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# Policy Statement

This policy applies to all employees in Northern Sydney Local Health District (NSLHD).

# Summary

This policy is intended to facilitate the safe and durable return to work for employees who have sustained a workplace injury or illness. The responsibilities and requirements of employees / managers involved in the process under the NSW Workplace Injury Management and Workers Compensation Act are also outlined.

# Definitions

**Claims Manager** - a person employed by NSLHD that works in the workers compensation claims office in consultation with the Rehabilitation Consultant and the Fund Claims Manager to oversee the management of the workers compensation claim

**Current Work Capacity** - (WCA 1987 s32A): 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.

**Fund Claims Manager** - The Fund Claims Manager is the insurance company that currently holds the contract to manage workers compensation claims on behalf of the TMF. Fund Claims Managers are responsible for day to day management of workers compensation claims. QBE currently holds the contract for NSLHD.

**icare NSW (Insurance and Care NSW)** – Formerly a part of WorkCover NSW, iCare is responsible for customer centred services and the application of Workers Compensation Insurance within NSW including that of the TMF fund.

**Injury** - Under the Workers Compensation Act [WCA] 1987 s4, Injury is defined as:

a) Personal injury arising out of or in the course of employment;

b) Includes a disease injury, which means:

1. A disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and
2. The aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease, and

c) Does not include (except in the case of a worker employed in or about a mine to which the Coal Mines Regulation Act 1982 applies) a dust disease, as defined by the Workers Compensation (Dust Diseases) Act 1942 or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined”.

No compensation is payable under the WCA 1987 s9A in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury. Note. In the case of a disease injury, the worker’s employment must be the main contributing factor.

**Injury Management Plan** - An individual plan completed by the Fund Claims Manager. The injury management plan outlines all the services required to return the injured employee to the workplace. It includes details about the injured employee and employer, information about the injury, the rehabilitation goal, the treatment and the actions required by the injured employee, employer, nominated treating doctor, rehabilitation provider and the Fund Claims Manager.

**Rehabilitation Consultant** – a person employed by NSLHD whose key roles are identifying the needs of the injured employee, understanding any constraints on the Employer and assisting in the coordination of the injured employees return to work.

**Return to Work Plan** - An individual plan which the employer (or nominated Rehabilitation Provider) develops in consultation with the injured employee, manager and treating providers to manage the recovery at work.

**SIRA** **(State Insurance Regulatory Authority)** – Formerly known as WorkCover NSW is the NSW Workers Compensation regulatory body of which TMF and NSLHD are bound by in regards to legislative compliance. The SIRA Act 2015 denotes the discrete organisations and functions by which the authority is managed (iCare NSW and SafeWork NSW).

**Suitable Employment** – (WCA 1987 s32A) defined as employment which is not the worker’s pre-injury employment, but employment in which the worker is medically fit to perform. Suitable employment considers the worker’s injury status, restrictions and transferable skills and is defined as real employment

**Treasury Managed Fund (TMF)** - NSW Treasury Managed Fund is the self-insurance and risk management scheme established by the NSW Government to cover certain liabilities of the State and its Agencies, such as Public Health Organisations.

**Worker** - (as defined under the Work Health and Safety Act 2011 [WHS Act 2011] s7): a person carrying out work in any capacity for a person conducting a business or undertaking (Agency), including work as an employee, contractor or subcontractor, an employee of a subcontractor, labour hire employee, outworker, apprentice, trainee, student gaining work experience or volunteer.

**Workplace Injury** - (under the Workplace Injury Management & Workers Compensation Act [WIM&WCA] 1998 s42): means an injury to a worker for which workers compensation is, or may be payable under WIM&WCA 1998.

# Policy

NSLHD recognises its legal obligations and compliance requirements under NSW Ministry of Health’s Injury Management and Return to Work Policy Directive (PD2013\_006) [*currently under review]*, NSW Workers Compensation Act 1987 and NSW Workplace Injury Management and Workers Compensation Act 1998 and legislate Amendments.

NSLHD is committed to preventing injury and disease by providing a safe and healthy working environment.

If workplace injury/disease does occur, NSLHD will as an expectation and normal practice ensure a safe and durable return to work for any employee with a workplace injury/disease.

NSLHD recognises the importance and benefits of providing effective workplace-based rehabilitation and supports the underlying principles associated with it.

**In achieving effective Injury Management NSLHD will**:

• designate appropriately trained, qualified and skilled staff to manage the injury management and claim process.

