

Compliance Code 2 of 4

Return to Work Coordinators

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Contents

| | | |
|-----------|---|-----------|
| 1. | Preface | 1 |
| 2. | Introduction | 2 |
| 2.1 | Purpose | 2 |
| 2.2 | Scope | 2 |
| 2.3 | Application | 3 |
| 3. | What does the law say? | 4 |
| 4. | How to comply | 5 |
| 4.1 | Return to Work Coordinator seniority | 6 |
| 4.2 | Return to Work Coordinator competence | 6 |
| 5. | Appendices | 11 |
| | Appendix A | 11 |
| | The Return to Work Compliance Framework | 11 |
| | Appendix B | 12 |
| | Terminology from the Act | 12 |
| | Appendix C | 14 |
| | Further information | 14 |
| | VWA publications | 14 |
| | Other Return to Work Compliance Codes | 14 |
| | Other useful references | 14 |

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1.

Preface

This compliance code provides practical guidance to **employers** who have obligations under Part 4 (Return to Work) of the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act) on how to comply with those obligations.

It was approved under the Act by the Hon. Gordon Rich-Phillips MLC, Assistant Treasurer.

This compliance code has been developed by the WorkSafe Victoria (WorkSafe).

The public and representatives of employers, unions, occupational rehabilitation providers and health practitioners were consulted during its preparation.

Employers should use this compliance code in conjunction with the Act.

This compliance code is not mandatory. An employer who complies with this compliance code will – to the extent that the compliance code deals with their obligations under Part 4 of the Act – be taken to have complied with their obligation.

An employer can put in place other compliance solutions. These solutions must also meet the employer's obligations set out in section 106 of the Act.

Compliance with the Act in relation to obligations that are not covered by this compliance code must be achieved by other means.

WorkSafe publishes guidance to assist with matters not covered in this compliance code: visit worksafe.vic.gov.au for a list of publications.

Evidence of a failure to observe a compliance code may be used as evidence in proceedings for an offence under the Act. However, a failure to comply with a compliance code does not, of itself, give rise to any civil or criminal liability. An employer who complies with a compliance code in relation to an obligation under Part 4 of the Act is, however, taken to have complied with the Act in respect of that obligation.

A Return to Work Inspector may cite this or other compliance codes in a direction or condition in a Return to Work Improvement Notice as a means of achieving compliance.

An approved compliance code may be varied or revoked by the Minister. To confirm that this compliance code is current and in force, visit worksafe.vic.gov.au.

Note

Material in this document in grey boxes including the examples and Appendices A and C is provided for information only, it does not form part of this compliance code.

2.

Introduction

2.1 Purpose

1. The purpose of this compliance code is to help employers comply with the law in relation to nominating and appointing a person to be a Return to Work Coordinator.
2. Section 97 of the Act sets out the purpose of the Act in relation to return to work. The purpose is to provide:
 - (a) that employers, workers and other persons involved in the return to work process cooperate to ensure that workers successfully return to work
 - (b) that employers are responsible for providing pre-injury employment or suitable employment to enable workers to return to work
 - (c) that workers are responsible for participating in the return to work process consistent with their capacity for work
 - (d) for workers to be represented, assisted and supported in the return to work process, and
 - (e) for effective occupational rehabilitation for workers to facilitate their early and sustainable return to work.
3. Part 4 of the Act sets out the obligations of employers and others in relation to return to work. The Act also sets out the maximum penalties for non-compliance with obligations under the Act.

2.2 Scope

4. This compliance code covers an employer's obligations under section 106 of the Act – Return to Work Coordinator to be appointed.

