

Compliance Code 1 of 4

Providing employment, planning and consultation about return to work

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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 obligations.

An employer can put in place other compliance solutions. These solutions must also meet the employer's obligations set out in sections 103, 104 and 105 of the Act.

Compliance with the Act in relation to obligations 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. Refer to **Appendix E** or visit **worksafe.vic.gov.au** for a list of useful WorkSafe 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, C, D and E 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 returning injured workers to work.
2. Section 97 of the Act sets out the purpose of the Act in relation to return to work. The purpose is to provide:
 - that employers, workers and other persons involved in the return to work process cooperate to ensure that workers successfully return to work
 - that employers are responsible for providing pre-injury employment or suitable employment to enable workers to return to work
 - that workers are responsible for participating in the return to work process consistent with their capacity for work
 - for workers to be represented, assisted and supported in the return to work process, and
 - 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 workers 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 sections 103, 104 and 105 of the Act – provide employment, plan return to work and consult about the return to work of a worker.

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 the WorkSafe Agent (the Agent) do not apply to self-insurers. Self-insurers are employers approved by WorkSafe to manage their own injured 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 employers are, to the extent indicated below, not required to comply with any obligation under Part 4 of the Act except for the obligation specified in section 103
 - (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.

How to comply

3.1 Providing employment to injured workers

When must an employer provide employment to an injured worker? (Section 103)

9. To the extent that it is reasonable to do so, the law requires employers to provide an injured worker for the duration of the 'employment obligation period' with:
 - *suitable employment* if the worker has a *current work capacity*, and
 - *pre-injury employment* if the worker no longer has an *incapacity for work*.
10. The employment obligation period is a period of 52 weeks which commences on the earliest of the following dates:
 - the date the employer receives from the worker a valid *Certificate of Capacity* issued by a registered medical practitioner. It must specify the expected duration of the worker's incapacity and whether the worker has a current work capacity or has no current work capacity, or
 - the date the employer receives a claim from the worker for compensation in the form of weekly payments, or
 - the date the employer is notified by their Agent that the worker has made a claim for compensation in the form of weekly payments, or
 - the date the employer is notified by their Agent that the worker has provided a *Certificate of Capacity*.
11. The obligation continues for 52 weeks. This period may not be consecutive as it is an aggregate period beginning on the earliest date above and including those periods during which a worker has an incapacity for work (resulting from or materially contributed to by the injury to which the employment obligation period relates).
12. The employer obligation period does not include:
 - any period during which the worker does not have an incapacity for work
 - any period commencing from the date the worker's claim has been rejected by the Agent or self-insurer and ending on the date that a direction or recommendation of a Conciliation Officer or a court determination that weekly payments are to be paid is made (unless the employer continues to provide suitable or pre-injury employment)
 - any period commencing on the date that WorkSafe sets aside a decision to accept a claim for compensation against an employer, and ending on the date that a direction or recommendation of a Conciliation Officer or a court determination that weekly payments are to be paid is made (unless the employer continues to provide suitable or pre-injury employment)

- any period commencing on the date a decision to revoke a direction of a Conciliation Officer to pay weekly payments is made and ending on the date that weekly payments resume (unless the employer continues to provide suitable or pre-injury employment), and
 - any period during which a return to work improvement notice issued to the employer is stayed by WorkSafe under section 150 of the Act or by VCAT on an application made under section 151 of the Act.
13. *Suitable employment*, in relation to a worker, means employment for which the worker is currently suited:
- (a) having regard to –
 - (i) 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
 - (ii) the nature of the worker's pre-injury employment
 - (iii) the worker's age, education, skills and work experience
 - (iv) the worker's place of residence
 - (v) any plan or document prepared as part of the return to work planning process
 - (vi) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
 - (b) regardless of whether the –
 - (i) work or the employment is available, and
 - (ii) work or the employment is of a type or nature that is generally available in the employment market (section 3 of the Act).
14. *Suitable employment* for the purposes of return to work also includes:
- employment in which the number of hours each day or week that the worker performs work or the range of duties the worker does is suitably increased in stages in accordance with return to work planning or otherwise
 - employment the worker is undertaking or that is offered, regardless of whether the work or the employment is of a type or nature that is generally available in the employment market, and
 - 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).
This occurs 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 (section 3 of the Act).
15. *Pre-injury employment* means the employment of a worker in a position which is the same as or equivalent to the position in which the worker was employed before receiving the injury.
16. Providing suitable or pre-injury employment means the employment should be available to commence as soon as the worker's capacity allows.
17. It will be reasonable for employers to provide suitable or pre-injury employment to an injured worker during the 52 week employment obligation period in most circumstances.

18. Employers who consider that they are unable to provide suitable or pre-injury employment to the extent that it is reasonable to do so at any point during the 52 week employment obligation period must be able to demonstrate why they consider it not reasonable to meet their obligations under the Act to provide suitable or pre-injury employment having taken the steps in the return to work planning process. This includes being able to demonstrate the efforts they have made to find suitable or pre-injury employment for their injured worker. Employers should seek guidance in fulfilling their obligations from their Agent if assistance in return to work planning is required, or where they feel there is an inability to provide suitable or pre-injury employment.
19. Factors or circumstances preventing an employer from providing suitable or pre-injury employment do not necessarily remain constant over time. As circumstances change and/or new information is available, the employer should review its ability to provide suitable or pre-injury employment during the employment obligation period. As the worker's injury improves and their capacity for work increases, information received via the return to work planning and consultation processes (described in this compliance code) will provide evidence of the type of work to be included. Employers should revise return to work arrangements and proposed suitable or pre-injury employment options and consult with the individuals involved in the return to work process as often as is necessary based on the available information.
20. Employers are required to meet their return to work obligations under sections 103, 104 and 105 of the Act to the extent that it is reasonable to do so.
21. In determining whether or not it is reasonable to provide suitable or pre-injury employment, an employer should take into account the:
 - size, nature or range of work activities and structure of the employer's organisation to ascertain if appropriate duties exist
 - availability of information regarding the worker's capacity
 - estimated cost of compliance and the financial impact on the employer, and
 - impact of meeting the employer's obligations to any other worker.
22. Where the worker currently has no current work capacity as certified in a *Certificate of Capacity* provided initially by a medical practitioner and subsequently by a medical practitioner, physiotherapist, chiropractor or osteopath, employers are not required to provide suitable or pre-injury employment. Employers are required to meet other obligations during this period, such as planning and consulting about the worker's return to work, to the extent that it is reasonable to do so.

For information

Agents can provide employers with guidance on return to work planning and providing suitable or pre-injury employment. Agents can also make referrals to services which will assist the employer to meet their obligations and facilitate return to work such as assessment of the worker by an occupational physician or occupational rehabilitation provider. Agents may also provide employers with advice regarding other WorkSafe Victoria return to work programs for employers.

Employers should contact their Agent to discuss their circumstances if the employer has any concerns. The Agent may provide useful information or initiate services to help the employer find solutions to potential return to work barriers.

3.2 Planning an injured worker's return to work

What does planning an injured worker's return to work involve? (Section 104)

23. To the extent that it is reasonable to do so, the law requires employers to plan the worker's return to work from the date on which the employer knows or ought reasonably to have known of the worker's incapacity for work.
24. The employer knows or ought reasonably to have known of the worker's incapacity for work from the date of the commencement of the employment obligation period. See paragraphs 10-12 of this compliance code for details.
25. Planning a worker's return to work includes:
 - obtaining relevant information about the worker's incapacity for work
 - considering reasonable workplace support, aids or modifications to assist in the worker's return to work
 - assessing and proposing options for suitable employment or pre-injury employment
 - engaging in consultation with the worker², treating health practitioner (with the consent of the worker)³ and occupational rehabilitation provider (where one is involved)
 - providing the worker with clear, accurate and current details of their return to work arrangements, and
 - monitoring the worker's progress.
26. The tasks set out above must be carried out as often as necessary to enable the worker to return to work in employment which is consistent with their capacity for work.
27. Employers should note that, while the tasks of planning a worker's return to work can be delegated to the Return to Work Coordinator, the employer cannot delegate its obligations under the Act. The Return to Work Coordinator is not personally liable for any act or omission committed in good faith in the course of acting in their role. Any liability for an act or omission attaches to the employer. Refer to *Compliance Code 2 of 4: Return to Work Coordinators*, for information about how to comply with employer Return to Work Coordinator obligations.
28. Return to work planning is no longer required when the worker has achieved full capacity for their pre-injury duties and hours and has returned to their pre-injury employment (or equivalent). If the worker has a subsequent incapacity as a result of the same injury, the employer must resume return to work planning for that worker.

² See paragraph 5.

³ The *Worker's Injury Claim Form* contains the following authority to release medical information which takes effect from the time the form is signed by the worker:

'I authorise and consent to any person who provides a medical service or hospital service to me in connection with an injury/condition to which this claim relates to provide upon request by the workers' compensation authority, my employer or insurer/claims agent, any information regarding the service relevant to the claim. I understand that my authority has effect and cannot be revoked for the duration of this claim.'

For information

In addition to their return to work obligations, employers have obligations under the *Occupational Health and Safety Act 2004* to provide, so far as is reasonably practicable, a working environment that is safe and without risks to health. These obligations apply to the health and safety aspects of a worker's return to work. The employer is obliged to do this for each individual employee. They must ensure, so far as is reasonably practicable, that an employee's health and safety would not be harmed by their return to work.

Information and views gathered (including from relevant professionals) about the nature and cause of the worker's injury or illness may assist the employer in identifying hazards in the workplace and/or indicate a need for the current risk controls to be reviewed.

For information

Return to work planning is a continuous process. The cycle should be repeated as often as is necessary to enable the worker to return to work in employment which is consistent with their capacity for work. This includes reviewing the process whenever circumstances change or new information becomes available. For example:

- the worker reporting a change in circumstance or capacity
- a new *Certificate of Capacity* or information about a change in the worker's medical condition is received
- the worker is having difficulty with the current return to work arrangements
- the worker is having difficulty progressing through a graduated return to work
- there is progress or an outcome on an issue being addressed through the return to work issue resolution process, or
- other suitable or pre-injury employment options become available, e.g. due to changes in work arrangements.

