

Australian Industry Group

New Return to Work Assistance Discussion Paper

Submission to
NSW State Insurance Regulatory Authority

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Ai
GROUP

State Insurance Regulatory Authority

Consultation on the regulation of return to work assistance – November 2015

SUBMISSION COVER SHEET

Name of organisation making this submission

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- ✓ I have read the SIRA submission procedure
- ✓ My submission is not confidential

NEW RETURN TO WORK ASSISTANCE DISCUSSION PAPER

SUBMISSION TO NSW STATE INSURANCE REGULATORY AUTHORITY

INTRODUCTION

The Australian Industry Group (Ai Group) is a peak industry association and has been acting for business for more than 140 years. Along with our affiliates, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our longstanding involvement with diverse industry sectors including manufacturing, construction, transport, labour hire, mining services, defence, airlines and ICT means we are genuinely representative of Australian industry.

Ai Group welcomes the opportunity to make a submission in response to the [New return to work assistance - Discussion Paper](#)

Ai Group's response to the Focus Questions is provided below.

We would welcome the opportunity to have further discussions with SIRA once the submissions summary paper has been published.

FOCUS QUESTION 1: What are the appropriate ‘classes’ of new employment assistance?

It is important that the assistance provided will support the injured worker to return to work. However, it is not always possible to clearly separate work-related and non-work-related expenditure – e.g. grooming, motor vehicle purchase. There should be flexibility, and streamlined administration, in applying this benefit of \$1,000.

FOCUS QUESTION 2: What circumstance, if any, should limit the types of costs that can be claimed under this benefit?

The limitations should ensure that the new employer does not avoid financial obligations they would otherwise incur, due to the payments made to the worker, e.g. the provision of personal protective equipment. Payments to workers should be in the form of a reimbursement. Administrative procedures should be simple, but include a statement by the worker that they have not been reimbursed for these costs by any other party.

FOCUS QUESTION 3: Should there be a time limit on when a cost was incurred and, if so, what timeframes would be reasonable?

Generally, the time limits applied to the obligations and entitlements of workers has some flexibility attached to them, as workers are often not aware of these times. Accordingly, timeframes for reimbursement should be flexible, but delivery of service must be closely aligned with the RTW. Having said that, if a worker incurs an expense to enable them to be more employable (clothing or grooming) and they subsequently receive an offer of employment, consideration should be given to reimbursing those costs.

FOCUS QUESTION 4: What type of employment arrangements (eg ongoing employment, casual, short term contract work, or self-employment should be considered)?

There should not be any restrictions about the type of employment options to which this assistance is applied. Any re-engagement in work will build the confidence of the worker and increase their employability.

FOCUS QUESTION 5: With reference to the information provided in Table 1 of this discussion paper, should limitations be considered in the classes of education and training?

It is important that the education and training is directly related to increasing the workers' employability. The current guidelines provide a good basis for this; reference to the [NSW Skills List](#) would also be beneficial. In addition, as this benefit is being provided after 78 weeks' of weekly payments, it is important to take into account any education and retraining that has been provided under the existing guidelines which apply more generally to injured workers, including consideration as to why previous assistance has not resulted in a successful return to work.

FOCUS QUESTION 6: With reference to the information provided in Table 2 of this discussion paper, should limitations be considered in the classes of training provider?

It is important that the education and training is provided by an RTO, higher education provider or specialist disability employment training provider. Otherwise future potential employers may not recognise the training.

FOCUS QUESTION 7: What circumstances, if any, should be considered in which an employer should not be liable to pay the cost of education and training assistance?

An employer should not be required to make these payments if the costs would otherwise be incurred by the new employer, e.g. apprenticeship training.

In addition, as this benefit is not available until 78 weeks of weekly compensation has accrued, a thorough assessment of the workers potential to gain employment following the training and education must be considered.

The training and education must be part of a total return to work plan that considers other potential barriers to return to work, and provides the necessary support mechanisms during the post training/education period.

FOCUS QUESTION 8: What considerations might be necessary in relation to the interaction between the new return to work assistance benefits and the existing vocational rehabilitation (section 53) programs.

