ie, self-employment) • Where the job involves unethical or illegal employment arrangements • Jobs for which the employer has their own workers who are in receipt of income maintenance and suited to those jobs • Jobs at any other locations or registrations linked to the pre-injury employer, whether part of the pre-injury employer at the commencement of the incapacity or at the time 58B(2) came into effect
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Reimbursement

An employer with a RISE agreement under the current scheme can seek reimbursement every **four weeks** in arrears using the four-weekly *RISE Wage reimbursement request* form.

Claims agent to identify as early as possible if potential RISE employer can be matched to a worker

- When the claims agent becomes aware of a potential RISE employer (eg, as a result of an eligible RISE employer contacting the claims agent), the claims agent will establish the job requirements then notify workplace rehabilitation providers of the vacancy and potential RISE employer.
- If the claims agent identifies a potential worker for the job vacancy, the claims agent should ensure the worker has been referred to an appropriate workplace rehabilitation provider who will provide structured integrated support for the employer and worker participating in RISE.

What happens when the workplace rehabilitation provider finds a 'RISE' employer for a worker?

Upon receipt of the *RISE Information and approval form*, the claims agent will:

- review the agreement by checking the content, checking whether the worker meets the eligibility criteria and whether the employment is suitable (eg, whether medical and vocational evidence supports the employment)
- identify the RISE ID number to write on the approval form (the number used for the RISE calculator record)
- sign and return the approval form to the workplace rehabilitation provider (who will provide copies of the signed form and issue a confirmation letter to the employer and worker).

OR

If the claims agent does not agree with the employment, discuss the issues with the workplace rehabilitation provider and see if there is an opportunity to resolve the issue and, if not, explain the reasons for non-

approval. If the claims agent's decision is to reject the application, the case manager will confirm this in writing (can be by email) to the workplace rehabilitation provider.

Where the employment has been approved, the claims agent will:

- check the 4 weekly (current RISE program) wage request forms they receive by verifying the amounts claimed against the attached proof of earnings
- remove any payment exclusions and
- input into the WorkCover RISE calculator to calculate the correct reimbursement to pay the employer

RISE forms

Relevant forms are:

- *RISE Information and approval form*
- *RISE Wage reimbursement request* (for all new RISE approvals from 1 September 2010)

All new applications for RISE must use the above approval forms to ensure the current information is provided to the employer. The previous 'approval request for a re-employment placement' and 'placement agreement' forms are no longer in use.

These forms can be accessed as follows:

www.workcover.com > Employer > Other useful information/contacts > RISE - Re-employment Incentive Scheme for Employers > RISE forms>

They are also available on WorkCover's workplace rehabilitation web page.

A signed copy of the form should be provided to the workplace rehabilitation provider when RISE is approved. The workplace rehabilitation provider will then send a letter with a copy of the signed form and issue a confirmation letter to the employer and worker.

What happens after RISE employment begins?

RISE Post-employment support service

This service is designed to provide support to the worker and employer in the first few months of RISE employment. This service can only be billed after RISE arrangements have been approved and the appropriate paperwork completed. Refer to WorkCover's *Workplace rehabilitation providers fee schedule and guidelines* for service standard details.

Changes to the employment arrangements or discontinuance of the RISE wage benefits payable (due to the worker leaving the employment, for example) must be confirmed in writing to the case manager by the employer.

Cúram payments

When processing payments in Cúram, the appropriate RISE comment code and service items must be used. The RISE calculator can be used to calculate the appropriate incentive amount based on the information provided by the employer, who must provide proof of earnings (ie, payslips or other pay record).

From 1 September 2010 (Employer must use the four-weekly *RISE Wage reimbursement request* form) the relevant service items are as follows:

Service	Service description
New	Four-weekly employer grant 40% (up to 52 weeks)
RH900	Workplace rehabilitation – employment integration support for up to 13 weeks for the employer and worker participating in RISE.

All workplace rehabilitation services, training, resume development, modifications, clothing and equipment must be paid under relevant service item codes.

What happens if worker is issued with a section 36 discontinuance notice

If the case manager issues a section 36 discontinuance notice to a worker this will not impact the RISE agreement.