• ensure the early assessment of the need for workplace rehabilitation and early commencement of the rehabilitation process in a manner consistent with medical judgement.

• provide suitable duties or hours of work, wherever practicable, as an integral part of the rehabilitation process.

• liaise closely with the Fund Claims Manager to facilitate the workplace injury management program.

• consult with employees and employee representatives (where appropriate) to ensure effective general and individual rehabilitation programs are developed and reviewed.

• provide appropriate mechanisms for managing disputes effectively.

• ensure employees participating in a rehabilitation program do not experience workplace prejudice in any way.

• ensure all records are maintained in a manner consistent with iCare NSW’s Guidelines on confidentiality.

• provide appropriate information and training for all employees on their rights and responsibilities in relation to workplace injury management and rehabilitation process;

• ensure ongoing monitoring of the policy and programs, including the development of district rehabilitation performance indicators, as a basis for regular program review and evaluation;

• provide employees diagnosed with a temporary non work-related injury or illness with temporary suitable duties or hours under the same rehabilitation program arrangements, where practicable. Each case will be assessed individually to determine the length of time the restrictions are likely to continue, and whether the Department can accommodate the stated restrictions without significantly impacting on the functioning of the department and that the employee can safely return to the workplace. This is done in conjunction with the department manager and Human Resource Business Partners to ensure that there is a durable return to work in an appropriate timeframe.

NSLHD will display a summary of the Return to Work Program prominently in each workplace and injured employees must be provided with information on injury management and workers compensation. *(Please refer to Appendix 1)*

# Responsibilities

## Worker Responsibilities

* NSLHD is committed to providing a safe and healthy work environment, all staff are expected to take reasonable care to prevent work related injuries to themselves and others.

## Injured employee Responsibilities

* Notify their supervisor or manager of a workplace injury as soon as possible and advise how long they will be off work. Preferably they should notify their supervisor or manager before leaving the workplace and ideally notification should occur within 24 hours.
* Complete an IMS+ Notification as soon as possible after the injury has happened, if able. Their representative or Manager/Supervisor can complete an IMS+ if necessary.
* Submit Certificate of Capacity, completed by your nominated treating doctor for the duration of the injury or illness to NSLHD as soon as possible and promptly submit claim forms if requested.
* Nominate a treating doctor who will agree to participate in the development of their Injury Management Plan and provide Certificate of Capacity.
* Provide consent for the Nominated Treating Doctor to give information to NSLHD and Fund Claims Manager for the purposes of the development and ongoing updating of an Injury Management Plan for the employee. This is achieved by signing the Certificate of Capacity and the consent form provided by the Claims Office in the initial contact letter.
* Be actively involved in the development of a specific documented Return to Work Plan for them.
* Comply and co-operate with their Injury Management Plan and Return to Work Plan.
* Report any difficulties they are experiencing with the Injury Management Plan to their manager, the Fund Claims Manager and/or Rehabilitation Consultant
* Discuss with the Rehabilitation Consultant, manager or supervisor as soon as possible any issues with the Return to Work plan.
* Make all reasonable efforts to return to work with NSLHD as soon as possible (WIM&WCA 1998 s48).
* Attend medical examinations arranged by NSLHD and Fund Claims Manager.
* Notify NSLHD of any change in circumstances (relating to capacity, income, contact, details, address, other places of work) as soon as possible.
* Notify NSLHD and Fund Claims Manager of any change to their nominated treating doctor. Reasons for changing nominated treating doctor include; if the doctor has moved or ceased practising, or there is evidence that the nominated treating doctor is not progressing the employee’s recovery and safe return to work.

## Manager / Supervisor Responsibilities

1. **Immediate Intervention/Reporting:**
* Ensure that first aid is administered (if required) as soon as the injured employee has reported the injury.
* Notify the Claims Office promptly regarding an injured employee, i.e. as soon as becoming aware of an injury/illness;

NOTE*: legislation requires notification to the Fund Claims Manager within 48 hours. Managers are responsible for ensuring this timeframe is met.*

* Initiate investigation to find the cause of injury to ensure safety of others;
* Notify the Rehabilitation Consultant of an employee with any temporary non work related illness so a Return to Work Plan may be formulated where required.
1. **Rehabilitation Pathway:**
* Modify the work procedures or work environment to address safety issues and/or support the return to work process;
* Support and assist the Rehabilitation Consultant in identifying suitable duties and providing suitable duties/modified hours where possible;
* Provide information and training to employees on a return to work plan;
* Provide support for the employee on a return to work plan, by monitoring the employee’s progress throughout the rehabilitation program and attending case management meetings;
* Supervise and monitor employee RTW plan compliance;
* Notify the Rehabilitation Consultant where difficulties arise, prior to suggesting any changes to the duties or hours worked by an injured employee on a return to work plan;
* Ensure employees on a rehabilitation plan are not prejudiced in any way;
* Implement, promote and support this policy in each facility/service.

