

Workers Compensation and Injury Management Bill 2021 (Consultation Draft)

Submission Template

Bill Clause	Comments
	<p>Rehabilitation Services by Altius welcomes the opportunity to comment on the consultation draft of the Workers' Compensation and Injury Management Bill 2021.</p> <p>Rehabilitation Services is a national workplace rehabilitation provider and has been present in Western Australia for over 15 years (formerly PeopleSense). Our extensive experience within the industry enables us to have a practical understanding of the functions of the Act, and the Health Benefits of Good Work.</p> <p>We support the objective to modernise the current Workers' Compensation and Injury Management (1981) Act and to ensure that workers with an injury are provided with sufficient support to enable them to return to health and work. Additionally, while many of the proposed changes to the Act are supported and are believed to achieve this overall objective, we have identified several areas of concern.</p> <p>Our intentions with this submission are to provide practical suggestions to improve the proposed Workers' Compensation and Injury Management Bill 2021, whilst ensuring that the rights of the worker remain at the forefront; and that any unintended outcomes relevant to the workplace rehabilitation industry have been identified and addressed.</p>
General	<p><u>Terminology – 'Injured Worker'</u> Using the term 'injured worker' places a limitation before the individual – an individual whom all stakeholders aspire to become once again a productive, fulfilled worker – a member of society and their own social frameworks. We suggest using the term 'worker with an injury' as this puts the individual before the limitation. It further creates aspiration for all stakeholders involved to support the individual's return to being a worker, whilst also reinforcing that injury or limitation is in almost all cases temporary, and even in cases where it has more prolonged and longer lasting effects, it is still secondary to an individual's capacity to be a worker once more, albeit one who may be performing a different role.</p> <p><u>Choice of Workplace Rehabilitation Provider (WRP)</u> To date, the legislative framework of workers compensation in WA has ensured that workers have access to independent workplace rehabilitation services and that they are appropriately compensated to support their recovery.</p> <p>Independence of WRPs is key to the current success and functioning within the existing scheme and in our ability to provide impartial consultation and education, whilst ensuring that all stakeholders are heard and meet their required obligations. We feel that the current working framework is crucial in building rapport with all parties; and in achieving safe and sustainable</p>

return to work outcomes. Whilst this may not be the desired intention, we feel that this understanding is not reflected within the proposed Workers' Compensation and Injury Management Bill 2021

Additionally, imperative to upholding the worker's rights and the success of WRP involvement is within their ability to elect their choice of provider. Whilst the draft Workers' Compensation and Injury Management Bill 2021 outlines a worker's choice in medical practitioner, it does not specify their right to choose a WRP. We feel that the separation of WRP and medical practitioners within the Bill may have unintended impacts upon the level of service provided to the worker with an injury.

We believe that the Workers' Compensation and Injury Management Bill 2021 should allow for worker choice of WRP. This right is currently articulated in WorkCover WA's Worker Consent Form for Workplace Rehabilitation Providers. The form states:

The worker's right to choose a workplace rehabilitation provider

Every worker has the right to choose a workplace rehabilitation provider. Should the worker wish to change their workplace rehabilitation provider, they will need to discuss the change [with] their employer and insurer

We are of the belief that the best results for workers are achieved when independent WRPs collaborate with key stakeholders. Complex cases require the committed efforts of all stakeholders to achieve positive return to work outcomes. As supported by WorkCover WA, complaints against WRPs are significantly lower than other stakeholders; We believe that this is because within our industry, professionals are independent and skilled in the complexities of supporting workers to return to health and work.

Medical Examinations

In certain situations, it may be appropriate for a workplace rehabilitation provider (WRP) to attend a medical examination. This may be at the request of the worker and / or medical practitioner; and is often to support with the workers' understanding of complex medical terminology and / or to provide objective medical information to other key stakeholders that will enable a safe and sustainable return to work to be implemented.

We believe that the Workers' Compensation and Injury Management Bill 2021 should include reference to enable a WRP to be present at a medical examination at the consent of the worker.

Furthermore, there appears to be different references to medical examinations and return to work case conferences which may lead to confusion; and Rehabilitation Services believes that further clarification within the Workers' Compensation and Injury Management Bill 2021 would be beneficial to all stakeholders.

Case Conferences

Rehabilitation Services supports that case conferences are referenced within the proposed Workers' Compensation and Injury Management Bill 2021. WRPs regularly act as the facilitator of case conferences, providing the link between the worker, employer and medical practitioner to achieve a positive return to work outcome. The proposed Workers' Compensation and Injury Management Bill 2021 does not indicate that a WRP can facilitate a return to work case conference; and we believe that this needs to be reflected.