29. Employers should be able to demonstrate the return to work planning that they have undertaken. This can be done with or without maintaining records, however, it's easier to demonstrate if written records are made.

For information

An example of maintaining records for planning is where an employer keeps a secure worker injury file. The file may include copies of documents received and provided, notes on planning activity, records of conversations, meetings and phone calls, any return to work arrangements put in place and records of the activity undertaken to assess suitable employment options.

An example of return to work planning where records are not maintained is where an employer can verbally verify the actions taken to plan the worker's return to work. This is confirmed by the relevant persons involved, including the injured worker.

Step 1: Obtaining relevant information about the worker's capacity for work

30. An employer must obtain relevant information in order to adequately assess suitable employment options consistent with the worker's capacity for work. The information that employers should obtain (but not limit themselves to obtaining) includes information about:
- the nature of the worker's injury or illness
 - the details of the worker's incapacity for work and what they are able to do
 - when the worker is likely to return to work
 - how long it will be before the worker can return to their pre-injury duties
 - other factors that may have an impact on the worker's capacity (e.g. capacity to travel, medication effects etc), and
 - the type and frequency of assistance required to support recovery (e.g. scheduled dressing changes, physiotherapy etc).
31. Information is available on the initial *Certificate of Capacity* and subsequent *Certificates of Capacity* and from the worker themselves. Where the information the employer receives is not clear or sufficient, an employer must seek clarification and/or obtain additional information. An employer can do this through consultation with the worker, the treating health practitioner who provided the *Certificate of Capacity* (with the consent of the worker), the Agent and/or the occupational rehabilitation provider (if involved). For further information on consultation, refer to pages 30-41 of this compliance code.

For information

Where the employer is unable to obtain sufficient or clear information about a worker's capacity for work, they should seek guidance from their Agent. The Agent can provide the employer with information on return to work planning and, where appropriate, may engage an occupational physician or refer the worker to an occupational rehabilitation provider to help ascertain the worker's capacity for work.

Workers have an obligation to participate in assessments of their capacity, rehabilitation progress and future employment prospects when requested to do so by the employer, Agent or self-insurer. An employer should speak to their Agent about whether it is appropriate for the worker to attend an assessment if the worker and treating health practitioner are unable to provide useable information during planning for the worker's return to work.

For information

Examples relating to Step 1: Obtaining relevant information about the worker's capacity for work

Example 1

- Bill, a Return to Work Coordinator, receives an initial *Certificate of Capacity* for Dennis, a production worker, who had previously been off work on sick leave for a week. The initial *Certificate of Capacity* contains limited information, but states that Dennis has a back injury and is totally unfit for work for the next four weeks.
- To commence planning for Dennis' return to work, Bill requires more information than is detailed on Dennis' initial *Certificate of Capacity*. Consistent with his obligation to obtain relevant information about the worker's capacity for work, Bill contacts Dennis to talk about his injury and recovery.
- Dennis tells Bill that he has suffered increasing back pain over the past three weeks and the pain is now unbearable. Dennis also informs Bill that his doctor is currently reviewing his pain management.
- Bill asks Dennis whether there is any support or assistance that he can provide. He also asks Dennis if he believes there is anything he feels he can do in the workplace, whether it is part of his usual duties, or some other temporary duties. Dennis tells Bill that he doesn't feel he can do anything at work at the moment because of his current pain levels. Dennis says he would be happy to review the return to work options as his condition improves.
- With Dennis' written consent (as Dennis hasn't yet submitted a signed *Worker's Injury Claim Form*), Bill phones Dennis' doctor to obtain further information about Dennis' injury and his capacity for work. This is another example of Bill meeting the employer's obligation to obtain relevant information. In their phone conversation, Dennis' doctor provides Bill with additional information about Dennis' prognosis and agrees to look at suitable employment options and consider these in the week after his pain levels have stabilised.
- With the additional information received from Dennis and his doctor, Bill has all the information he needs at this stage to plan and support Dennis' return to work. Bill has demonstrated that he has taken actions consistent with the obligation to obtain relevant information about the worker's capacity for work. To ensure his employer continues to comply with this obligation, Bill needs to take similar actions as needed throughout Dennis' return to work.

For information

Example 2

- Sharon has submitted a *Worker's Injury Claim Form*. Return to Work Coordinator Michelle has been receiving *Certificates of Capacity* on a fortnightly basis from the doctor who is treating Sharon. Each *Certificate of Capacity* contains detailed information as to Sharon's injury, treatment, capacity for work, medical restrictions and other relevant comments.
- Sharon informs Michelle of each upcoming medical appointment. Michelle can send to the doctor any proposed amendments to the return to work arrangements that are appropriate for Sharon's recovery progress.
- Sharon hand delivers each *Certificate of Capacity* to Michelle on the day of the appointment, and they discuss the information it contains and any impact it has on Sharon's current return to work arrangements.
- Occasionally Michelle is uncertain about the information provided by Sharon's doctor on the *Certificate of Capacity*. Michelle demonstrates she is taking actions consistent with the employer's obligations to obtain relevant information about Sharon's capacity for work by talking to Sharon and, if necessary, contacting Sharon's doctor to seek clarification and any relevant additional information as appropriate. Michelle has previously confirmed with Sharon's doctor that the doctor prefers Michelle to contact her by phone or for Michelle to attend the occasional medical appointment with Sharon.

Step 2: Considering reasonable workplace support, aids or modifications to assist in the worker's return to work

31. Employers must consider whether the workplace or work station can be modified to accommodate the worker's injury and restrictions or whether there are any supports or aids that can be obtained/provided to help the worker stay at or return to work earlier. These could be modifications such as installation of a ramp or widening of a doorway to allow wheelchair access; aids such as provision of a cushioned non-slip mat to ease the effects of long periods of standing; or supports such as an additional person to accompany the worker on delivery rounds to minimise the requirement for lifting.
32. In some cases these modifications will be requested by the treating health practitioner on the *Certificate of Capacity* or suggested by an occupational physician or occupational rehabilitation provider. The employer must consider the worker's injury and restrictions, the nature of the work and workplace and talk with the worker and relevant supervisor/line manager about how the worker could best be supported to remain at or return to work.

For information

The employer can also seek professional advice by contacting the worker's treating health practitioner (with the consent of the worker), the approved occupational rehabilitation provider (if involved) and/or their Agent.

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33. In considering the extent to which the workplace support, aids or modifications are reasonable, and while not limiting themselves to considering only the below factors, employers should take the following into account, where relevant:
- the advice provided by the treating health practitioner, occupational rehabilitation provider (if involved) and the Agent
 - the views put forward by the worker in the course of consultation
 - the availability and suitability of training and supervision in the workplace to assist the worker to return to work
 - the availability, suitability and feasibility of support, aids and modifications to the workplace or work processes or conditions to assist the worker to return to work, and
 - the progress or an outcome on an issue being addressed through the return to work issue resolution process.
34. Employers should:
- seek information from the relevant parties about the potential need for workplace supports, aids and/or modifications to assist in the worker's return to work
 - assess the potential needs of the worker as part of the worker's return to work arrangements and, before the worker commences pre-injury or suitable employment, implement any reasonable workplace supports, aids or modifications identified to the extent that it is reasonable to do so, and
 - where an employer assesses that it is not reasonable to provide a particular workplace support, aid or modification that has been requested, the employer should communicate the reasons for this assessment to the worker, Agent, treating health practitioner (with the consent of the worker) and the occupational rehabilitation provider (if involved).

For information

Examples relating to Step 2: Considering reasonable workplace support, aids or modifications to assist in the worker's return to work

Example 3

- Dean suffers a back strain which is attributed to repetitive forklift operation.
- His Return to Work Coordinator, Angie, commences planning for Dean's return to work immediately upon receiving his initial *Certificate of Capacity*. Shortly after, Angie receives Dean's *Worker's Injury Claim Form*.
- She obtains all the relevant information she requires to fully understand Dean's injury, restrictions and individual circumstances. Angie then takes action consistent with the employer's obligation to consider reasonable workplace support, aids or modifications by meeting with Dean's manager and talking through what, if anything, can be done at the workplace to assist Dean's return to work.
- Through this conversation, and her knowledge of the workplace, Angie identifies that several minor alterations may be able to be made to the forklift that would assist to prevent a recurrence and/or exacerbation of Dean's injury. However, Angie is not confident enough in her assessment of these modifications to propose them formally.
- Angie therefore seeks assistance, again demonstrating actions consistent with the employer's obligation to consider reasonable workplace support, aids or modifications to assist in the worker's return to work. Angie asks the Agent to engage an occupational rehabilitation (OR) provider to conduct a worksite assessment to provide confirmation of the workplace modifications that can be made.
- Following their assessment, the OR provider recommends that alterations to the forklift be made, including the addition of a spinner knob, a rear view mirror extension and an extra cushioned seat. The recommendations made by the OR provider and the subsequent consultation and identification of suitable duties enables Dean to return to work in safe and suitable employment – unrestricted pre-injury forklift operation. The cost of modifications and aids is considered a good investment given Dean can come back to work immediately and stay at work in safe and sustainable employment. The same changes are then scheduled to be applied to other forklifts.

For information

Example 4

- Max has worked in food manufacturing for 20 years and has few transferable skills should he be unable to continue with his present work.
- Max has suffered ongoing knee and hip pain for several years and his doctor confirms the presence of arthritis. Standing all day on concrete in a cool environment is likely to inflame Max's arthritis and contribute to his ongoing pain. However, Max's doctor informs Max that he should be able to continue working in his usual role at his employer if the impact of the cold environment on his body can be minimised.
- The Return to Work Coordinator at Max's employer acts in accordance with the employer's obligation to consider reasonable workplace supports, aids and modifications to assist the worker return to work by consulting with Max's doctor and treating physiotherapist about minimising the impact of cold on Max and the possible modifications that may be considered.
- The Return to Work Coordinator also contacts a similar food manufacturer to hear if they have suggestions that may contribute to a suitable solution that will help Max continue working as long as possible.
- Following these discussions, and an assessment of Max's work duties and workstation, it is identified that thermal pants and jacket and rubber floor matting can be provided for Max to reduce the impact of the work environment on his arthritis. In addition, a sit-stand stool can be provided to enable Max to vary his posture during his shift.
- Max's doctor agrees that these supports and modifications will enable Max to continue working longer term.
- The Return to Work Coordinator at Max's employer again acts in accordance with the employer's obligation to consider reasonable workplace supports, aids and modifications to assist the worker to return to work by implementing these supports and modifications within a fortnight. The equipment is necessary as it helps prevent an aggravation of Max's condition and helps him stay at work.