Incentive payments to the RISE employers can cease before the end of the RISE agreement if:

- the worker abandons his RISE employment or
- the RISE employer terminates the worker's employment.

The case manager must ensure that they are not paying the RISE employer if the worker has left their employ.

Considerations leading up to the end of the 130-week entitlement period (after employment has commenced)

It is important to note that if a determination is made to:

- discontinue the worker's entitlement to weekly payments or
- discontinue the worker's entitlement to the weekly top-up payments – ie, a section 36 notice was previously issued reducing the worker's weekly payment entitlement to the top-up payment)

as a result of a work capacity assessment under section 35B, this does not impact the agreement with the employer, and as long as that worker remains employed, the employer's incentive payments continue for the life of the RISE agreement.

However, it is incumbent upon the case manager to ensure that they are not paying the employer where the worker has left their employ.

Sections 58B and 58C – return to work

Section 58B places a duty on the employer to provide suitable employment to an injured worker, where reasonably practical to do so, while section 58C requires the employer to give at least 28 days' notice of their intention to terminate a worker's contract of employment. This notice period allows WorkCover time to assess the employer's obligations under section 58B.

Section 58B is not time limited and may apply at any time in the lifecycle of a claim and after a worker's employment is lawfully terminated. The claims agent is expected to take appropriate action to enforce the employer's obligations.

The role of the employer and claims agent

The employer has a duty to provide suitable employment to an injured worker, where reasonably practical to do so, and the onus is on the employer in any legal proceedings to demonstrate that they have met this duty, or that it was not reasonably practicable in the circumstances. This obligation applies to the whole of the employer's enterprise, not just a location.

The role of the claims agent is to maintain the employment relationship between the worker and employer, obtain an offer of suitable employment, where necessary and ensure - in consultation with the employer and the worker - that all suitable employment options are assessed and pursued. This will usually involve the preparation and implementation of rehabilitation and return to work plans under section 28A, including consideration and delivery, where required, of retraining, equipment and workplace modifications.

Return to work with the pre-injury employer provides the most cost effective outcome and is a crucial outcome in the management of the WorkCover Scheme.

The role of the claims agent and WorkCover in the change of rehabilitation goal and enforcement of sections 58B and 58C

The claims agent is responsible for pursuing a worker's return to work with the pre-injury employer. This includes the decision as to whether a worker may begin job seeking. To change a worker's rehabilitation goal to job seeking with a different employer, the claims agent must ensure all options of RTW with the pre-injury employer are exhausted. If the claims agent is not satisfied that the employer has exhausted their obligation to provide suitable employment, they must promptly intervene and make all reasonable efforts to address and rectify the matter. Where the employer subsequently fails to comply with their obligations the matter together with the agent's findings and actions taken must be referred to WorkCover who may intervene and investigate the employer's obligation.

An employer's failure to meet their obligations under sections 58B and 58C must be referred to WorkCover's Compliance and Investigations Directorate. Where it has been determined that the employer has failed to provide suitable employment as required by section 58B and/or failed to provide the appropriate notice of their intention to terminate an injured worker's contract of employment, WorkCover may apply a supplementary payment under section 72C of the Act.

Where RTW options with the pre-injury employer are exhausted and it is appropriate to change the rehabilitation goal to job seeking then the following should occur:

- Case Conference or face to face meeting with all key parties to ensure in particular the worker and employer are fully aware of the consequences detachment from pre-injury employer;
- Either at the above Case Conference or separately the agent should meet face to face with the worker to discuss the new rehabilitation goal and obligations.

Section 58B(1) – employer’s obligation to provide suitable employment

There are a number of legal tests under section 58B(1) that must be met when applying this section.

- The claim is accepted and the worker has some form of incapacity.
- The employment must be suitable, and
 - must be work for which the worker is fit
 - may be full time or part time
 - may or may not be the worker’s pre-injury employment.
- It is reasonably practicable for the employer to provide suitable employment (the onus is on the employer to demonstrate if it is not reasonably practicable).

What is suitable employment?