Furthermore, the RACP strongly supports the importance of WRP case conferences, stating that these support in facilitating 'the timely and effective rehabilitation of the disabled, injured or ill employee', being that they are an 'essential part of the proper process to ensure that the

employees receive appropriate support'. The RACP indicated that a case conference where a WRP is present assists by:

- Developing injury management and return to work plans.
- Providing education to all stakeholders to ensure clarity of roles.
- Effective identification of strengths and barriers; as well as development and implementation of plans to overcome these.
- Liaison with allied health practitioners to improve the timeliness of access to medical treatment, including specialist reviews.

Within the Workers' Compensation and Injury Management Bill 2021, it states that that an employer, insurer or agent cannot be present at a medical examination when there is a need for a progress medical certificate to be issued (as per regulations). At a return to work case conference, a required outcome is that a progress certificate of capacity is issued; and therefore we are concerned that this may lead to misinterpretation if not clarified.

Finally, we note that the draft Workers' Compensation and Injury Management Bill 2021 has proposed a limitation on the number of case conferences which can occur. This is perceived to be a reduction in the worker's rights where further case conferences may be required to support their recovery and return to health and work.

Reclassification of workplace rehabilitation

The proposed Workers' Compensation and Injury Management Bill 2021 reclassifies rehabilitation from being an entitlement (as with wages and medical funding) to being an expense and transfers it from the legislation to subsidiary regulations not yet drafted. The justification for this change has not yet been clarified; and it is our belief that there are undesirable outcomes which will result from this change.

Within the existing legislation, workers with an injury are aware of their right to access the services of a WRP which is independent from other parties. Additionally, the language used by WorkCover WA (workcover.wa.gov.au) offers clear assurance to workers that they are entitled to receive support from a WRP:

Understanding your rights, obligations & entitlements

Understanding all of your workers' compensation and injury management rights, obligations and entitlements will help you navigate your way to a suitable resolution following an injury or illness in the workplace.

Workplace rehabilitation providers

Find out about your entitlement to engage a workplace rehabilitation provider and how they could assist with your return to work following an injury or illness in the course of your employment.

Whilst it is understood that this is not the Government's intention, there is concern that describing rehabilitation as an 'expense' will result in an industry perception that a worker's entitlement and access to support have been reduced. It is our belief that the best interests of key stakeholders are achieved when workplace rehabilitation is viewed as an important, beneficial service that provides workers with the support they require to return to health and work.

We believe that for the successful functioning of the workers compensation scheme in WA, that rehabilitation remain an entitlement and not be reclassified as an expense. We do not believe that this provides reasoning for a different approach between the funding for WRP's and medical practitioners.

Additionally, we are concerned that by transferring rehabilitation to the yet to be drafted, regulations may allow for future interpretation from other stakeholders who may determine what

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	<p>is and what is not a reasonable expense. It is our view that by removing workplace rehabilitation from the Workers' Compensation and Injury Management (1981) Act and reclassifying it as an expense, an unintended outcome is that this will reduce worker choice and access to essential services in their recovery from illness or injury.</p> <p>It is also believed that this change will negatively impact the success and effectiveness of the current scheme, which is known to be a high performer, if not the best performer, nationally.</p> <p><u>Executive Summary</u> Rehabilitation Services is committed to continuing to work collaboratively with WorkCover WA to support workers following injury or illness. We believe our submission will support in improving the proposed Workers' Compensation and Injury Management Bill 2021, ultimately ensuring that workers' have the assistance required to return to health and work. We welcome the opportunity to expand further on our submission.</p>
<p>Part 2, Division 2, Section 41(2)</p>	<p>This clause fails to mention the workplace rehabilitation entitlement. Rehabilitation Services argues that if provisional payments are to be legislated, this provision should also include reference to workplace rehabilitation expenses.</p>
<p>Part 2, Division 3, Section 56</p>	<p>While we acknowledge and support workers being appropriately compensated following an injury, a possible unintended consequence of this change may be delays in the worker's return to work. We are of the belief that early referral to a WRP for early return to work intervention services is a highly influential factor in supporting an worker with an injury in achieving a successful return to work outcome.</p> <p>We suggest that the scheme encourages earlier return to work and that a referral to an accredited WRP is required if a worker has been off work for four weeks. This would ensure that all potential return to work strategies are investigated, and that the worker and the employer can be educated and engaged in a process that encourages a safe and sustainable return to work. This suggestion is also supported by recent research funded by ARPA National (As evidenced within the Early Intervention position paper, February 2021, 'Workplace Rehabilitation Providers – Getting people back to work, back to health and back to life' statement and 'When should a WRP be engaged?' statement; all available on the arpa.org.au website), WorkSafe Victoria and undertaken by the Institute for Safety, Compensation and Recovery Research (ISCRR).</p> <p>Furthermore, it is noted that any delays would leave workers lacking direction and support and may escalate any psychosocial factors which would lead to poorer outcomes.</p>
<p>Part 2, Division 4, Section 70</p> <p>AND</p> <p>Part 3, Division 4, Section 172</p> <p>AND</p> <p>Part 3, Division 4, Section 180</p>	<p>We acknowledges and agree that medical expenses are to be referred to as 'compensation for medical and healthcare expenses'. It is however proposed that the Workers' Compensation and Injury Management Bill 2021 is amended to reflect workplace rehabilitation services as a compensable expense; and that Part 3, Division 4, Section 172, be titled to 'compensation for workplace rehabilitation expenses' and moved to Part 2, Division 4 to align with a worker's other entitlements.</p> <p>This would ensure that workplace rehabilitation expenses align with medical and healthcare expenses which was previously in Schedule 1 of the current Workers' Compensation and Injury Management Act (1981). We feel that this is key in the current successful functioning of the current Act and that therefore this should remain within the new legislation.</p> <p>We are of the opinion that by ensuring the workplace rehabilitation funding remains as an entitlement, this will best benefit the worker by ensuring they have access to an independent, appropriately qualified professional who is able to determine the most appropriate services to</p>