For information**Example 5**

- Judy breaks her leg during the course of her work duties. She does consultancy work for a small employer (under 10 employees) and her workplace is on the second floor of a two storey office complex. The only access is by the stairs. Judy's doctors expect a full recovery, however, Judy is unable to access the workplace via the stairs for eight weeks while her leg is in plaster.
- Judy is motivated to return to work and can undertake the full requirements of her pre-injury position. Her employer, Jim, acts in accordance with the obligation to consider reasonable workplace supports, aids and modifications to assist the worker to return to work by making investigations into the cost of installing a lift.
- The quotes that the employer receives are all more than \$40,000. A proposal is put forward to the landlord, but they refuse to pay for the lift saying the employer is welcome to fund it themselves. As a small employer, Jim is unable to fund the installation of a lift, particularly as it is only a temporary requirement.
- Jim again takes actions consistent with the employer's obligation to consider reasonable workplace supports, aids and modifications to assist the worker to return to work by meeting with Judy and her manager about an alternate solution. The three of them agree that, regardless of who pays, a \$40,000 investment for only an eight week period is not reasonable or viable.
- Jim takes further actions consistent with the employer's obligation to consider reasonable workplace supports, aids and modifications to assist the worker to return to work. He consults with Judy, Judy's doctor and the Agent about the possibility of modifying Judy's work and enabling her to work from home until her leg is out of plaster and she can access the stairs.
- The Agent engages an OR provider to conduct a worksite assessment of Judy's home office. Jim implements the return to work arrangements and agrees to pay for Judy's work-related phone and internet access for the eight week period. These actions are also consistent with the employer's obligation to consider reasonable workplace supports, aids and modifications to assist the worker to return to work.
- Judy is able to continue working and eight weeks later returns to undertake work duties at the workplace.

Step 3: Assessing and proposing options for suitable employment or pre-injury employment

35. Employers should assess and propose options for suitable or pre-injury employment early and as often as is necessary and appropriate through the process of planning a worker's return to work. The process of assessing and proposing suitable or pre-injury employment options should be done in consultation with the worker and completed as soon as practicable after the date on which the employment obligation period commences. Proposed suitable or pre-injury employment should be based on the information the employer has obtained about the worker's current capacity for work as well as the worker's anticipated recovery and likely increased capacity.

For information

Example relating to Step 3: Assessing and proposing options for suitable employment or pre-injury employment

Example 6

When a worker has a current capacity for work – Pre-injury employment

- Cathy, a small business owner, has an employee, Rick, who presents an initial *Certificate of Capacity* stating he cannot lift more than 2 kg for the next four weeks due to a lower back strain. Rick's normal duties require him to package and move boxes weighing between 5 and 8 kg. The 2 kg lifting restriction suggests that Rick is unable to work while he is recovering. Rick's doctor has not put any restriction on work hours, just lifting.
- Cathy takes actions consistent with the obligation to assess and propose options for suitable or pre-injury employment by discussing the injury and medical restrictions with Rick and, together with Rick, assessing his work duties.
- Given that it is not viable to unpack the boxes, or otherwise reduce the weight of the boxes, Cathy and Rick are unable to see how Rick's duties could be modified to accommodate Rick's lifting restrictions. Rick suggests he would be willing to do office work instead. Cathy employs one person to do office work, Doris, and often finds it hard to have enough work to keep Doris busy, let alone both Doris and Rick.
- Cathy acts according to the employer's obligation to assess and propose options for suitable or pre-injury employment by further assessing the feasibility of Rick's suggestion of temporarily swapping Rick and Doris' roles. Cathy explores the suggestion with Doris, who has concerns about it. She has only ever done office work, has never worked in packaging, and is fearful of having to lift 5-8 kg boxes.
- Cathy determines that swapping roles would unreasonably disadvantage Doris and is therefore not appropriate. Cathy continues to act in line with the obligation to assess and propose options for suitable or pre-injury employment by actively seeking to identify an alternate solution to Rick's restrictions.
- Cathy seeks guidance from her Agent, and a workplace assessment is arranged with an OR provider to assess the suitable employment options.
- The OR provider makes several recommendations as to how to modify the packing line so that boxes no longer need to be lifted and stacked. Cathy demonstrates actions consistent with the employer's obligation to assess and propose options for suitable or pre-injury employment by proposing the permanent modifications and pre-injury employment to Rick and his doctor. After discussions with Rick, his doctor certifies Rick to return to his pre-injury packing work duties on the understanding that the permanent workplace modifications are made.
- Before Rick returns to work, Cathy follows through with her proposal by implementing the inexpensive and permanent alterations to the packing line. Cathy then monitors Rick's work and his back strain closely.

Suitable employment

36. Providing suitable employment could mean allowing the worker to perform the majority of their pre-injury duties with modifications or to perform alternative suitable duties and/or work reduced hours. As far as possible, suitable employment should consist of duties that have a relationship to the worker's pre-injury position and are as close as possible to the worker's pre-injury employment.
37. Suitable employment should be structured to accommodate increases in duties and hours consistent with the worker's recovery and changing capacity for work. To do this, employers should continue to assess suitable employment options as the worker recovers.
38. When assessing suitable employment options, and while not limiting themselves to considering only the below factors, employers should take the following into account:
 - the nature of the worker's injury and incapacity for work
 - the information available regarding the worker's incapacity for work (employers should, with the consent of the worker, seek more information from the worker's treating health practitioner or other sources if required)
 - the nature of the worker's pre-injury employment and whether this can be tailored to accommodate the worker's capacity for work
 - the work characteristics and arrangements in the workplace (e.g. whether alternative shifts or suitable alternative work is available, what types of alternative work is available)
 - the characteristics of the worker (e.g. language, literacy and other skills, age, education, work experience, place of residence)
 - the size and structure of the business
 - whether the return to work can be graduated in hours and/or range of duties
 - any plan or document prepared as part of the return to work planning process
 - any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
 - the location of the work.
39. In assessing options, employers should consider roles in addition to those currently available in the workplace or available more generally in the employment market. Suitable employment can be a combination of components of several roles.
40. Employers must consider reasonable workplace support, aids or modifications to the equipment, tools or systems/methods of work that the worker would normally use to help them return to work. See the guidance on page 11 of this compliance code that addresses considerations of reasonable workplace support, aids or modifications.
41. Once an employer has identified an option or options for suitable employment consistent with the worker's capacity for work this should be discussed with the worker and any aspects clarified as required. The discussions should include considering whether it is necessary to modify some aspects of the suitable employment based on feedback or additional information from the worker.

42. Proposing suitable employment options means that the employer proposes to the worker suitable duties that the employer can make available and that the worker can perform based on their current capacity for work, or may be able to perform when they are certified with a capacity for work.
43. Once the return to work arrangements have been confirmed, the employer must provide the worker with clear, accurate and current details of the return to work arrangements. See the guidance on page 25 of this compliance code that addresses return to work arrangements.
44. In determining the return to work commencement date the employer must consider the worker's current medical information and consult with the worker, their treating health practitioner (with the consent of the worker), and the occupational rehabilitation provider (if one is involved).

For information

A worksheet to assist in assessing and/or reviewing suitable employment options is provided at Appendix C.

For information

Example relating to Step 3: Assessing and proposing options for suitable employment or pre-injury employment

Example 7

When a worker does not have a current capacity for work

- Ross is a packaging line worker at a medium size packing company. He sustains a lower back strain. Ross' doctor provides him with an initial *Certificate of Capacity* stating that he is unfit for all work for four weeks. Ross' normal duties require him to package and move boxes weighing 5-8kg.
- Wendy, the organisation's Return to Work Coordinator, speaks with Ross about his injury and the potential duties he could undertake while he is recovering. Ross informs Wendy that his doctor has told him that he cannot lift more than 2 kg and so Ross has come to the conclusion that he cannot return to work because the boxes he lifts weigh 5-8kg.
- Wendy takes action in line with the employer's obligations to assess and propose suitable and pre-injury employment, by meeting with Ross' direct supervisor, Amy, and undertaking a joint assessment of potential suitable employment options.
- Amy and Wendy consider asking the Agent to involve an OR provider to assist them to identify suitable duties. However, after discussing the options themselves without involving an OR provider they are able to identify short term duties on the packaging line that require no lifting. These duties could be sustained for approximately three months. After consulting with Ross about these duties, Wendy provides the proposed duties to Ross and his doctor by providing them with written details of the duties and their physical requirements. Wendy then contacts them both by phone to further discuss.
- Ross is unaware that this suitable employment option is available in his workplace. On receiving the information he goes to talk to his doctor about how the duties align with his restrictions.
- Ross' doctor confirms that the duties are in line with Ross' physical restrictions. The doctor supports Ross undertaking these duties for a period of two months and working reduced hours (18 hours per week) while he recovers.
- Wendy and Ross confirm the arrangements for Ross' return to work the following Monday and Ross returns to work accordingly.
- Wendy continues to take action in line with the employer's obligation to assess and propose suitable and pre-injury employment consistent with the worker's capacity for work by regularly reassessing the suitable employment options available according to the changes in Ross' capacity as he recovers.
- Wendy, in consultation with Ross, transfers him back to his pre-injury duties as soon as his doctor indicates he has recovered sufficiently to manage the requirements of his pre-injury duties.