2.3 Application

5. A worker may be represented, assisted and supported at any stage of the return to work process, including in the consultation process. A worker may choose any person (except a legal practitioner) to perform this function. If a worker has chosen an individual to represent, support and assist them, the employer should liaise with this person at all stages of the return to work process. Any reference in this compliance code to 'the worker' should be taken to read the worker and the individual they have chosen to represent, assist and support them (if any). Employers are required to notify workers of their right to be represented, assisted and supported in the return to work information they must make available to their workers. For more information on this obligation see WorkSafe's *Compliance Code 3 of 4: Return to work information*.
6. Apart from the exceptions listed below, this compliance code applies to all employers, including self-insurers. The references in this compliance code indicating that an employer or Return to Work Coordinator should involve an WorkSafe Agent (the Agent) do not apply to self-insurers. Self-insurers are employers approved by WorkSafe to manage their own workers compensation claims.
7. This compliance code does not apply to an employer of a worker who:
 - (a) at the time of their injury is a student at a school within the meaning of Part 5.4 of the *Education and Training Reform Act 2006*, and
 - (b) is employed under a work experience arrangement under that Part.
8. Further, the following classes of employer are not required to comply with section 106 of the Act:
 - (a) employers (including owners corporations within the meaning of the *Owners Corporation Act 2006*) who employ domestic or similar workers other than for the purposes of the employer's trade or business (but only to the extent that such workers are concerned)
 - (b) employers who hold owner-builders' permits under the *Building Act 1993* (this relates only to the workers employed to conduct the work to which the permits relate)
 - (c) employers (being corporations) who only employ workers who are directors of the corporation
 - (d) employers who only employ workers who are members of the employer's family, and
 - (e) employers who only employ workers who only perform work while outside Victoria.

3.

What does the law say?

9. The law about an employer's obligations to appoint a person as a Return to Work Coordinator is contained in section 106 of the Act.
 - Sub-section 106(6) of the Act requires an employer to appoint a person to act as a Return to Work Coordinator who has an appropriate level of seniority and is competent to assist the employer to meet their obligations under Part 4 of the Act.
 - Sub-section 106(7) of the Act provides that a person is competent to be a Return to Work Coordinator if they have the knowledge, skills or experience relevant to planning for return to work, including:
 - (a) knowledge of the obligations of employers and workers under Part 4 of the Act, and
 - (b) knowledge of the compensation scheme provided for under this Act and the *Accident Compensation Act 1985*, the functions of WorkSafe and, if relevant, self-insurers under Part 4 of the Act.
 - Sub-section 106(1) of the Act requires that an employer who has certified, or been assessed, as having a total rateable remuneration of \$2,169,670 or more (for all the employer's workplaces in respect of the preceding policy period) has a Return to Work Coordinator appointed at all times.
 - Sub-section 106(2) of the Act requires that an employer who has certified, or been assessed, as having a total remuneration of less than \$2,169,670 (for all the employer's workplaces in respect of the preceding policy period) has a Return to Work Coordinator appointed for the duration of the employer's obligations under Part 4 to a worker who has an incapacity for work.
 - Sub-section 106(3) of the Act states that a Return to Work Coordinator is not personally liable for any act or omission done or omitted to be done in good faith in the course of acting as a Return to Work Coordinator.
 - Sub-section 106(4) of the Act states that an employer would instead be liable for any such act or omission.

4.

How to comply

10. The approach outlined in this compliance code is not the only way for employers to meet their obligations to appoint a Return to Work Coordinator. An employer who has undertaken each applicable step in this compliance code is taken to have complied with their obligations under section 106 of the Act.
11. Appointing a Return to Work Coordinator means the employer has identified a suitable person and has advised them, preferably in writing, of their appointment as a Return to Work Coordinator. Section 107 of the Act requires the name and contact details of the Return to Work Coordinator to be made available to the employer's workers, if applicable. This can be done by recording the details in relevant workplace policies, records and notices such as in the *If you are injured poster* on display in the workplace.

For information

The employer should provide a Return to Work Coordinator with relevant information and other assistance to help them understand what will be required of them.