Section 3(1) of the Act defines ‘suitable employment’ in the following way:

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:

- (a) *the nature of the worker’s incapacity and previous employment*
- (b) *the worker’s age, education, skills and work experience*
- (c) *the worker’s place of residence*
- (d) *medical information relating to the worker that is reasonably available, including in any medical certificate or report*
- (e) *if any rehabilitation programs are being provided to or for the worker*
- (f) *the worker’s rehabilitation and return to work plan, if any*

Any offer of suitable employment should include an outline of the worker’s role and responsibilities, the tasks to be performed, the position the worker should report to and any other requirements of the position, including the level of remuneration.

Reasonably practicable

The onus is on the employer to demonstrate that it is not reasonably practicable to provide suitable employment. In considering the employer’s views, at least the following issues should be considered:

- the worker's capacity and abilities can be matched to existing or available suitable employment
- the nature and size of the employer's business
- the range of occupations within the employer's organisation
- the worker's age
- the recovery status of the worker
- the worker's transferable skills and aptitude for acquiring appropriate skills and performing new job demands
- the success of – or prior attempts at – rehabilitation or return to work
- aggravations suffered by the worker when undertaking work that has been provided
- clear definition of the worker's permanent restrictions
- the employer's financial restrictions and/or limitations
- the impact a worker's return to work would have on the health, safety and welfare of co-workers, customers or members of the public. (S19&22 OHSW (SA) Act 1986)
- provisions of Federal or State industrial laws, agreements or awards that may conflict with the worker's return to work.
- any other Federal or State laws that may impact upon the worker's return to work.

Each case must be determined on its own merits. The employer is exempt from providing suitable employment, where they can demonstrate that it is not reasonably practicable to do so or that the other exceptions under section 58B(2) apply.

Employers' obligation to pay wages for performance of alternative or modified duties

Section 58B(3) of the Act provides that, if an injured worker undertakes alternative or modified duties that are different from the duties of their pre-injury employment, the employer must pay the worker an appropriate wage or salary for performing such alternative or modified duties - unless WorkCover determines otherwise.

When determining an appropriate wage or salary for the worker, an employer should consider the following:

- If the alternative or modified duties being performed by the worker are covered by an award or industrial agreement, the award or industrial agreement rate would apply.
- If the alternative or modified duties are not covered by an award or industrial agreement, the worker should be paid a wage or salary in line with that paid by the employer to other workers performing similar work, or paid to workers generally doing similar work.
- If neither of the above applies and the worker is performing duties that add value to the employer's business, the State minimum wage should apply.

The only situation, where an employer does not have to pay a wage or salary to a worker is when the worker is performing alternative or modified duties in accordance with section 58B(3) of the Act and the duties performed are of no real value (ie, the duties are supernumerary) to the employer's business. The onus is on the employer to prove that the duties being performed by the worker are of no benefit to their business. A test of this is whether an employer would have to pay someone to undertake the duties. The employer must have prior approval from the claims agent before ceasing to pay a wage or salary to the worker.

Case managers having a claim in which the facts indicate it may fall into one of the above categories should refer the matter to the claims agent's relevant customer service unit, who will determine whether it should be referred to the WorkCover's Compliance and Investigations Directorate.

Rehabilitation and return to work plans

(Refer to the section in this chapter about rehabilitation and return to work plans)

To assist the employer and worker in locating suitable employment, the claims agent must ensure - where possible - that an individual plan:

- includes actions that are consistent with the employer's ability to maintain the contract of employment when the worker is able to return to employment
- clearly identifies the goal of return to work with the employer
- outlines the mutual obligations of the parties regarding the safety, rehabilitation and return to work of the worker
- provides appropriate rehabilitation and vocational services - including training - to support the worker's recovery, rehabilitation and return to work with the employer.

In consultation with the workplace rehabilitation consultant and the injured worker, adequate assessment and support services should be provided to ensure the employer's worksite and organisation - as well as the worker's individual circumstances - are assessed and reviewed.

Section 58C – proposed termination

The employer's responsibility to give the claims agent and the worker 28 days notice under section 58C arises as soon as the worker is injured. The responsibility only expires, when the worker has no further entitlement under the Act.