To assist us in developing our response to the Discussion Paper generally, and this question more specifically, we have developed a simplified table (below) of possible entitlements associated with return to work assistance, identifying qualifying periods and quantum, for both current and new entitlements.

	Return to current employer	Return to other employer
No qualifying period	CURRENT GUIDELINES: Access to retraining, equipment and workplace modification – as determined by RTW Coordinator / OR Provider – no apparent limits, other than in relation to delegations for approval.	
No qualifying period		NEW BENEFITS: Up to \$1,000 to assist with things such as child care, travel, clothing
More than 26 weeks of weekly payments		CURRENT GUIDELINES: Job seeking – up to \$200 With offer of employment – up to \$5,000
More than 78 weeks of weekly compensation		NEW BENEFITS: UP to \$8,000 for retraining to prepare for new employment

Retraining

Retraining is available to injured workers as part of their rehabilitation and return to work under current guidelines, to assist them to return to work with their current employer or a new employer. Therefore the NEW retraining benefit that becomes available after 78 weeks, and applies to new employers, needs to be considered in light of earlier provision of retraining. In particular, consideration needs to be given as to how likely it is that the training provided at this stage of the claim will actually result in a successful return to work.

Transitional assistance

Transitional assistance is available under both the current guidelines (after 26 weeks) and the new benefits (without time qualifications).

The current job seeking payment of \$200 initially appears to be completely separate from the NEW benefit which is tied to an offer of suitable employment; however, some of the items covered could be the same, e.g. clothing.

The other benefits (\$1,000 NEW benefit without time qualifications and the existing benefit of \$5,000 after 26 weeks) have a great potential to overlap. It will only be in rare circumstances that consideration of new employment will occur within the first 26 weeks of the claim. Therefore, we have to assume that a person will be eligible for both amounts at the same time.

Identifying specific provisions to delineate the \$1,000 from the \$5,000 seem to be arbitrary in nature, creating unnecessary complexity and bureaucracy. It is suggested that if the current \$1,000 entitlement has not been accessed when the worker becomes eligible for the existing entitlement of \$5,000, the two amounts are added together and administered according to the current guidelines.

FOCUS QUESTION 9: What operational and administrative arrangements should be considered in relation to the new return to work assistance benefits?

Scheme governance is an important issue for the scheme and for employers, and some checks and balances do need to be put into place. However, the value of these benefits will be maximised if the administrative and bureaucratic barriers are minimised.

Transitional benefits should generally be based on reimbursement of expenses; in some cases of severe hardship there may need to be a payment made in advance. Applications should be streamlined through the use of forms with appropriate declarations from injured workers that the expense was related to their return to work, and they have not received any other financial reimbursement in relation to the expense. It should be possible for the employer to approve these applications, unless they chose to seek approval from their Agent.

Retraining benefits should be administered in the same manner as current retraining entitlements, taking into account any previous access to retraining that has been provided. Where possible, the highest level of approval should rest with the Agent, i.e. there should not be any need for applications to be referred to SIRA. Thresholds should also be established to allow Occupational Rehabilitation Providers to approve retraining, subject to meeting certain guidelines; compliance with the guidelines should be subject to random audits.

FOCUS QUESTION 10: Do you have any innovative ideas that might be incorporated into the return to work assistance regulation or otherwise enhance the regulation?

Not in relation to the regulations. However, see our response to question 11.

FOCUS QUESTION 11: Are there any other matters relevant to the return to work assistance regulation that have not been addressed elsewhere in the SIRA discussion paper or your submission?

Evaluation

These benefits, and the existing benefits, are designed to assist injured workers to return to work, through increased skills and the removal of barriers to return to work.

It is essential that the implementation of these provisions is evaluated to identify the effectiveness of these benefits and any opportunities for improvement.

Identifying the cost responsibility

Throughout the Discussion Paper there is reference to the employer paying for these benefits. In line with recent changes to the NSW insurance premium scheme employers do not pay, either directly or indirectly, for the costs of rehabilitation. Hence, it is our view that any reference to these benefits should refer to payments being made by “the scheme”.