12. A Return to Work Coordinator must have an appropriate level of seniority and be competent to assist their employer to meet its obligations under Part 4 of the Act.
13. An employer with a rateable remuneration of **\$2,169,670 or more²** must have a Return to Work Coordinator appointed at all times.
14. An employer with a rateable remuneration of **less than \$2,169,670²** must appoint a Return to Work Coordinator for the duration of the employer's return to work obligations to an injured worker. The employer's return to work obligations to an injured worker start as soon as the employer receives the worker's *Certificate of Capacity* or claim for weekly payments, whichever is earlier, or from the date that the employer is advised by their Agent that they have received these documents. This obligation continues for 52 weeks of the worker's incapacity for work resulting from or materially contributed to by their injury.

² This amount is indexed annually. For the current threshold, call your Agent, visit worksafe.vic.gov.au, or call WorkSafe's Advisory Service on freecall 1800 136 089 or (03) 9641 1444.

Return to Work Coordinator seniority

15. A Return to Work Coordinator is required to have a sufficient level of seniority to assist the employer meet its return to work obligations under the Act. The required level of seniority will depend upon the employer's particular circumstances.
16. Seniority is a term often used to describe an individual's position within a workplace or their length of service in a workplace. For Return to Work Coordinators, seniority means that they are empowered to speak on behalf of, and make return to work related decisions for, the employer.
17. The employer must ensure that the Return to Work Coordinator has sufficient seniority to assist the employer to do the following:
 - plan the return to work and make return to work related decisions to progress an injured worker's return to work
 - identify and propose suitable or pre-injury employment
 - consult with the parties involved in the return to work being the injured worker, the injured worker's treating health practitioner (subject to the consent of the worker) and occupational rehabilitation provider (where involved)
 - act as a point of contact for a Return to Work Inspector, if requested to do so by the employer
 - deal with any of a Return to Work Inspector's requests
 - liaise with any other people as required about return to work related matters including those within the organisation such as managers and supervisors, and
 - participate in the resolution of return to work issues in accordance with the applicable procedure.

Return to Work Coordinator competence

18. A Return to Work Coordinator is considered competent if they have the required knowledge, skills or experience needed to perform the role of assisting the employer meet their return to work obligations. The required skills and knowledge with respect to each competency listed below will depend on the employer's particular circumstances.
19. The employer must ensure that the Return to Work Coordinator has the following competencies:
 - knowledge of the employer's return to work obligations under Part 4 of the Act including the employer's obligation to provide the worker with pre-injury or suitable employment for the duration of the employer obligation period to the extent that it is reasonable to do so
 - an understanding of the role of the Return to Work Coordinator
 - an understanding of the steps that employers should take following a work-related injury
 - an understanding of the rights and obligations of injured workers
 - an understanding of how to plan a worker's return to work, including the steps required to provide pre-injury or suitable employment
 - an understanding of which people the employer is required to consult with during the return to work process and the steps involved in this consultation process
 - an ability to communicate with the diverse range of people involved in the return to work process

- knowledge of where support, information and guidance is available and an ability to seek this assistance and guidance when appropriate
- an understanding of the importance of maintaining the confidentiality of the worker's private information in accordance with the Act and applicable privacy legislation and how to do this
- an understanding of the procedure to be used by the workplace (agreed or specified by Ministerial Direction) when resolving a return to work issue
- an understanding of the functions of the Return to Work Inspectorate and their role in enforcing compliance with Part 4 of the Act
- knowledge of the Victorian workers compensation scheme, and
- knowledge of the functions of WorkSafe in relation to return to work.

For information

Maintaining confidentiality of private information

When consulting and communicating with people other than the worker, employers should ensure that the worker's privacy is maintained in accordance with the *Information Privacy Act 2000* and the *Health Records Act 2001* and only information essential to assisting their return to work is communicated. Personal and health information may not be distributed more broadly than necessary. For example, the worker's supervisor will need information about the worker's duties, work restrictions and breaks but should not need additional details such as medical information relating to the worker's injury and treatment.

Consideration should also be given to ensuring that the worker's private information is securely stored and that conversations about the worker's return to work are undertaken in an appropriately private environment.