The exceptions to this 28-days-notice rule apply if the worker:

- is properly terminated on grounds of serious and wilful misconduct
- is not receiving compensation and is not participating in rehabilitation
- has exhausted all of their rights to claim compensation under the Act
- has not lodged a claim for compensation within the required time.

(Refer to section 58C(2))

The exceptions also include workers, who are covered by a Federal award or agreement, which specifies a shorter period. The notice period given must then be in keeping with the provisions of that federal award or agreement.

It is the claims agent's role to make an assessment of whether serious and wilful misconduct has occurred. A decision by the case manager under section 36(1) (e) about discontinuance of weekly payments should be consistent with a view about an employer's compliance with section 58C (2)(a).

An employer failing to comply with section 58C should be referred to the claims agent's relevant customer service unit.

Claims agent reporting requirements to WorkCover

The claims agent is required to report the following breaches to WorkCover:

- matters where a pre-injury employer fails or refuses to meet their obligations to provide suitable employment under sections 58B;
- matters where a pre-injury employer fails to provide appropriate notice of their intention to terminate an injured worker's contract of employment or inappropriately terminates the injured worker;

In addition to the above the claims agent is required to provide monthly updates to WorkCover on the number of workers detached from their pre-injury employer including:

- details of time lag between date of injury and date of detachment;
- number of face to face meetings with detached workers;
- reasons for detachment; and
- individual claim details of the above.

Serious and wilful misconduct

The onus of proving that the worker is guilty of serious and wilful misconduct rests with the employer. What constitutes 'serious and wilful misconduct' depends on the facts and circumstances of each case. 'Serious and wilful misconduct' is generally interpreted in the same way in industrial and workers compensation jurisdictions; however, when an employer terminates an injured worker's contract of employment due to what the employer believes is serious and wilful misconduct, the claims agent will:

- conduct their own investigation
- review the matter internally to assess the employer's section 58B and 58C obligations prior to determining whether a section 36(1)(e) notice should be issued because the onus rests with the claims agent to establish the serious and wilful misconduct if the worker disputes the section 36 decision.

Examples of worker behaviour leading to appropriate dismissal on grounds of serious and wilful misconduct include:

- theft, stealing or fraud
- physical violence at work
- extreme intimidation or bullying including threats against management or other employees
- deliberately damaging employer's property
- deliberate failure of the worker to carry out reasonable and lawful instructions resulting in serious consequences.

Interaction of various provisions of the Act and industrial relations legislation

Where an injury has occurred and a worker is receiving compensation by way of income maintenance, a termination of employment can give rise to a range of legal responses and obligations, not all of which are necessarily complementary in nature. They include:

- the employer making a decision to terminate the employment
- the worker making a decision to challenge that termination under unfair dismissal legislation (State or Federal)
- the claim agent's determination to discontinue income maintenance for the dismissal for serious and wilful misconduct and breach of mutuality
- WorkCover's determination, namely that the employer's decision to terminate is inconsistent with sections 58B and/or 58C.

The pursuit of employment issues through the industrial relations court systems does not necessarily preclude the operation of sections 58B and 58C. However, the facts of individual cases will be considered on their merit in determining the application of sections 58B and 58C.

Factors to consider where redundancy occurs

Employer factors

Number of employees

Number of employees made redundant

Type of positions they were employed in

Is there more than one location or major work area – If so, what are the details?

Have redundancies affected all locations?

Type of industry

What is the reason for making workers redundant?

Financial – if so verify

- Rationalisation
- Restructure
- Downsizing

How will the employer be affected if they are required to employ workers?

Are there other possible areas for the worker to be employed in?

Is a worksite assessment warranted?