For information

Example 8

Return to work – Mental Injury

- Steve worked as a plasterer for Company X. Steve submitted a *Worker's Injury Claim Form* and an initial *Certificate of Capacity* to his employer alleging he was being bullied at work by his direct supervisor, Sally. Steve's *Certificate of Capacity* stated that he was not fit for any duties due to anxiety caused by this workplace bullying.
- As a large employer (with over \$2 million remuneration), Company X had a nominated and appointed Return to Work Coordinator, Geoff, when Steve submitted his claim.
- After receiving Steve's *Worker's Injury Claim Form* and initial *Certificate of Capacity*, Geoff assisted his employer meet their obligation to plan Steve's return to work by obtaining relevant information about Steve's capacity for work. Geoff did this by contacting Steve to discuss his claim and the issues that he had been experiencing at work. Geoff spoke with Steve and found out more about his circumstances than was originally provided in his *Worker's Injury Claim Form* and initial *Certificate of Capacity*. This additional information helped Geoff to provide more support to Steve and gave him the necessary information to plan his return to work.
- During their discussion, Steve told Geoff he reported directly to Sally when she was on site. Steve said he felt belittled by Sally and that he was being intimidated. He also mentioned that colleagues had told him Sally had made derogatory comments about him to others. Steve informed Geoff that Sally only worked 3 days per week on that site (Steve worked 5 days a week) and that the intimidating behaviour only occurred when he reported directly to her.
- Geoff learned from Steve that there was a site manager and an alternate supervisor who Steve could report to once back at work. Steve told Geoff that he didn't have any issues with the site manager or alternate supervisor. Steve told Geoff that if he wasn't required to report directly to Sally, he would feel less anxious about the prospect of returning to work.
- Steve also said he wanted Sally's behaviour to change and for him to know that others on the worksite wouldn't be intimidated by her. Geoff passed the information about Steve's allegations regarding Sally to Company X's Health and Safety Manager to be investigated.
- Geoff considered whether workplace supports, aids or modifications were required to assist Steve to return to work. He felt these weren't required given Steve's circumstances. Steve's doctor also confirmed that these weren't required. By considering these options, Geoff assisted his employer meet their obligation to plan Steve's return to work.
- Geoff talked at length with Steve about what measures Company X could take to assist Steve back to work and what Steve thought he could do when he returned.
- Geoff assisted his employer meet their obligations to consult with Steve and Steve's doctor in relation to his return to work by sharing a variety of work options with them both. He also provided them with an opportunity to consider the information and express their views and took those views into account.

For information

Example 8

Return to work – Mental Injury (continued)

- After reviewing the options, Steve and his doctor agreed to Geoff's proposed return to work arrangements.
- Geoff again assisted his employer meet their obligation to plan Steve's return to work by providing him with clear, accurate and current details of his return to work arrangements. Geoff achieved this by documenting the return to work arrangements in writing and provided a copy to Steve and his doctor for their reference.
- The agreed return to work arrangements (in place until the conclusion of the investigation) documented by Geoff outlined:
 - when Steve would return to work (in 2 weeks)
 - the hours and times he would work for 4 weeks after he returned to work (part time 9am-5pm for three days on weeks 1 and 2 (including the two days that Sally did not work), part time 9am-5pm for four days on week 3 and full time in week 4)
 - scheduled reviews of Steve's return to work arrangements
 - Steve's reporting channels
 - channels for Steve to receive workplace support, and
 - how Steve could escalate issues at work if they arose.
- Company X's Health and Safety Manager also provided Steve and Geoff with updates about the controls Company X had implemented during the investigation to meet their obligation to provide a safe workplace under the Act.
- Geoff further assisted his employer meet their obligation to plan Steve's return to work, and provide Steve with suitable employment, by offering Steve suitable employment that was consistent with his work capacity and documenting the details in the return to work arrangements provided to Steve and his doctor.
- Prior to Steve returning to work, and being careful not to breach the privacy of those involved in the claim, Geoff met with Sally, Steve's replacement supervisor and Steve's colleagues. Geoff provided an update about Steve's return to work arrangements and how each of them could support Steve to return to work.
- After 2 weeks off work, Steve returned to the construction site. Geoff continued to make regular contact with him upon his return and, as agreed, conducted regular reviews of his return to work arrangements and progress. As part of this monitoring process, Geoff also spoke regularly with the new supervisor to ensure that the return to work arrangements were successful. By doing so, Geoff assisted his employer meet their obligation to plan Steve's return to work and monitor his progress.
- Although Steve was nervous going back to work, with the support of Geoff and the return to work arrangements, Steve made a successful return.
- After 6 weeks the plastering project on the construction site on which Steve was working had finished and Steve moved onto the next project with Company X.

Pre-injury employment

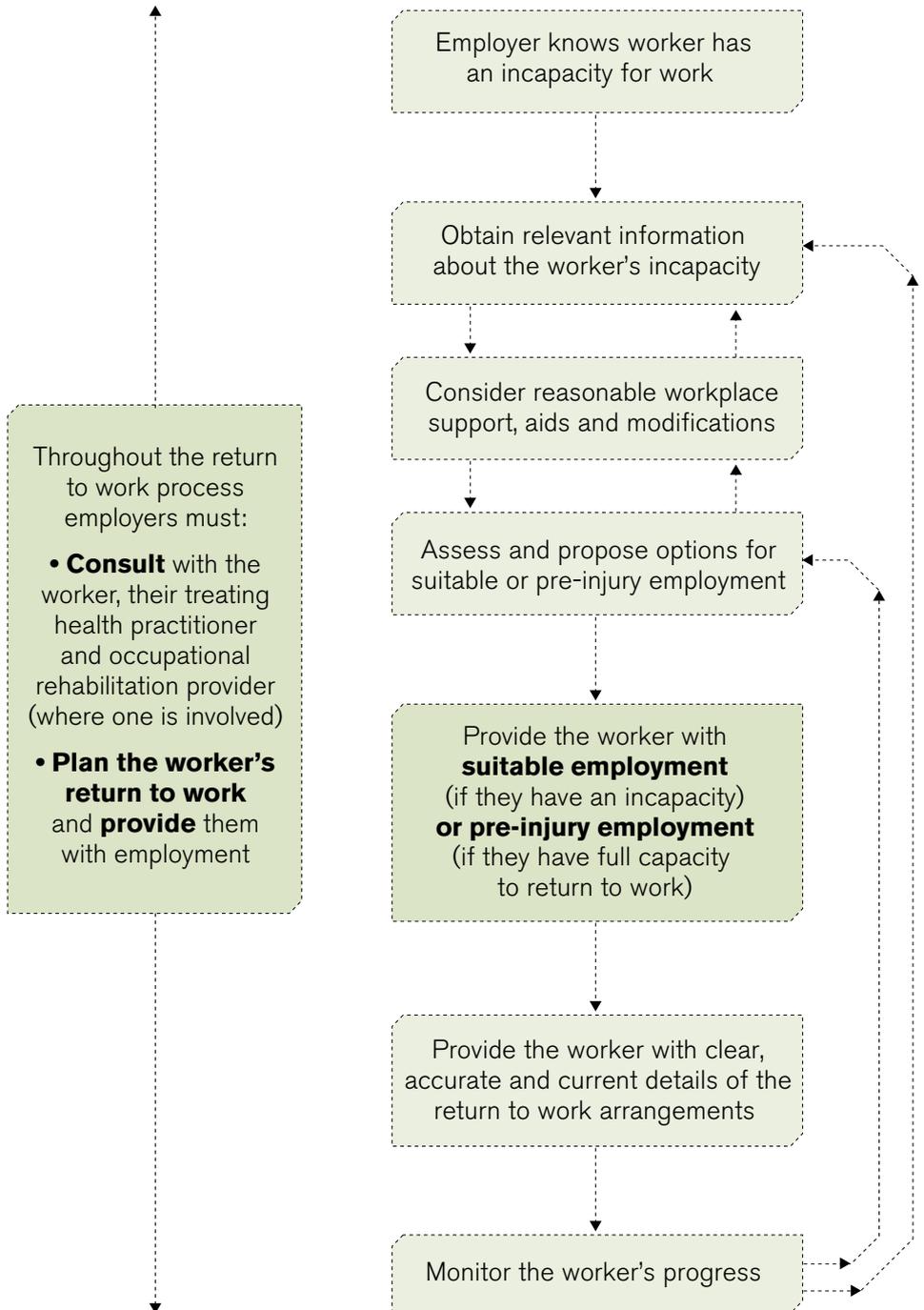
45. Where a worker has full capacity for their pre-injury employment duties and hours, employers must provide pre-injury employment. Refer to paragraphs 15-22 of this compliance code for details about the obligation to provide employment.
46. In most cases, this will be achieved by providing the worker with the same position in which the worker was employed before receiving the injury.
47. In situations where the pre-injury position is not available, employers must assess and propose employment that is equivalent to the worker's pre-injury position. In assessing whether the proposed position is equivalent, an employer should consider (but is not limited to considering) the following:
 - the level of responsibility, status and seniority of the position
 - the duties and tasks of the position
 - rosters or shifts associated with the position
 - the location of the work
 - the pay rates in the position
 - access to training and development in the position
 - the career prospects in the position, and
 - the hours of work in the position.

Step 4: Engaging in consultation with the worker, treating health practitioner and occupational rehabilitation provider (where one is involved)

For more information see 'Consulting about a worker's return to work' on page 30.

48. Consultation should occur throughout the return to work process as shown in the diagram opposite:

Overview of the return to work planning process



These steps should be undertaken as often as is necessary to enable the worker to return to work in employment that is consistent with the worker's capacity.

49. The obligation to plan for a worker's return to work and each step that forms part of this planning is linked with the employer's obligation to consult with the worker, the worker's treating health practitioner (with the consent of the worker) and any occupational rehabilitation provider involved in a worker's return to work to the extent that it is reasonable to do so. Employers should ensure that the planning process is undertaken with appropriate ongoing consultation throughout the process.

For information

Occupational rehabilitation services are aimed at helping injured workers to return to work or stay at work with their injury employer or, if that is not possible, return to work with a new employer.

Services can only be delivered by an occupational rehabilitation provider approved by WorkSafe. An employer's Agent must approve the occupational rehabilitation services provided to an injured worker and payment will be managed directly by them.

The Act entitles an injured worker to choose a provider they would like to deliver the service.

The Act requires that an injured worker be given a list of at least three providers nominated by the employer's Agent (where three are available). The list takes into consideration the worker's work-related injury, the type of service they may require, where they live and the location where the service may be provided.

50. Details of how to consult about a worker's return to work are covered in the 'Consulting about the worker's return to work' section of this compliance code (pages 30-41).