Further information on employer obligations and Return to Work Coordinators can be found online at worksafe.vic.gov.au/returntowork.

You can also contact your Agent or WorkSafe's Advisory line for assistance.

Return to Work Coordinators may assist their employer further by having an awareness of other legislative requirements the employer may need to comply with in a return to work context. For example, the *Occupational Health and Safety Act*, *Equal Opportunity Act*, *Fair Work Act* and the *Disability Discrimination Act*.

The obligation to appoint a Return to Work Coordinator with sufficient seniority and competence as outlined in section 106 of the Act rests with the employer. If the Return to Work Coordinator acts in good faith, the Return to Work Coordinator does not assume any personal liability by performing the role.

There are a number of ways that employers can ensure their Return to Work Coordinator has the required competencies to perform the role. These include, but are not limited to, supporting the Return to Work Coordinator to access, participate in or undertake the following activities:

- attending WorkSafe endorsed training (*Role of the Return to Work Coordinator*)
- attending other injury management and Return to Work Coordinator focused training
- accessing and reviewing relevant return to work material available at **worksafe.vic.gov.au/returntowork**
- accessing and reviewing return to work newsletters and publications
- participating in mentoring from an experienced Return to Work Coordinator (within or outside your own workplace)
- participating in networking activities within or outside the workplace and by talking to others who have experience in or are currently managing workers compensation claims, occupational rehabilitation services or return to work processes
- joining WorkSafe's Employer Networks
- attending and participating in networking forums and workers compensation and injury management discussions
- attending and participating in WorkSafe's events, free information sessions and injury management and workers compensation seminars and conferences, and
- accessing and reviewing relevant internet sites and journal publications.

Note that the Return to Work Coordinator must have the requisite competencies at the time they are appointed to the role.

Example 1

Employer with a rateable remuneration of \$2 million or more

- Nick is the managing director of a company with a rateable remuneration of \$3.5 million. The Return to Work Coordinator for the company is about to leave and Nick needs to appoint a new coordinator.
- Nick undertakes an expression of interest process in order to fill the role. Nick meets with all candidates, including Jess, to discuss the role and the competencies required. Jess occupies a senior role within the organisation and is the only candidate with previous experience as a Return to Work Coordinator. Jess has an excellent reputation within the organisation as someone who is a great communicator and she understands the return to work process. By notifying Jess in writing, Nick appoints Jess to the position of Return to Work Coordinator on an ongoing basis. Jess will commence in the role on the same day that the former Return to Work Coordinator leaves the company.
- Jess's appointment as the organisation's Return to Work Coordinator was made official at an 'employee briefing' held on her second day on the job. At this briefing session, Nick told employees about Jess's role.

Example 1 (continued)

- During the first week in her new role, Nick arranged for Jess's name and contact details to be placed on all *If you are injured at work* posters and on the return to work information booklets displayed throughout the workplace.
- In the circumstances, Nick's nomination and appointment of Jess to the role of the Return to Work Coordinator is consistent with the employer's obligation to nominate and appoint a Return to Work Coordinator with appropriate seniority and competence to assist the employer meet their return to work obligations.

