

## Workers Compensation and Injury Management Act 2023

# Implementation proposals for regulations and administrative instruments

## Implementation Consultation Paper 6: Injury Management and Return to Work

**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 – Injury Management & Return to Work

## Scope

This document sets out proposed regulations, requirements and implementation processes that will apply under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)* associated with:

- an employer’s obligation to establish an injury management system and return to work program
- return to work case conferences
- an employer’s obligation to give notification if a worker receiving compensation is to be dismissed for any reason.

## Background and intent

All employers are currently required to establish an injury management system which describes the steps to be followed when there is an injury in the workplace. In the event of a workplace injury resulting in partial incapacity, the employer is required to develop a written return to work program for the injured worker.

There are no changes to these requirements under the *WCIMA23* and the approved form of both the injury management system and return to work program will be substantially the same as under the 1981 Act, regulations and Code of Practice. The Code of Practice is not replicated under the new regime.

The *WCIMA23* clarifies that a worker cannot be dismissed solely or mainly due to the worker’s incapacity for work and cannot be dismissed for any reason unless the employer has given the worker notice in the approved form at least 28 days before the dismissal takes effect. The approved form of the notice is intended to be substantially the same as under the 1981 Act and regulations.

The *WCIMA23* provides for a worker’s participation in return to work case conferences. It is intended regulations and guidance will provide for the conduct of return to work case conferences to ensure they are utilised appropriately.

## WCIMA23 key provisions

s.159, s.160, s.165, s.168

## Injury management systems and return to work programs

There are no changes regarding an employer’s obligations to establish an injury management system or to develop a return to work program.

The injury management system and return to work program must be in the approved form. No changes are intended to be made to the template injury management system and return to work program used under the 1981 Act other than minor terminology and design improvements.

## Return to work case conferences

The *WCIMA23* requires a worker to attend a return to work case conference, arranged by the worker's employer, insurer, treating medical practitioner or an approved workplace rehabilitation provider (WRP) in order to support the worker's recovery and assist in the worker's return to work.

A worker is required to comply with a requirement to attend and participate in a return to work case conference.

The regulations will provide for matters such as the conduct and procedure of return to work case conferences and the number of times and frequency a worker must attend, and who may attend.

WorkCover WA intends to issue guidelines which set out an ideal return to work case conference plan to record, guide conduct and report on the outcome of return to work case conferences.

## Regulations

It is intended regulations will provide for the following with respect to return to work case conferences:

### Maximum frequency

A worker cannot be required to attend a return to work case conference:

- more frequently than once every 4 weeks (unless requested by the treating medical practitioner only)
- at any time other than during usual business hours (8.30am to 5pm).

### Conduct

The following conduct is expected by parties at a return to work case conference:

- active involvement and contribution of all parties on issues relevant to them
- information to be shared openly
- conversation to be polite and respectful
- the case conference to have a clear purpose and set realistic goals that address the risk factors, barriers and supports for return to work
- discussion is within scope of a return to work case conference as set out below.

### Matters that can be discussed

A return to work case conference can only be used to discuss the following matters:

- to inform the treating medical practitioner of the workplace, the worker's duties and return to work opportunities
- to identify types of duties the employer can provide while the worker has work restrictions and the workplace support a worker needs
- to identify any modifications which may be required to the workplace or work equipment
- to identify barriers that are, or may be, impacting a worker's return to work

- developing or modifying return injury management activities or goals that are required in any certificate of capacity or return to work program.

### Matters that cannot be discussed

A return to work case conference cannot be used for any other purpose including:

- challenging the treating medical practitioner's diagnosis, medical assessment findings or certified capacity for work
- discussing matters relating to liability for the claim including how the injury happened, whether it is a new injury or recurrence of a pre-existing condition, or challenging the worker or medical practitioner on factual grounds
- discussing any matters relating to the worker's medical condition for which an employer or insurer has the right to initiate a medical examination of the worker under s. 180 of the *WCIMA23*.

### Persons who may attend

The following persons may attend and participate in return to work case conferences:

- the worker and any support person (union, legal representative, authorised agent, family member, carer)
- the employer and / or the employer's insurer
- the worker's treating medical practitioner
- an approved WRP.

### Notice

The notice in writing about the case conference must be given in the approved form [Attachment 1 – Notice to attend Return to Work Case Conference](#) and can be given by electronic means, by post or delivered personally to the worker.

The notice is taken to be given when it is delivered by post (last known address of the worker), in person, or by email to the last known email address of the worker.

### Dismissal of an injured worker

The *WCIMA23* clarifies that a worker cannot be dismissed solely or mainly due to the worker's incapacity for work and cannot be dismissed for any reason unless the employer has given the worker notice in the approved form at least 28 days before the dismissal takes effect.

Failure to comply is an offence and may result in a fine of \$10,000.

The notice must be in the approved form. No changes are intended to be made to the notice used under the 1981 Act other than minor terminology and design improvements.

### WorkCover WA expectations

- Employers comply with their obligations to establish and implement an injury management system, return to work program and provide a worker's pre injury position or alternative position as required by the *WCIMA23*.
- All parties involved in a return to work case conference work together in good faith and use the conference for its intended purpose to support the worker's recovery and assist in the worker's return to work.

## Attachments

1. Notice to Attend Return to Work Case Conference

## Attachment 1: Notice to attend return to work case conference

## Workers Compensation and Injury Management Act 2023

To:			
(Name of worker)			
Claim number:			
Date of injury:			
Nature of injury:			
Current return to work status and capacity for work:			
This notice advises that we have arranged a return to work case conference and you are required to attend. Please refer to the details below:			
Date:	Time:	Venue:	
In person <input type="checkbox"/>	Video link <input type="checkbox"/>	Audio link <input type="checkbox"/>	Other electronic means _____
<i>Please Note: You are required to participate and cooperate in the return to work case conference.</i>			
This notice is given by (Name):			
Date:	Signature:		
Phone:	Address:		
Organisation:			
Email:			