

## Workers Compensation and Injury Management Act 2023

# Implementation proposals for regulations and administrative instruments

## Implementation Consultation Paper 12: Workplace Rehabilitation Services

**October 2023**

Public comment on the implementation proposals  
should be submitted to:

[consultation@workcover.wa.gov.au](mailto:consultation@workcover.wa.gov.au) by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

**\*\*\*Draft proposals only\*\*\***

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

# Implementation Consultation – Workplace Rehabilitation Services

## Scope

This document outlines proposed regulations, implementation processes and requirements associated with workplace rehabilitation services that will apply under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*.

This document does not address the approval framework for workplace rehabilitation providers (see *Implementation Consultation – Approval Framework for Workplace Rehabilitation Providers*).

## Background and intent

An employer's liability to pay workplace rehabilitation expenses compensation arises when it is reasonably necessary for an approved workplace rehabilitation provider (WRP) to provide a workplace rehabilitation service in accordance with the regulations.

Section 93 of the *WCIMA23* provides for regulations to include provision with respect to the following:

- (a) the circumstances in which it is reasonably necessary for an approved WRP to provide a workplace rehabilitation service
- (b) the services that can be provided for the purposes of workplace rehabilitation
- (c) who can request the provision of workplace rehabilitation services and the process for selecting, engaging or changing providers
- (d) the circumstances in which a workplace rehabilitation service should be terminated.

It is intended the regulations will continue to prescribe workplace rehabilitation services consistent with the 1981 Act and regulations but will also address matters relating to when it is reasonably necessary for workplace rehabilitation services to be provided and the processes for engaging approved WRPs.

## WCIMA23 key provisions

Section 93.

## Regulations

It is intended the following provisions will be made in regulations.

### Workplace rehabilitation services

It is intended the services listed in [Attachment 1 - Prescribed Workplace Rehabilitation Services](#) will be services that can be provided for the purposes of workplace rehabilitation under the *WCIMA23*.

The list of prescribed workplace rehabilitation services is substantively the same as the table to regulation 44 of the Workers' Compensation and Injury Management Regulations 1982 (the 1982 Regulations) with the following changes:

- items 5 & 6 in the table to regulation 44 of the 1982 Regulations are not replicated as these items relate to specialised retraining programs. Specialised retraining programs are discontinued as a service and not recognised under the *WCIMA23*.
- updating of terminology from vocational rehabilitation to workplace rehabilitation.

Fees payable to approved WRPs for the provision of these services will be set by a Ministerial Fee Order. The proposed ministerial fee order will be made closer to commencement of the *WCIMA23* and is likely to be based on the current fee schedule for workplace rehabilitation services with some additional controls on travel to ensure transparency and accountability.

There is no intention at this time to move towards outcome-based models or alternative service delivery models.

The *Workplace Rehabilitation Providers Principles and Standards of Practice* (as updated from time to time) will continue to apply to the delivery of workplace rehabilitation services by approved providers.

Processes and procedures for recording workplace rehabilitation referrals and outcomes will not change under the *WCIMA23*.

The total limit on expenses associated with the provision of workplace rehabilitation services is the same as the 1981 Act (7% of the general maximum 'prescribed' amount).

### When workplace rehabilitation is reasonably necessary

It is not clear under the 1981 Act as to whether or when workplace rehabilitation is reasonably necessary. Sometimes there is disagreement as to the whether external expertise by an approved WRP is required at all and/or at what stage.

It is intended the regulations will provide it is 'reasonably necessary' for an approved WRP to provide a *workplace rehabilitation service* (listed in Attachment 1) if a request is made to an approved WRP by a worker, a worker's employer, an employer's insurer or a worker's treating medical practitioner, having regard to the relevant considerations below.

There is no intention to prescribe in regulations a time period or stage in the claim or return to work process for when workplace rehabilitation involvement is or should be considered reasonably necessary.

### Relevant considerations

The following are intended 'relevant considerations' in deciding whether it is reasonably necessary for an approved WRP to provide a workplace rehabilitation service:

- (a) the nature of an injury is impacting on a worker's ability to remain at work or return to work
- (b) a worker's condition has deteriorated significantly, and the worker requires assistance to remain at or return to work
- (c) biopsychosocial barriers for recovery and return to work have been identified
- (d) a worker is no longer employed, or it is not practicable for an employer who employed the worker at the time the injury to provide the worker's pre-incapacity position, and the employer requires assistance to provide a position for which the worker is qualified and capable of performing, for example job seeking and redeployment activities
- (e) a worker is in a different geographical location to the employer, particularly if they work in a remote location
- (f) a worker's injury results from perceived or actual conflict in the workplace
- (g) assistance is required to establish a return to work program.

An approved WRP is required to:

- (a) identify and address risk factors impacting a successful return to work
- (b) assess a worker's functional capacity and provide recommendations to translate functional gains into meaningful work
- (c) provide advice on the best pathway to recovery
- (d) engage with a worker's treating medical practitioner and inform treatment plans, certificates of capacity and return to work programs by providing insights into the working environment
- (e) provide recommendations on how a worker can be accommodated within the workplace while they recover
- (f) assess a workplace to determine safe duties for a worker to undertake during recovery, how duties can be modified or whether any equipment will assist a worker in safely returning to their duties
- (g) provide supportive, educational and motivational rehabilitation counselling to assist a worker to maximise their function and manage any injury throughout the return to work process
- (h) help a worker identify their vocational strengths, skills and abilities if they are unable to return to their usual position, and assist with identifying steps that can be taken to transition into a different type of work
- (i) initiate and/or participate in a return to work case conference
- (j) assist in the development of a return to work program.