For information

To decide whether it is reasonable or not to consult with the worker, the employer should consider the appropriateness of contact, nature and severity of the injury and the worker's current circumstances (e.g. hospitalisation, psychological harm). The employer can request advice from the Agent and/or the worker's treating health practitioner about the appropriateness of the contact.

Refer to page 30 of this compliance code for details about consulting to the extent that it is reasonable to do so.

For information

Example relating to Step 4: Engaging in consultation with the worker, treating health practitioner and occupational rehabilitation provider

Example 9

- Barry is a small employer with fewer than 10 employees. One of his sales assistants, Bree, has just put in a *Worker's Injury Claim Form* after being off work for a week with a work-related injury.
- Barry contacts his Agent to advise that he has received the *Worker's Injury Claim Form* and clarify what he should do next. In relation to return to work, the Agent informs Barry of his return to work obligations and advises him to contact Bree in accordance with the employer's obligation to consult with the worker, treating health practitioner (and OR provider, if involved). Accordingly, Barry calls Bree, who agrees to come in to work to discuss her injury, restrictions and return to work.
- Barry understands that Bree has provided permission for him to consult with her doctor about her return to work by signing the authority on the *Worker's Injury Claim Form* and verbally confirms this with Bree.
- In preparation for his consultation with Bree's doctor, Barry draws up a list of duties he considers are suitable and in accordance with Bree's medical restrictions. The details Barry prepares include the physical requirements of Bree's tasks, how frequently the tasks are undertaken, and the supervision and support available.
- In accordance with the employer's obligation to consult with the worker, treating health practitioner and OR provider (if involved), Barry forwards this information to Bree's doctor by fax, and gives a copy to Bree. Barry encourages Bree to see her doctor as soon as possible to discuss the proposed suitable employment options.
- Bree's doctor contacts Barry during the consultation with Bree and, following clarification of several elements of the proposed suitable employment, provides Bree with a *Certificate of Capacity* for modified duties. This enables Bree to return to work in modified duties in line with the suitable employment proposed by Barry.

Step 5: Providing the worker with clear, accurate and current details of the worker's return to work arrangements

51. Once suitable or pre-injury employment has been confirmed, employers must provide the worker with details of the return to work arrangements. The details of the return to work arrangements must be clear, accurate and up to date. Employers should include (but not limit themselves to including) details about:
 - the suitable employment being provided including modified or alternative duties that accommodate restrictions identified in medical information available such as *Certificates of Capacity*
 - commencement time and date
 - details of any tasks or duties the worker needs to avoid
 - the hours of work and the place of work
 - work breaks, rotations or exercise breaks

- support, aids or modifications to the workplace to assist the worker's return to work
 - the Return to Work Coordinator contact details
 - details of the worker's supervisor or manager when returning to work, and
 - the review date (reviews may occur earlier than this date as appropriate).
52. An employer must communicate the details of the return to work arrangements to the worker or other relevant parties in a way that is most appropriate for the worker and the other parties. Providing the worker with this information in writing is one way to comply, but it is not mandatory to do so. However, this may not always be adequate and other approaches may be required such as talking through the return to work arrangements with the worker.
53. Where the worker requests or requires the information in another language in order to effectively participate in communications about their return to work, the employer must ensure that information is provided clearly and accurately. In some cases a professional interpreter will need to be engaged.
54. Employers should present information in the clearest way possible taking into account any numeracy and literacy issues. For example, photographs and videos could be used as part of the communication process.
55. Where a worker indicates that the return to work arrangements provided are not clear or accurate, the employer must make appropriate efforts to:
- consider providing the return to work arrangements in another way requested by the worker such as in writing, with the aid of an interpreter or diagrams, and
 - overcome any language or communication barriers that may be limiting the worker's understanding of the return to work arrangements.

For information

The return to work arrangements that are to be implemented should be communicated to the worker and their supervisor. The employer should be mindful not to disclose the worker's confidential personal or health related information when providing the return to work arrangements to other parties.

For information

A template to assist in providing clear, accurate and up to date return to work arrangements to the worker is provided at Appendix D. This can also be used to inform other key parties of the return to work arrangements, such as the treating health practitioner (with the consent of the worker) and an occupational rehabilitation provider (if involved).

For information

Step 5: Providing the worker with clear, accurate and current details of the worker's return to work arrangements

Example 10

- Zachary has been off work for a week following a minor back strain. At the end of the week, his doctor certifies him fit for modified work duties and notes the restrictions Zachary needs to adhere to when he returns to work, including the hours to be worked over the next four weeks.
- Upon receiving the information from Zachary, the employer, David, talks to Zachary about the return to work arrangements that may be put in place.
- David offers to put these arrangements in writing so that they are clear and can be used as a reference point in a week's time when the arrangements are reviewed. Zachary agrees that this is a good idea.
- In line with the employer's obligation to provide clear, accurate and current details of the worker's return to work arrangements, David writes out the current return to work arrangements and provides a copy to Zachary, Zachary's doctor and his supervisor.
- The employer's obligation to provide clear, accurate and current details of the worker's return to work arrangements is ongoing. Therefore David updates the information following each review of Zachary's progress and provides Zachary, Zachary's doctor and his supervisor with these updated documents.

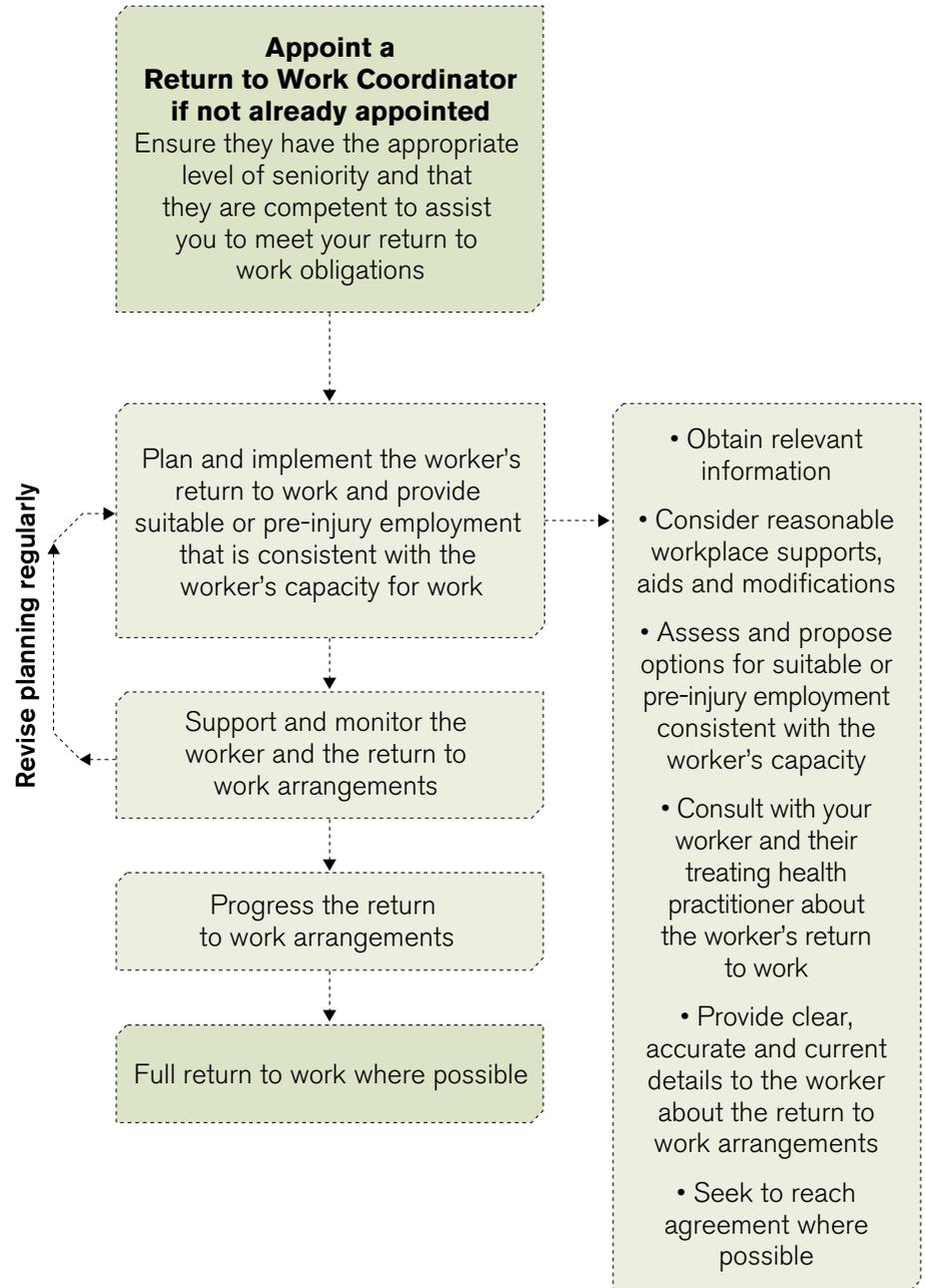
Step 6: Monitoring the worker's progress

56. Employers must monitor a worker's return to work progress, regardless of the worker's capacity for work. In order to effectively monitor progress, the employer should review and discuss the worker's return to work with the worker, the worker's supervisor or manager, the treating health practitioner (where necessary and with the consent of the worker) and any other relevant people involved in the worker's rehabilitation. The employer must take into account relevant information that is received over time, such as the information contained in *Certificates of Capacity*.
57. The monitoring must be undertaken by the employer on an ongoing basis. Information gained from monitoring the worker's progress is part of the information that may result in return to work planning and arrangements being amended or revised (see paragraph 56 above).
58. In monitoring the worker's progress, an employer must take into account (but not limit themselves to considering):
 - changes in the worker's capacity for work
 - the worker's progress against the agreed objectives of the return to work
 - changes in the worker's injury or condition
 - whether the worker's injury has stabilised or reached a plateau
 - changes in the worker's individual circumstances
 - changes in the workplace and the needs of the workplace
 - the worker's ability to perform the work and possible training needs, and
 - opportunities for suitable or pre-injury employment over time.

