

Steps to resolving return to work issues

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Cooperation between the employer, injured worker and other parties involved in the return to work process is important to its success. When return to work related issues arise in the workplace, their quick and effective resolution fosters trust and prevents them from becoming barriers to returning to work. Regular and respectful informal communication and clarification is often the best way to avoid return to work issues arising.

If, however, a return to work issue arises, the employer and the worker must attempt to resolve it. This can be done by either using the workplace's agreed issue resolution procedure or, in the absence of an agreed procedure, the relevant procedure contained in *Return to Work Direction No. 1 of 2010 (Ministerial Direction)*. Details of the relevant procedure in the Ministerial Direction (the Return to Work Issues Resolution procedure) are outlined below.

Aim of the Return to Work Issues Resolution procedure

The aim of the Return to Work Issues Resolution procedure is to provide guidance to parties involved in return to work activities on how to resolve return to work related issues in the workplace and to provide a clear escalation pathway where the issue remains unresolved. WorkSafe and your WorkSafe Agent can provide further assistance in these matters.

Persons who can raise an issue

The following persons can raise a return to work issue:

- injured worker
- person nominated by the worker – the worker has the option to be represented, supported and assisted in the return to work process by another person
- occupational rehabilitation provider
- Return to Work Coordinator
- injured worker's manager or supervisor
- worker's treating health practitioner

Return to work issues

The Return to Work Issues Resolution procedure may be used to resolve return to work issues including, but not limited, to where the:

- employer unreasonably delays or refuses to plan an injured worker's return to work
- employer inadequately plans an injured worker's return to work
- injured worker does not agree with the employer's proposed suitable employment and/or return to work arrangements
- employer refuses to offer the injured worker pre-injury or suitable employment
- employer refuses to provide or provides inadequate return to work related documentation to an injured worker
- injured worker's Return to Work Coordinator is not nominated and appointed within the required timeframe
- Return to Work Coordinator is not considered to have adequately performed their functions
- employer breaches the confidentiality of an injured worker's personal information as it relates to return to work
- employer refuses to consult or consults inadequately with other parties about the return to work of an injured worker.

Issues not covered under the Return to Work Issues Resolution procedure

The Return to Work Issues Resolution procedure is to be used for issues arising out of the return to work process.

It is not designed for complaints about:



WorkSafe (unless WorkSafe is the employer of the injured worker)



the Agent



claim liability



payment of a claim or entitlement



termination or suspension of a claim



reimbursement of an expense



a conciliation, court or Medical Panel referral outcome



general matters of policy and practice applying across the workplace and not directly and particularly related to the worker's return to work

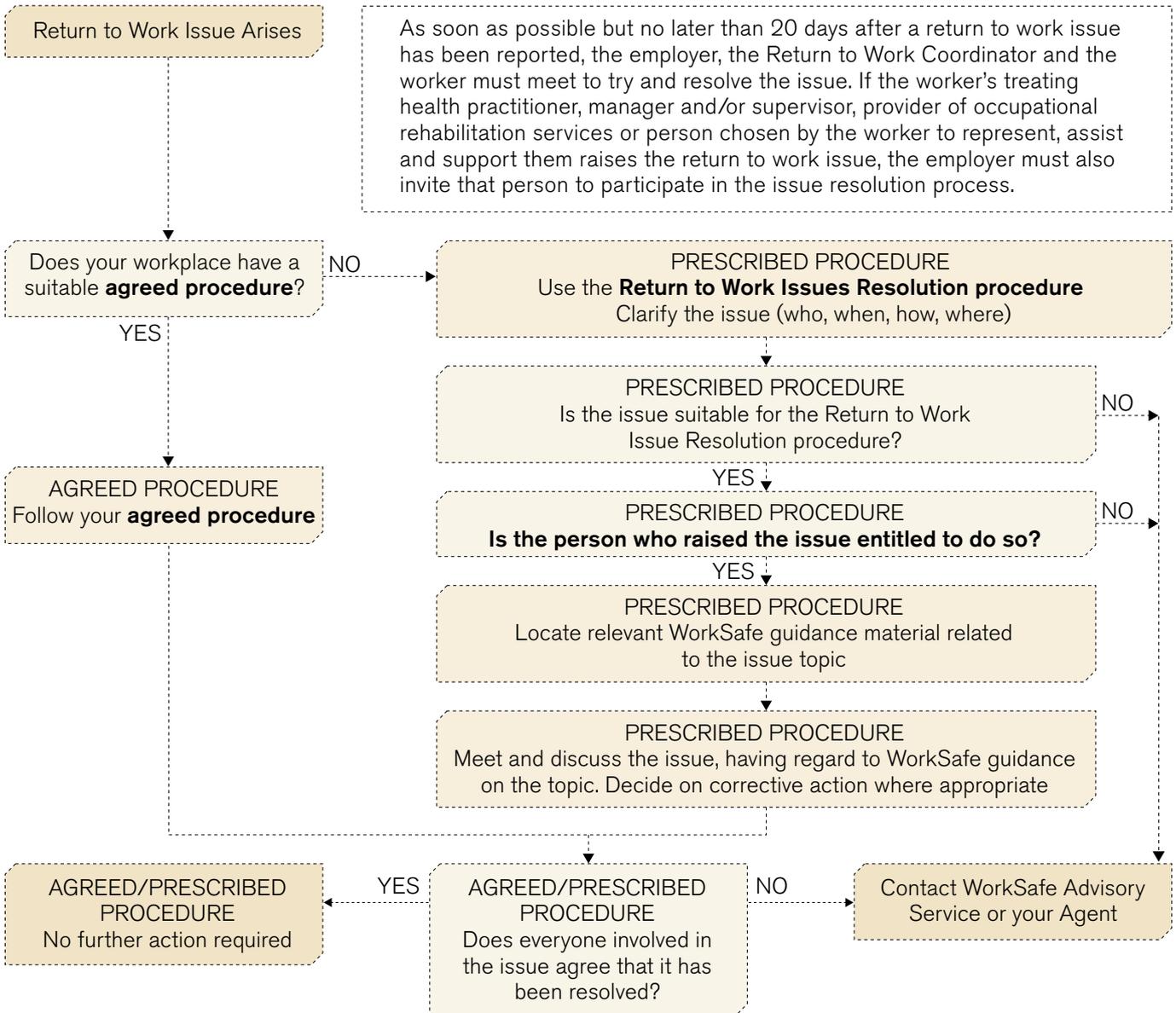
These issues should be addressed using alternative issue resolution processes.