### Who can request workplace rehabilitation and select a provider?

While expenses for workplace rehabilitation services are characterised as compensation, payments are not generally made to workers but are paid to approved WRPs.

Workplace rehabilitation services are of primary benefit to injured workers in returning them to work as soon as practicable, but the referral source can come from workers, treating medical practitioners, employers or insurers, depending on the specific needs of the parties in engaging workplace rehabilitation expertise.

Consistent with current practices it is intended the regulations will provide that a request for workplace rehabilitation services can be made by the following parties if it is reasonably necessary to engage an approved WRP:

- A worker or worker's representative
- A worker's treating medical practitioner
- An employer
- An employer's insurer

Regardless of the referral source, it is intended the regulations will provide that an injured worker is entitled to select an approved WRP of the worker's choice.

An injured worker must be given an opportunity to select an approved workplace rehabilitation provider of the worker's choice if the request for workplace rehabilitation is made by a worker's treating medical practitioner, the worker's employer, or the employer's insurer. In practice this requirement would be met if, for example, an insurer contacts the worker and provides the list of approved workplace rehabilitation providers from which the worker can select.

The proposed regulation embeds worker choice and independence of the WRP and does not alter the referral pathways that are currently in place for workplace rehabilitation under the 1981 Act.

### Change of provider

There is no intention to make any regulation at this time regarding a change in provider once workplace rehabilitation services have commenced.

### Terminating a workplace rehabilitation service

There is a need to clarify the circumstances in which a workplace rehabilitation service should be terminated with a particular provider.

It is intended the circumstances for terminating a workplace rehabilitation service after a referral is made and a service has commenced will be:

- An injured worker can no longer undertake or participate in workplace rehabilitation or is participating in workplace rehabilitation with a different provider. Example: an injury has worsened resulting in total incapacity with workplace rehabilitation no longer seen as necessary.
- The goal or outcome of a workplace rehabilitation service or program has been attained. Example: a referral is made for a specific service or workplace rehabilitation program and that service or program has been delivered with the goal or outcome attained.
- The workplace rehabilitation entitlement limit has been exhausted or an injured worker has registered a settlement for the compensation claim. Example: reaching the cap or settlement of the claim discharges the employer's liability to pay for the workplace rehabilitation services

- A WRP's approval is suspended or cancelled. Example: a WRP exits the market or following investigation has approval suspended for major breach of approval criteria or conditions.

## Transitional

A savings and transitional provision in the *WCIMA23* provides a workplace rehabilitation service in operation before commencement of the *WCIMA23*, continues in operation as if it were the corresponding service under the *WCIMA23*.

This means any workplace rehabilitation service in operation on commencement date of the *WCIMA23* will be recognised and there is nothing that needs to be done to continue providing the service(s). This applies regardless of whether the service is a specific service, part of a workplace rehabilitation program or return to work program.

## WorkCover WA expectations

WorkCover WA expects:

- stakeholders work cooperatively to determine whether workplace rehabilitation services are reasonably necessary having regard to the 'relevant considerations' in regulations
- workers to be given the right of choice of approved WRP for services that are reasonably necessary
- approved WRPs deliver workplace rehabilitation services in accordance with the regulations, *WorkCover WA Rehabilitation Providers Principles and Standards of Practice*, and charge for services in accordance with the Ministerial Fee Order.

## Evaluation and monitoring

The *WCIMA23* provides for WorkCover WA to conduct performance monitoring and review of approved WRPs in the provision of services to determine compliance with legislation, regulations, approval criteria and conditions and ministerial fee orders.

## Attachments

1. Prescribed Workplace Rehabilitation Services

## Attachment 1: Prescribed Workplace Rehabilitation Services

Service	Description
1. Support counselling	Activities to assist a worker to adjust to an injury and to the worker's return to work; family counselling related to vocational rehabilitation; progress counselling related to the progress of, and problems with, the worker's return to work.
2. Vocational counselling	Activities focussed on problems a worker has in selecting and preparing for vocational change.
3. Purchase of aids and appliances	Advising and assisting a worker with the purchase of aids and appliances.
4. Case management	Activities associated with the management of a worker's return to work, which may include liaising and negotiating with the parties, developing, coordinating, and otherwise managing, and reviewing, the service delivery plan, and arranging for interpreter services.
5. Training and education	Assisting to develop a worker's skills and knowledge, which may include providing training courses or other aspects of injury management.
6. Workplace activities	Activities involving analysis of work behaviour and analysis and design of job duties.
7. Placement activities	Activities focussed on obtaining a new job for a worker, which may include assistance with the preparation of a resume and preparation for an interview and research and other assistance in finding jobs.

Service	Description
8. Assessments	
8(a). Functional capacity	Activities associated with assessing a worker's functional capacity, which may include preparing a report
8(b). Vocational	Activities associated with assessing a worker's vocational and retraining options, which may include preparing a report
8(c). Ergonomic	Activities associated with assessing how a particular work environment would affect a worker, which may include preparing a report
8(d). Job demands	Activities associated with identifying and assessing the physical and cognitive demands of a job, which includes preparing a report
8(e). Workplace	Activities associated with assessing the suitability of various workplace alternatives and other job options, which may include preparing a report
8(f). Aids and appliances	Activities associated with developing recommendations for aids and appliances to assist a worker, which may include preparing a report.
9. Travel	Travel that is directly associated with providing workplace rehabilitation services.
10. Medical	Discussion with specialists and other medical practitioners about workplace rehabilitation, which may include preparing a report.
11. Reports	Status reports relating to workplace rehabilitation.