-
59. Employers should be able to demonstrate:
- what has been done in monitoring a worker's return to work
 - actions as a result of this monitoring, and
 - an active role in understanding progress made and/or overcoming barriers encountered.
60. An employer must undertake the following activities to monitor a worker's progress (but not limit themselves to considering only those activities listed below):
- review new information that is received, such as information contained in *Certificates of Capacity*
 - seek additional information about the worker's capacity if clarification is required
 - maintain regular communication with the parties to understand and discuss the worker's recovery and return to work progress
 - review return to work planning and arrangements over time in response to new or changed information, and
 - inform the worker of relevant changes to duties available in the worker's workplace.

Where the worker has no capacity for work

61. In situations where the worker has no current work capacity, employers must still plan for the worker's return to work. In these circumstances, the approach to planning must take into account the nature of the worker's injury or illness.
62. In particular, employers must, to the extent to which it is reasonable to do so, consult with the worker. Refer to pages 30-41 of this compliance code for information about consulting to the extent that it is reasonable to do so.
63. Employers should consider potential suitable employment options and seek the treating health practitioner's consideration of these (with the consent of the worker). The treating health practitioner's feedback should be taken into account as potential options are developed.
64. Employers must continue to obtain information about a worker's capacity for work.
65. Employers must check the worker's *Certificates of Capacity* to:
- determine whether the worker continues to have no current work capacity
 - consult with the treating health practitioner (with the consent of the worker) about the support the employer can provide and the suitable employment options available once the worker has a capacity for work, and
 - assess possible suitable employment options based on the worker's anticipated recovery and likely capacity for work.
66. Employers should liaise with their Agent so that they are ready to act and provide suitable employment when the worker regains a capacity for work.



Seek assistance whenever needed throughout the process.

3.3 Consulting about a worker's return to work

What form must consultation take? (Section 105)

67. The law requires an employer to consult, to the extent that it is reasonable to do so, with the following people about a worker's return to work:
- the worker
 - their treating health practitioner, if the worker consents, and
 - a provider of occupational rehabilitation services who is providing those services to the worker.
68. Consultation means:
- sharing information about the worker's return to work
 - providing a reasonable opportunity for those people to consider and express their views about the worker's return to work, and
 - taking those views into account.
69. Whilst an employer must consult directly with the worker, the worker may have a representative assist them during the consultation. The representative can be any person chosen by the worker, except a legal practitioner.
70. Effective consultation is an essential part of supporting an injured worker's safe and sustainable return to work. Consultation must occur at appropriate times during the return to work process.
71. Consultation is a two-way exchange that can help enable:
- more informed identification of, and quicker decision making about, suitable employment options
 - more informed identification of, and decisions about, reasonable workplace supports, aids or modifications to assist the worker's return to work
 - a stronger commitment to return to work decisions because those affected have had an opportunity to provide input, and
 - greater understanding and trust in the return to work process because employers, workers and treating health practitioners have a better understanding of each other's point of view.
72. Consultation can be conducted in many different ways including telephone discussions, informal or formal meetings, by exchanging written or other materials or a combination of these. Employers should consult in ways that are appropriate to the circumstances and to the person being consulted. An employer should consider factors such as, but not limited to, those listed below:
- the individual circumstances, such as the nature of the worker's injury and incapacity
 - who is being consulted
 - the need to protect the worker's privacy and confidentiality
 - the matter being consulted on and the information that needs to be provided, and
 - the need to support timely return to work activities without unnecessary delay.

73. Employers must be able to demonstrate the consultation that they have undertaken or the reasonable efforts they have made to do so. While maintaining written records is not mandatory, compliance with the duty to consult can be easier to demonstrate if written records exist.
74. The employer must be able to demonstrate attempts at consultation that they have undertaken, including what the employer has consulted about, when consultation has occurred, how this has been undertaken, the information and opinions shared by and with the employer, the opportunity given for each other person to consider and express their views and the outcome of the consultation process.
75. Record keeping alone does not equate to meeting an employer's obligation to consult to the extent that it is reasonable to do so. However, it does assist the employer to demonstrate the return to work consultation that has been undertaken.
76. An example of demonstrating consultation without maintaining records is where an employer can verbally verify the actions taken to consult about the return to work of a worker with the relevant people and this can be further verified by the persons consulted.
77. A refusal to consult by a person other than the employer will not result in the employer failing to comply with their obligation as long as the employer has made reasonable attempts to consult with that person and can demonstrate these attempts.

Where the worker has no capacity for work

78. In situations where the worker has no current work capacity, employers should evaluate the extent to which it is reasonable to consult with the worker.
79. Employers should assess potential suitable employment options and consult with the treating health practitioner (with the consent of the worker) about this. The treating health practitioner's feedback should be taken into account as potential options are developed.
80. Employers also should liaise with their Agent so that they are ready to act when the worker regains a capacity for work.

Where the worker has full capacity for work

81. Consulting about a worker's return to work is no longer required when the worker has achieved full capacity for their pre-injury duties and hours and has returned to their pre-injury employment (or equivalent). However, if the worker has a subsequent incapacity as a result of the same injury, the employer must resume consulting about the worker's return to work.

For information

Consultation

An employer should also consult with other parties to ensure that they are involved in and support the worker's return to work. Managers should be informed about when the worker is likely to resume work and likely to be able to perform their pre-injury role. Colleagues should be advised how they need to support the worker. This information allows work and staffing to be planned while the worker is absent from the role. The efforts of and inconvenience to these parties should be acknowledged and appreciated.

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 should 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.

Consulting with the worker

82. Effective consultation with the worker is essential. It allows the worker to contribute to their return to work planning and helps ensure that employers can take relevant factors into account early.
83. To the extent that it is reasonable to do so, employers must consult with the worker about their initial return to work and inform them about the return to work process over time. Consultation must continue throughout the return to work process.
84. An employer must consult with their worker directly. However, the worker is entitled to be represented, supported and assisted during any consultation by any other person (except a legal practitioner) such as a colleague, family member, friend or union representative.

What to consult about

85. To the extent that it is reasonable to do so, the employer must consult with the worker about:
 - the worker's capacity for work, what work they can do, and any work restrictions
 - possible duties and hours of work, work location, supervision arrangements and other relevant factors in the particular circumstances
 - reasonable workplace support, aids or modifications to assist in the worker's rehabilitation and return to work (e.g. how the work station, workplace, work site and/or work arrangements can be reasonably adjusted or training provided to support and assist the worker to return to work)
 - proposed options for suitable or pre-injury employment

- return to work arrangements
- arrangements for monitoring the worker's progress and reviewing the return to work over time
- other issues that can affect the return to work process, such as real and perceived barriers to return to work, hazards or risks of further injury, and
- relevant changes to the duties available in the worker's workplace.

When to consult

86. To the extent that it is reasonable to do so, the employer must consult with the worker when:
- the worker or another person on the worker's behalf, notifies the employer that they have an incapacity for work due to a workplace injury
 - considering or proposing suitable or pre-injury employment options
 - there is a change in the worker's capacity for work, e.g. when the treating health practitioner certifies that the worker's capacity or restrictions have changed
 - an occupational rehabilitation provider involved in the worker's return to work process is undertaking an assessment or has provided a report
 - the employer receives additional information from the worker
 - the worker is reporting difficulty with the current return to work arrangements
 - a new medical report provides further information about the worker's capacity or restrictions
 - the worker is ready to resume their normal duties
 - the progress of the return to work is slowing or has stalled, to discuss options that may be available
 - the worker is not adhering to the return to work arrangements
 - the employer's circumstances change, impacting upon the worker's return to work, and
 - the return to work arrangements need to be modified.

How to consult with the worker

87. When consulting with the worker, employers should consider:
- whether it is appropriate to consult with the worker at a particular time and/or about a particular matter, and
 - whether there are factors affecting how the consultation should be carried out including (but not limited to) the:
 - nature and severity of the worker's injury
 - sensitivity of the information to be consulted about, and
 - worker's individual circumstances (such as language or literacy levels, mobility or use of technology barriers).
88. Where the worker requires the use of a language other than English to participate in consultation about their return to work, employers should seek the assistance of a person as an interpreter. In some cases a professional interpreter will need to be engaged.
89. Employers should present the information in the clearest way possible taking into account any numeracy and literacy issues. For example, photographs and videos could be used as part of the consultation process.

90. When consulting with their worker:

Step 1: Employers must share information about the worker's return to work.

- The employer should communicate this in a manner appropriate to the circumstances. This includes:
 - considering the information that needs to be shared between the worker and employer
 - considering the worker's individual circumstances such as those noted in paragraph 85, and
 - sharing the information and opinions in a manner appropriate to the circumstances.

Step 2: Employers must provide a reasonable opportunity for the worker to consider and express their views about their return to work.

- An employer should encourage the worker to ask questions, raise concerns, make suggestions and be part of the process leading to decisions regarding their return to work.
- In providing a 'reasonable opportunity', an employer must consider the following factors:
 - the complexity of the information and opinions being shared between the worker and employer
 - the worker's circumstances – e.g. language and literacy levels, reasonable availability of the worker, the worker's reasonable needs or requests (such as to involve a support person or to have time to consider the information or talk to another person such as a doctor or representative)
 - appropriately progressing the worker's safe and sustainable return to work without unnecessary delay, and
 - giving the worker an opportunity to seek advice from their treating health practitioner before the worker expresses a definitive view about matters relating to the worker's capacity for work.

Step 3: Employers must take those views into account.

- An employer can demonstrate that they have taken the worker's views into account by explaining how concerns raised and suggestions made by the worker have been addressed.
- The employer must explain the final decision to the worker and why it has been taken.

91. Where agreement cannot be reached through consultation, the worker is entitled to use the employer's return to work issue resolution procedure to resolve the issue.

For information

Consultation with the worker can result in stronger commitment to decisions made because those affected are involved in the process and have a better understanding of each other's perspectives.