Example 2**Employer with a rateable remuneration of \$2 million or more**

- Arthur recently commenced as the Executive Director of a medium size organisation with an annual rateable remuneration of \$2.3 million. Soon after starting, he became aware that there was no appointed Return to Work Coordinator. Arthur rectified this as soon as possible in order to meet the organisation's obligations under the Act.
- Arthur spoke with a number of employees about the role of the Return to Work Coordinator. After getting a better understanding of the skills, experience and knowledge each person might bring to the role, Arthur suggested Jodie for the role. Although Jodie had no previous experience as a Return to Work Coordinator she had proven influencing and communication skills and had demonstrated an ability to deal well with sensitive matters.
- To assist Jodie develop the required competencies to be appointed as a Return to Work Coordinator, Arthur provided her with a copy of WorkSafe's publication, *Return to Work Coordination – The basics you need to know*, as well as the contact details for the organisation's Agent. He also arranged for an experienced mentor (the Return to Work Coordinator from his previous employer) to support Jodie in her new role and assist her develop the skills, knowledge and confidence as a Return to Work Coordinator.
- Arthur also offered Jodie the option of undertaking WorkSafe approved 2-day Return to Work Coordinator Training and made himself available to assist her and provide advice where required.
- After being satisfied that Jodie had the required competencies, Arthur appointed Jodie as the new Return to Work Coordinator.
- Upon Jodie's appointment, Arthur outlined details of her seniority and responsibilities in her position description. In order to assist Jodie to perform her role, Arthur took an excerpt about Jodie's seniority from her position description and gave it to all managers/team leaders and supervisors so that they understood the role Jodie would play in her new position and what Jodie could ask of them.

Example 2 (continued)

- Arthur also ensured that employees within the organisation knew of Jodie's appointment to the role by placing her details on the *If you are injured at work* posters displayed around the business, as well as announcing her role in the employee newsletter.
- Arthur complied with the organisation's obligation to appoint a Return to Work Coordinator with appropriate seniority and competence to assist the employer meet their return to work obligations. The employer also met their obligations by ensuring the person had immediate access to competency development activities and were given sufficient authority in the organisation to undertake the role when appointed.

Example 3

Employer with a rateable remuneration of less than \$2 million

- David runs a business with a total annual remuneration of \$925,000. He has envisaged he will undertake the role of the Return to Work Coordinator.
- David prepares himself by talking to his Agent to ensure he understands the role. He also reads the *Return to Work Coordination – the basics you need to know* publication.
- Eleven months later, one of David's employees falls and fractures his ankle. David immediately appoints himself as the Return to Work Coordinator for the injured worker. David records the appointment in the employee's file, notifies the Agent, emails his management team and notifies the injured employee regarding the appointment. In order to meet his obligations under the Act, he liaises closely with the Agent who provides him with ongoing guidance and support. David also asks his Agent for an occupational rehabilitation provider to be considered for the injured worker to provide additional support.
- Through David's own knowledge of the return to work process (obtained through reading guidance material), together with the support and guidance received by David's Agent and an occupational rehabilitation provider, he is able to meet his obligations under the Act.
- As a result of David's actions he is able to provide evidence of his attempts to meet his obligation to appoint a Return to Work Coordinator who has sufficient seniority and competency to perform the role.

5.

Appendices

Appendix A

The Return to Work Compliance Framework

The table below sets out the elements of the Return to Work Compliance Framework. It also describes the legal status of each element under the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act).

| | |
|--|--|
| <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> | Workplace Injury Rehabilitation and Compensation Act 2013 Sets out the law in relation to workers compensation in Victoria. |
| <i>Ministerial Directions</i> | Ministerial Directions specify the way in which an obligation under the Act must be performed or prescribe procedural or administrative matters to support the Act. |
| <i>Compliance Codes</i> | Compliance Codes provide practical guidance in relation to obligations under the Act. A compliance code is not mandatory. A person or entity that has an obligation under Part 4 of the Act and complies with a compliance code will – to the extent that the compliance code deals with that obligation under the Act – be considered to have complied with their obligations. |
| <i>Non-statutory guidance</i> | Non-statutory guidance includes information published by WorkSafe which assists with building people's knowledge and awareness of return to work related matters. Non-statutory guidance is not mandatory, nor does it provide any 'deemed to comply' outcomes in relation to an obligation. |

Appendix B

Terminology from the Act

Occupational Rehabilitation Service
(s3 of the Act)

Occupational rehabilitation service means any of the following services provided by a person who is approved by the Authority as a provider of an occupational rehabilitation service:

- (a) initial rehabilitation assessment
- (b) functional assessment
- (c) workplace assessment
- (d) job analysis
- (e) advice concerning job modification
- (f) occupational rehabilitation counselling
- (g) vocational assessment
- (h) advice or assistance concerning job seeking
- (i) vocational re-education
- (j) advice or assistance in arranging vocational re-education
- (k) advice or assistance in return to work planning
- (l) the provision of aids, appliances, apparatus or other material likely to facilitate the return to work of a worker after an injury
- (m) modification to a work station or equipment used by a worker that is likely to facilitate the return to work of the worker after the injury
- (n) any other service authorised by the Authority –
but does not include a hospital service.