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	<p>support them with their return to health and work. Furthermore, it is crucial that this worker's right is underpinned by legislation and not in regulations.</p> <p>We have concerns that by leaving this to be written into future regulations, that this may impact a worker's access to services; and that other stakeholders will be able to determine what is and what is not reasonable. The existing system and functioning have demonstrated clear achievement of strong return to work rates, consistency in service payments and high levels of stakeholder satisfaction.</p>
<p>Part 3, Division 2, Section 164 (1)</p>	<p>We propose that WRPs are included within the Workers' Compensation and Injury Management Bill 2021 as another party able to coordinate and facilitate a case conference. This would reflect current practice, whereby WRPs are often the primary party in coordinating and facilitating case conferences.</p> <p>An outcome of case conferences is the need for a progress certificate of capacity to be issued as this medical information is required to develop the return to work program in collaboration with other stakeholders. It is therefore recommended Part 3, Division 4, Section 171 does not limit the ability for parties to be present when a progress certificate of capacity is issued.</p> <p>We support a framework on the frequency of case conferences, however recommends that regulations relating to the maximum number of times a worker may be required to participate in a return to work case conference be removed. The number of case conferences is individualised to each worker's needs and any associated complexities; and may vary based on several factors including biopsychosocial influences, employer and / or doctor's understanding of a return to work and nature of the injury or return to work duties. For more complex injuries or situations, this limitation may be detrimental to the worker's outcome.</p>
<p>Part 3, Division 4, Section 170 (3)</p>	<p>We support General Practitioners functions being clearly defined, inclusive of attendance to return to work case conferences.</p>
<p>Part 3, Division 4, Section 171</p>	<p>We agree that in most circumstances there is no need for an employer, insurer or agent of the insurer to be present when a worker is being physically examined. However, this item also indicates that an employer, insurer and agents of insurer cannot be present when a progress certificate of capacity is issued. This contradicts the required and current outcome of return-to-work case conferences.</p> <p>We suggest either removal of the item 'to issue a certificate of capacity for the worker' or clarity within the section of return to work case conferences (Part 3, Division 2, Section 164(1) that allows a progress certificate of capacity to be issued.</p>
<p>Part 3, Division 4, Section 181</p>	<p>Recent research conducted by ARPA NSW into the current rates paid to WPRs in comparison to allied health services demonstrated the damaging impacts of failing to gazette commercially viable fixed rates for workplace rehabilitation services.</p> <p>In ARPA NSW's submission to SIRA in November 2020, they recommended that workplace rehabilitation service rates be gazetted at commercially viable rates to align services with comparable markets. In this submission, ARPA NSW also detailed how this creates consistency across services and ensures fairness with other service providers which also employ allied health professionals.</p> <p>We are also aware of the significant issues of outcomes-based funding models, specifically that it fails those who have longer term or more complex needs given it incentivises management of less complex claims. 'Parking and creaming' are issues that remain prevalent in outcomes based</p>

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	<p>funding models, including in schemes such as Worksafe VIC and in Federal Disability models. Personal injury schemes across the world, including locally and in New Zealand, have clearly demonstrated that outcomes-based funding models are hugely complex, cannot be designed to accommodate the wide needs to individual workers and injury presentations, and consistently have costly unintended consequences, disadvantaging workers, escalating claims costs to insurers, putting upward pressure on employer premiums, and impacting on the quality of services all stakeholder receive.</p>