Consulting with the worker's treating health practitioner

92. Effective consultation with the treating health practitioner (with the consent of the worker) is important in bringing together the practitioner's medical expertise and opinion with the employer's knowledge of the workplace to come up with appropriate return to work options. The treating health practitioner's role is crucial in planning a sustainable return to work. However, the treating health practitioner has no duties or obligations under the Act. Their primary role is to treat the worker's injury. For that reason, employers must seek their participation in return to work but remain reasonably flexible to accommodate the treating health practitioner's preferred means of involvement.
93. Employers must consult with the treating health practitioner (if the worker consents) to the extent that it is reasonable to do so. Relevant factors influencing this consultation include, but are not limited to:
- the information available and whether this needs to be clarified
 - the treating health practitioner's availability, responsiveness to requests and preferred method of consultation (if known)
 - whether the worker has consented to the employer consulting with the treating health practitioner (refer to paragraphs 94 to 96 below for further details).
94. The *Worker's Injury Claim Form* contains the following authority to release medical information which takes effect from the time the form is signed by the worker:
- 'I authorise and consent to any person who provides a medical service or hospital service to me in connection with an injury/condition to which this claim relates to provide upon request by the workers' compensation authority, my employer or insurer/claims agent, any information regarding the service relevant to the claim. I understand that my authority has effect and cannot be revoked for the duration of this claim.'*
95. If the worker has not yet submitted a signed *Worker's Injury Claim Form* before consulting with their treating health practitioner, the employer must obtain consent from the worker to do this. If consent has not been provided by the worker, the employer cannot commence consulting with the treating health practitioner.
96. The employer should contact their Agent for assistance if unsure about what to ask or provide to the treating health practitioner. The employer should also contact the Agent for assistance if uncertain about information that the employer receives from the treating health practitioner.

What to consult about

97. To the extent that it is reasonable to do so, employers must consult with the treating health practitioner (with the consent of the worker) about:
- the worker's incapacity for work, what work they can do, and any restrictions
 - the worker's anticipated recovery and appropriate timing for their return to work
 - the worker's treatment program
 - possible duties and hours of work, work location, supervision arrangements and other relevant factors in the particular circumstances
 - reasonable workplace support, aids or modifications to assist in the worker's return to work (e.g. how the work station, workplace, work site and/or work arrangements can be reasonably adjusted or training provided to support and assist the worker to return to work)

- proposed options for suitable or pre-injury employment
- return to work arrangements including the details identified on pages 25-27 of this compliance code
- arrangements for monitoring the worker's progress and reviewing the return to work over time, and
- other issues that can affect the return to work process, such as real and perceived barriers to return to work, hazards or risks of further injury.

When to consult

98. To the extent that it is reasonable to do so, employers must consult with the treating health practitioner (with the consent of the worker) about the worker's return to work. This should occur initially and as the return to work progresses or whenever information about the worker's capacity is needed or requires clarification as set out in paragraph 100 below. Consultation with the treating health practitioner is ongoing and should continue for as long as the employer is required to plan the worker's return to work.

For information

To decide whether it is reasonable or not to consult with the treating health practitioner, the employer should consider the appropriateness of contact, nature and severity of the injury and the worker's current circumstances (e.g. hospitalisation, psychological harm). The employer can request advice from the Agent about the appropriateness of the contact with the treating health practitioner. Refer to pages 30 to 31 of this compliance code for details about consulting to the extent that it is reasonable to do so.

99. Other key times when the employer must consult with the treating health practitioner (with the consent of the worker) include (but are not limited to):
- considering or proposing suitable or pre-injury employment options
 - there is a change in the worker's capacity for work – e.g. when the treating health practitioner certifies that the worker's capacity or restrictions have changed
 - an occupational rehabilitation provider involved in the return to work process is undertaking an assessment or has provided a report
 - the employer receives additional information from the worker about the worker's capacity
 - the worker is reporting difficulty with current return to work arrangements
 - a new medical report provides further information about the worker's capacity or restrictions
 - the progress of the return to work is slowing or has stalled, and discussion of options may be valuable
 - the worker has almost recovered, before progressing to full normal duties
 - the worker is not adhering to the return to work arrangements
 - the employer's circumstances change, impacting upon the worker's return to work, and
 - the return to work arrangements need to be modified.

How to consult

100. Consultation may be undertaken in a variety of ways and an employer needs to consider factors that may assist effective consultation with the treating health practitioner (with the consent of the worker). This includes asking about the treating health practitioner's preferred method of communication and trying to accommodate this.

101. The method of communication the employer chooses should be appropriate for the circumstances and may include one or a combination of the following:

- Indirect communication
 - using the information provided on the worker's *Certificate of Capacity* (where this provides sufficient information)
 - through the worker
 - through the Agent
 - through the occupational rehabilitation provider
- Direct communication by
 - letter
 - questionnaire
 - email or fax
 - telephone conversations or conference telephone calls including where the worker is present and where possible and appropriate in the circumstances.

102. When consulting with the treating health practitioner:

Step 1: Employers must share information about the worker's return to work.

- When sharing information with the treating health practitioner about the worker's return to work, employers must:
 - take into account the most effective way to provide the information to the treating health practitioner and ensure that the information is clear, and
 - try to accommodate the treating health practitioner's preferred method of communicating where this is known.

Step 2: Employers must provide a reasonable opportunity for the treating health practitioner to consider and express their views about the worker's return to work.

- A 'reasonable opportunity' must take into consideration factors including:
 - the complexity of the information being shared with the treating health practitioner
 - the extent of the feedback being sought, and
 - how to appropriately progress the worker's safe and sustainable return to work.

Step 3: Employers must take those views into account.

- Employers must consider the treating health practitioner's views. An employer can demonstrate that they have taken the treating health practitioner's views into account by documenting the practitioner's views and the steps taken by the employer in response.

For information

A treating health practitioner is a medical practitioner or healthcare provider who has issued the worker with a *Certificate of Capacity* under the Act. A worker has the right to choose their own treating health practitioner or healthcare provider.

The treating health practitioner has a key role in certifying a worker's capacity for work so employers should place the appropriate emphasis on their input to ensure that the work provided appropriately reflects the worker's capacity and that the worker returns to healthy and safe work.

It should be noted that treating health practitioners do not have obligations under the Act.

Ringling a busy medical practice and seeking to speak to a practitioner is unlikely to succeed. It would be more effective to ring the practice and ask the receptionist for the preferred means of providing information regarding the worker's claim and billing arrangements.

Where an employer considers it cannot accommodate the treating health practitioner's views, they should provide feedback explaining this to the treating health practitioner and clarify any points that need to be further understood. Ultimately it is beneficial, but not required, that the employer and the treating health practitioner agree on the decision or decisions that the employer will take following consultation. However, return to work duties must consider the worker's capabilities and restrictions as outlined in their *Certificate of Capacity*.

Consulting with providers of occupational rehabilitation services

103. Employers must consult about the worker's return to work with the provider of occupational rehabilitation services to a worker where the services are provided in accordance with the Act.

For information

The principles of privacy and access to information only with the worker's permission apply to occupational rehabilitation providers. In submitting the *Worker's Injury Claim Form*, the worker has been notified by the Collection Statement of other persons with whom information relevant to their claim may be shared and for what purpose. This enables the employer to consult with the occupational rehabilitation provider in relation to the worker's claim and their return to work.

If the service is being provided before the claim is submitted, the employer must obtain authority from the worker to release personal and health information to the occupational rehabilitation provider before providing this information.

104. Where an occupational rehabilitation provider has been engaged, the employer must consult with this provider during the period the employer is required to plan the worker's return to work for the period that the occupational rehabilitation provider has been engaged to provide a service.
105. Employers must consult to the extent that it is reasonable to do so. Once an occupational rehabilitation service has been approved, employers should consult effectively with the occupational rehabilitation provider to:
- enable the occupational rehabilitation provider to deliver its service in an effective and timely manner
 - clarify information or recommendations provided to the employer by an occupational rehabilitation provider, and
 - incorporate recommendations as appropriate into planning and implementing the worker's return to work.
106. The employer should contact their Agent for assistance if unsure about what to ask or provide to the occupational rehabilitation provider. The employer should also contact the Agent for assistance if it is unsure about information that is given to the employer by the occupational rehabilitation provider.

What to consult about

107. To the extent that it is reasonable to do so, employers must consult with an occupational rehabilitation provider. Employers should consult about:
- the worker's incapacity for work, what work they can do, and any work restrictions
 - the worker's anticipated recovery, and appropriate timing for their return to work
 - possible duties and hours of work, work location, supervision arrangements, and other relevant factors in the particular circumstances
 - reasonable workplace support, aids or modifications to assist in the worker's return to work, for example, how the workstation, workplace, worksite, work arrangements can be reasonably adjusted to support and assist the worker to return to work
 - options for suitable or pre-injury employment
 - return to work arrangements including the details identified on page 25 to 27 of this compliance code
 - arrangements for monitoring the worker's progress and reviewing the return to work over time, and
 - other issues that can affect the return to work process, such as real and perceived barriers to return to work, hazards or risks of further injury.

When to consult

108. To the extent that it is reasonable to do so, where an occupational rehabilitation provider is engaged, the employer must consult about those matters relevant to the service being provided by the occupational rehabilitation provider. This consultation may include but is not limited to:
- considering or proposing potential suitable or pre-injury employment options
 - informing the occupational rehabilitation provider:
 - about changes in the worker's capacity for work, for example, when the treating health practitioner certifies that the worker's capacity or restrictions have changed

- about additional information the employer has received from the worker
 - that the worker is reporting difficulty with current return to work arrangements
 - that another medical report provides further information about the worker's capacity or restrictions, and
 - that the employer's circumstances have changed, which impacts the worker's return to work
- a report is provided by the occupational rehabilitation provider
 - the progress of the return to work is slowing or has stalled, and discuss options that may be available, and
 - the worker is ready to resume their normal duties.

How to consult

109. Where an occupational rehabilitation provider is engaged, consulting with the occupational rehabilitation provider to the extent that it is reasonable may include, but is not limited to:

- facilitating a visit by the occupational rehabilitation provider to the workplace to enable better understanding of what the worker's job involves and help to ensure the return to work duties are appropriate
- enabling an occupational rehabilitation provider to have reasonable access to the workplace – often this will need to be broader than the worker's immediate work area
- enabling an occupational rehabilitation provider to have reasonable access to relevant people within the workplace, for example, the Return to Work Coordinator, the worker's supervisor, the worker's colleagues, etc
- meeting with the occupational rehabilitation provider to discuss return to work matters
- participating in a meeting involving the worker and the occupational rehabilitation provider
- preparing a list of questions the employer wishes to ask about the worker's return to work along with information about duties that may be available
- preparing photos or a video of job activities, and
- providing details of possible duties, suitable or pre-injury employment options and any other return to work arrangements proposed.