Note: WorkSafe should be notified directly where employers fail to meet their obligations. Agents should be notified directly where workers fail to meet their obligations.

Information about Steps to resolving return to work issues

Issue resolution

When a return to work issue has been identified, the people involved should refer to the workplace's agreed procedure. If one doesn't exist, then the Return to Work Issues Resolution procedure is to be applied (see below).



As soon as possible but no later than 20 days after a return to work issue has been reported, the employer, the Return to Work Coordinator and the worker must meet to try and resolve the issue. If the worker's treating health practitioner, manager and/or supervisor, provider of occupational rehabilitation services or person chosen by the worker to represent, assist and support them raises the return to work issue, the employer must also invite that person to participate in the issue resolution process.

At any time, a person who has raised a return to work issue may request that the employer set out in writing the details of the issue and matters relating to its progress, resolution or outcome. If such a request is made, the employer must respond within 14 days of the request in a manner and in a language that is agreed by the employer, Return to Work Coordinator and the worker.

Important notes

A. Take caution – care should be taken in applying the Return to Work Issues Resolution procedure in circumstances where there may be a risk of causing the worker harm.

B. Assistance or clarification required – if at any stage during the application of the Return to Work Issues Resolution procedure any party involved requires assistance or advice, they should contact their Agent or the WorkSafe Advisory Service.

What is an agreed procedure?

Ideally, an agreed procedure should outline the steps involved in resolving a return to work issue. It should not be a procedure that exists solely for other purposes, such as a grievance or complaint procedure, unless such a procedure is agreed to be used for return to work issues.

It is recommended that the agreed procedure is in writing and should be clear and accessible to all parties who may potentially be affected by a return to work issue.

The agreed procedure must be agreed to by both the employer and all of their workers. The agreement must be genuinely consensual and incorporate genuine consultation.

The agreed procedure cannot be imposed on one party by another or arise out of a flawed process. A flawed process may be one where:

- only a select group of employees participated and agreed with the employer or,
- agreement is reached through an unrepresentative process.

If either the employer or a majority of employees have concerns about an agreed procedure, they are entitled to withdraw their agreement and, unless or until a new one is agreed, the Return to Work Issues Resolution procedure will apply.

If a workplace's agreed procedure does not meet the above criteria, it is not a valid alternative to the Return to Work Issues Resolution procedure.

Using the Return to Work Issues Resolution procedure

Where a return to work issue has been reported, the employer, Return to Work Coordinator and the worker must meet and try to resolve the issue as soon as possible, but in no later than 20 days.

If the worker's treating health practitioner, Return to Work Coordinator, manager, supervisor, provider of occupational rehabilitation services or person chosen by the worker to represent, assist and support them raises the return to work issue, then the employer must also invite that person to participate in the issue resolution process.

For the purpose of resolving the return to work issue, the employer and the Return to Work Coordinator should liaise directly with the worker, however, a worker may be represented, assisted and supported during the return to work issue resolution process.

The Return to Work Issues Resolution procedure should be conducted in a manner and in a language that is agreed to be appropriate by persons who can raise a return to work issue.

If the person who raised the return to work issue requests that the employer set out in writing the details of the issue and matters relating to its progress, resolution or outcome, the employer must do so within 14 days of the request. A copy of the information also needs to be provided to the worker, Return to Work Coordinator and to the person who has raised the return to work issue.

Employer and worker participation requirements

This issue resolution procedure has been developed to help workers and employers resolve return to work issues before they become disputes. If employers and/or workers do not attempt to resolve return to work issues in accordance with their workplace's agreed procedure or the Return to Work Issue Resolution procedure their failure to participate may be reported to WorkSafe or their Agent.

Further information

For more information about employers' return to work obligations, please:

- Visit our website at worksafe.vic.gov.au
- call the WorkSafe Advisory Service on (03) 9641 1444 or freecall **1800 136 089**
- email info@worksafe.vic.gov.au
- Refer to the WorkSafe publication *What to do if a worker is injured – A guide for employers* and WorkSafe's Compliance Codes:
 - *Compliance Code 1 of 4: Providing employment, planning and consulting about return to work*
 - *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*
- contact your Agent
- contact your union or industry group representative.

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