Pre-injury employment
(s96(1) of the Act)

Employment in a position which is the same as or equivalent to the position in which the worker was employed before receiving the injury.

Suitable employment
 (s3 of the Act)

In relation to a worker, suitable employment means employment in work for which the worker is currently suited having regard to –

- (a) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, the *Certificate of Capacity* supplied by the worker
- (b) the nature of the worker's pre-injury employment
- (c) the worker's age, education, skills and work experience
- (d) the worker's place of residence
- (e) any plan or document prepared as part of the return to work planning process
- (f) any occupational rehabilitation services that are being or have been, provided to or for the worker, and
regardless of whether –
 - i. the work or the employment is available, and
 - ii. the work or the employment is of a type or nature that is generally available in the employment market.

For the purposes of Part 4 of the Act, suitable employment also includes:

- (a) employment in respect of which the number of hours each day or week that the worker performs work or the range of duties the worker performs is suitably increased in stages in accordance with return to work planning or otherwise
- (b) employment the worker is undertaking or that is offered to the worker regardless of whether the work or the employment is of a type or nature that is generally available in the employment market, and
- (c) suitable training or vocational re-education provided by the employer or under arrangements approved by the employer (whether or not the employer also provides employment involving the performance of work duties), but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends suitable training or vocational re-education.

The Act

Workplace Injury Rehabilitation and Compensation Act 2013

Appendix C

Further information

WorkSafe has a range of publications, tools and templates that may assist with undertaking return to work activity and meeting return to work obligations. These are available from [worksafe.vic.gov.au/returntowork](https://www.worksafe.vic.gov.au/returntowork).

To order hard copies of publications please contact WorkSafe's Advisory Service.

WorkSafe publications

- *What to do if a worker is injured – A guide for employers*
- *Return to Work Coordination – The basics you need to know*
- *Suitable employment for injured workers – A step by step guide to assessing suitable employment options*
- *Return to Work Arrangements Template*
- *Labour hire and return to work*
- *Return to Work Coordinators*
- *Return to work obligations – Information for employers*
- *Steps to resolving return to work issues*
- *Who's who in the claims process – A glossary for injured workers*
- *Return to Work Inspectors*
- *Returning to work – A guide for injured workers*
- *Introducing WorkSafe – A guide for injured workers*
- *Return to work obligations – Information for workers*

Other Return to Work Compliance Codes

- *Compliance Code 1 of 4: Providing employment, planning and consulting about return to work*
- *Compliance Code 3 of 4: Return to work information*
- *Compliance Code 4 of 4: Cooperating with labour hire employers about return to work*

Other useful references

Further information can also be provided by Agents, industry associations and unions. Agents can also provide assistance regarding the management of workers compensation claims. Small businesses may also request the Agent to assist in obtaining the involvement of an occupational rehabilitation provider.

WorkSafe Victoria

Advisory Service

Phone.....(03) 9641 1444
 Toll-free.....1800 136 089
 Email.....info@worksafe.vic.gov.au
 Website.....worksafe.vic.gov.au

WorkSafe Agents

ALLIANZ Workers' Compensation (Vic) Limited

Freecall: 1800 240 335

CGU Workers Compensation (Vic) Limited

Freecall: 1800 066 204

Gallagher Bassett Services Workers Compensation Vic Pty Ltd

Freecall: 1800 774 377

QBE Workers Compensation (Vic) Limited

Freecall: 1800 817 820

Xchanging Pty Ltd

Freecall: 1800 801 070

For information about WorkSafe in your own language, call our Talking your Language service

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