110. When consulting with the occupational rehabilitation provider:

Step 1: Employers must share information about the worker's return to work.

- When sharing information with the occupational rehabilitation provider about the worker's return to work, employers must take into account how to provide information (including but not limited to the most effective way to provide the information), ensuring that anything the employer is providing to and asking of the occupational rehabilitation provider is clear.

Step 2: Employers must provide a reasonable opportunity for the occupational rehabilitation provider to consider and express their views about the worker's return to work.

- In providing a 'reasonable opportunity' an employer must take into consideration the following factors:
 - the complexity of the information being shared with the occupational rehabilitation provider
 - the extent of the feedback being sought, and
 - appropriately progressing the worker's safe and sustainable return to work.

Step 3: Employers must take those views into account.

- Employers must consider the occupational rehabilitation provider's views in relation to the return to work information being consulted about.
- An employer can demonstrate that they have taken the occupational rehabilitation provider's views into account by documenting those views and the steps taken by the employer in response.
- After considering their response, employers should make informed decisions about how to progress relevant aspects of the worker's return to work, taking the feedback provided into account.
- Where the employer considers that it cannot accommodate the occupational rehabilitation provider's response, it would be useful for the employer to discuss this with the occupational rehabilitation provider. Ultimately, it is beneficial but not required that the employer and the occupational rehabilitation provider agree about the matter being consulted on.

4.

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

Approved occupational rehabilitation provider	A person approved by WorkSafe as a provider of occupational rehabilitation services under section 3 of the Act.
Current Work Capacity (s3 of the Act)	In relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment.
Incapacity for Work (s96(2) of the Act)	In Part 4 of the Act, a reference to a worker who has an incapacity for work, is a reference to a worker – (a) who has no current work capacity; or (b) who has a current work capacity.
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 or equivalent to the position in which the worker was employed prior to the injury.

Terminology from the Act (continued)

Representative (s96(1) of the Act)	In relation to a worker, does not include a legal practitioner.
Return to work issue resolution process (s118 of the Act)	<p>If an issue about a worker's return to work arises, the employer and the worker must attempt to resolve the issue in accordance with:</p> <ul style="list-style-type: none"> (a) the relevant agreed procedure, or (b) if there is no relevant agreed procedure, the relevant procedure specified in written directions issued by the Minister for the purposes of this section.
Suitable employment (s3 of the Act)	<p>In relation to a worker, suitable employment means employment in work for which the worker is currently suited having regard to –</p> <ul style="list-style-type: none"> (a) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, the <i>Certificate of Capacity</i> supplied by the worker; and (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; and (f) any occupational rehabilitation services that are being or have been, provided to or for the worker, and <ul style="list-style-type: none"> regardless of whether – <ul style="list-style-type: none"> 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. <p>For the purposes of Part 4 of the Act, suitable employment also includes:</p> <ul style="list-style-type: none"> (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	<i>Workplace Injury Rehabilitation and Compensation Act 2013</i>
Treating Health Practitioner (s96(1) of the Act)	<ul style="list-style-type: none"> (a) a medical practitioner who has issued a <i>Certificate of Capacity</i>; (b) a medical practitioner, registered physiotherapist, registered chiropractor or registered osteopath who has issued a <i>Certificate of Capacity</i>.
Certificate of Capacity	A certificate required under the Act that certifies the worker's incapacity for work, and whether the worker has a current or no current work capacity.

Appendix C:

Worksheet to assess suitable employment options

This worksheet can be used to assist in assessing and reviewing suitable employment options. A Word version is available at worksafe.vic.gov.au.

WORKSHEET TO ASSESS SUITABLE EMPLOYMENT OPTIONS

This worksheet contains key questions to consider when assessing and reviewing suitable employment options for your worker during the return to work planning process. Step through these questions each time you review your worker's return to work in readiness for their increased capacity and when their capacity changes. Speak with relevant managers, supervisors and work colleagues when assessing suitable employment options. Consult with your worker and their treating health practitioner. Examples have been provided to help you answer each question. Write your answer in the space provided as it relates to your worker and your workplace. Answering these questions will help determine what work is appropriate for your worker's current capacity for work or likely capacity in the future.

Worker's Name: _____
 Claim Number: _____

Assessing suitable employment options	Step 1 Understand your worker's capacity for work	Step 2 Assess your worker's pre-injury duties and whether these can be modified	Step 3 Look for other suitable duties	Step 4 Consider your worker's individual circumstances	Step 5 Outline suitable employment to be proposed
<p>Considerations, questions and actions</p> <p>Talk to your worker and review their Certificate of Capacity and any other available information (e.g. medical or occupational rehabilitation reports). If you have the worker's consent or signed claim form, speak to their treating health practitioner. You should also talk to their occupational rehabilitation provider (if relevant).</p> <ul style="list-style-type: none"> What is the nature of your worker's injury or illness? What is their capacity for work and their medical restrictions? What is the expected duration of their incapacity for work? 	<p>Try to provide suitable employment that is as close as possible to your worker's normal job.</p> <ul style="list-style-type: none"> What are your worker's normal duties? What parts of their normal duties could they do with their capacity and medical restrictions? Could they safely perform some or all of their normal duties if they were temporarily or permanently modified? (e.g. support tools or equipment, reduced hours, rest breaks, working with the support of a colleague etc.) 	<p>Consider whether there are any other duties available in the workplace that your worker may be able to perform safely.</p> <ul style="list-style-type: none"> Are there different duties they could do in the immediate work area? Are there different duties they could do in another part of your organisation? Can your worker safely perform any of these tasks or roles? Consider whether reasonable workplace supports, modifications or assistance (e.g. buddy system, tools, equipment, training etc.) would help your worker return to work in suitable employment? 	<p>How do your worker's age, education, skills, work experience and personal circumstances impact upon their return to work? How can you accommodate these factors?</p> <ul style="list-style-type: none"> Could your worker perform duties other than those associated with their pre-injury work? (e.g. review your worker's resume or personal file) Where does your worker live - does their injury affect their ability to get to and from work or a particular workplace? Are there other things to consider to support your worker's return to work? (e.g. time to attend treatment) 	<p>After completing steps 1-4, you should be able to document some suitable employment options.</p> <p>It is also a good idea to document the proposed return to work arrangements, including suitable employment options, in writing and provide these to your worker and their doctor or healthcare provider.</p> <p>An easy way to do this is by using WorkSafe's Return to Work Arrangements template. **If no duties are identified, contact your Agent to discuss what steps you need to take and what support your Agent can offer.**</p>	
<p>Example</p> <p><i>Mike injured his back. His Certificate of Capacity says he can work 4 hours per day. He can lift up to 10kg and can't sit for more than 30 minutes. Mike's doctor has said that Mike will recover over the next few weeks but will need to build up his strength to protect his back from further injury.</i></p>	<p><i>Mike's a storeroom and delivery driver. Mike can take delivery of stock and pick up light orders with the help of a trolley. He can also enter delivery orders into the computer. Mike's colleague can help him by lifting any heavier items.</i></p>	<p><i>Mike's manager says he'd like some help in the warehouse with stocktaking. This can be done sitting or standing and doesn't require any lifting. The accounts and customer service department's work also can some help. Mike requires some training to use the computer for stocktaking. Mike's manager says he can sit with Mike to talk him through it.</i></p>	<p><i>Mike is 42 years old. His education, skills and work experience make it difficult for him to quickly take up something in customer service roles. Mike says he can't drive because sitting and sleeping the pain makes him pain. Mike wants to attend his back strengthening when time is available.</i></p>	<p><i>A proposal can be made to Mike as follows:</i></p> <ul style="list-style-type: none"> working Monday to Friday from 10am to 12pm taking deliveries and picking up light orders for 2 hours, stock-taking for 2 hours per day no lifting any materials above 10kg rest breaks as required 3 hour computer training with the manager travel expenses will be provided 	
<p>Completed by: _____</p> <p>Date: _____</p>					
<p>First review conducted by: _____</p> <p>Date: _____</p> <p><small>E.g. When new WorkSafe Certificate of Capacity issued / capacity changes</small></p>					
<p>Second review conducted by: _____</p> <p>Date: _____</p> <p><small>E.g. When new WorkSafe Certificate of Capacity issued / capacity changes</small></p>					

Keep this completed worksheet for your records. Provide a copy to your WorkSafe Agent if you do not believe you can provide suitable employment.

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Appendix D:

Documentation of return to work arrangements

This format can be used to document the agreed return to work arrangements, following consultation between the employer, worker and other relevant parties. A Word version is available at worksafe.vic.gov.au.



RETURN TO WORK ARRANGEMENTS

(INCLUDES PROPOSED SUITABLE OR PRE-INJURY EMPLOYMENT)

Note: These return to work arrangements are not a new employment contract. These arrangements will be reviewed over time to ensure that the duties and hours are consistent with your capacity for work and are helping to progress your return to work. For information about developing return to work arrangements see page 3.

DETAILS

These return to work arrangements are for

Name of worker	WorkSafe claim number
Pre-injury work	Days/hours of work
Job title	
Location	
Name of employer	

RETURN TO WORK ARRANGEMENTS

Duties or tasks to be undertaken
Describe the specific duties and tasks required. Include any physical and other requirements, e.g. lifting, sitting, rotation of tasks, etc.

Workplace supports, aids or modifications to be provided
Describe workplace supports, aids or modifications, e.g. rest breaks, buddy system, special tools, equipment, training, etc.

Specific duties or tasks to be avoided
Describe the specific duties and tasks that are to be avoided or restricted, e.g. no loading pallets, tasks that are only to be undertaken with the assistance of another worker.

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Appendix E

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.

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 2 of 4: Return to Work Coordinators*
- *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

廣東話.....	1300 559 141
Ελληνικά.....	1300 650 535
Македонски.....	1300 661 494
Italiano.....	1300 660 210
普通话.....	1300 662 373
Српски.....	1300 722 595
Español.....	1300 724 101
Türkçe.....	1300 725 445
Việt Ngữ.....	1300 781 868
العربية.....	1300 554 987
English.....	1300 782 442
Other.....	1300 782 343