Worker factors

Injury

Capacity

Aptitude, ability, suitability for retraining

Relationship issues

Worker's age and personal circumstances

What is the workers opinion? (ie, they may choose to accept a voluntary redundancy)

Medical and rehabilitation information

GP view

FCE, Worksite assessment and vocational assessments

Rehabilitation provider view

Case management considerations

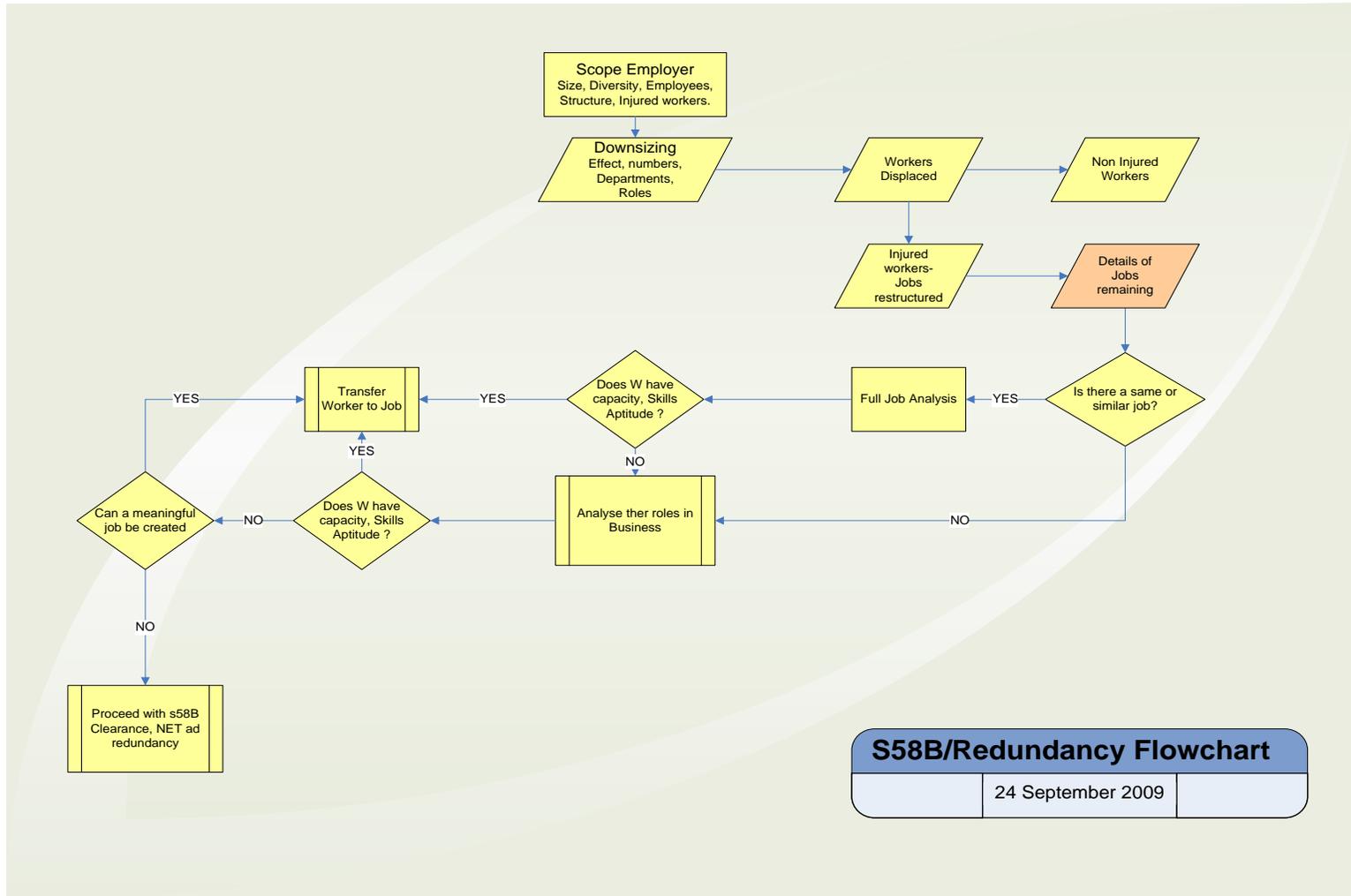
What affect will redundancy have on scheme liability?

Claim status

What is best return to work direction?

Is it reasonably practicable for the employer to provide suitable employment?

Section 58B – Redundancy flowchart



S58B/Redundancy Flowchart
24 September 2009