## Rehabilitation Consultant Responsibilities

Rehabilitation Consultants are responsible for the initiation, coordination, management and monitoring of the rehabilitation process, developing return to work plans, liaising between key stakeholders including injured employees, doctors, treating providers, managers and supervisors, human resources business partners, senior management, insurer and Rehabilitation Providers as appropriate. A Rehabilitation Consultant will be allocated for each facility in NSLHD.

## Claims Manager Responsibilities

Claims Managers are responsible for notifying the Fund Claims Manager of any new workers compensation injuries within 48 hours of receipt. The Claims Manager completes administrative tasks to assist the Rehabilitation Consultants with the management of the claims. They are also responsible for calculating the injured employees Pre-Injury Average Weekly Earnings (PIAWE) and ensuring the injured employees are paid their fortnightly wages correctly in accordance with their capacity and legislation. The Claims Managers also complete the Wages Reimbursement Schedules (WRS) and seeks reimbursement from the Fund Claims Manager on a regular basis. A Claims Manager will be nominated for each facility in NSLHD.

## Fund Claims Manager Responsibilities

Claims managers are responsible for ensuring that the requirements of Workers Compensation legislation and iCare NSW are met in terms of reporting requirements, liability and correct payments for managing workers compensation claims.

#  Notification & Assessment

## Notification

An IMS+ (Incident Management System) notification must be completed for “any incident or near miss pertaining to the health of any staff, visitor, volunteer or contractor".

A Workers Compensation Notification of Injury (NOI) Form ([NOI form](http://intranet.nslhd.health.nsw.gov.au/corpsupport/workforce/hsi/rehab/Documents/Notification%20Of%20Injury.doc)) is completed as a notification to the Fund Claims Manager. The Fund Claims Manager only needs to be notified when:

 An employee sustains a work related injury, and as a result

 a) Time lost from work is greater than 4 hours OR

 b) External treatment costs are incurred OR

c) The employee is unable to resume their pre-injury duties

The NSLHD must notify the Fund Claims Manager within 48 hours of the manager / supervisor becoming aware of a compensable injury as mandated by SIRA *(Please refer to Appendix 2).*

## SIRA Certificate of Capacity

An injured employee must have a Nominated Treating Doctor who will coordinate all aspects of their treatment and return to work management. A Nominated Treating Doctor will issue an injured employee with a Certificate of Capacity. An Injured employee must submit these certificates to NSLHD for the duration of the injury or illness as soon as possible.

The Certificate of Capacity must be signed by the employee on page 1 of the certificate to indicate consent for the exchange of information in order to manage the claim. It must also be signed on page 3 declaring any other forms of paid employment.

If the Certificate of Capacity has not been signed by the employee and treating Doctor then NSLHD may not be able to pay weekly workers compensation benefits, unless there are exceptional circumstances. If the initial certificate has not been signed by the employee then it may affect the Fund Claims Manager’s ability to determine liability on the claim.

## Initial Contact & Assessment

1. Within 48 hours of a claim being made, the Rehabilitation Consultant will contact the injured employee to:

* enquire about the employee’s wellbeing and extent of the injury including the mechanism
* assess the injured employee to determine his/her rehabilitation needs which may include psychological support
* provide the injured employee with the verbal and written information about the rehabilitation process and associated Worker’s Compensation benefits
* If consent is not already obtained, obtain the injured employee’s consent in order to obtain or release information about the employee to parties other than the Fund Claims Manager in accordance with iCare NSW Guidelines
* obtain the treating doctor’s name to discuss the nature of the workplace based rehabilitation program that will be required to facilitate a successful return to work

2. Following discussion with the injured employee the Rehabilitation Consultant will contact the manager to discuss the injury and options for suitable duties.

3. The Rehabilitation Consultant will contact the treating doctor to:- provide information about the rehabilitation process in NSLHD; obtain further information regarding the employee’s condition and restrictions; provide information regarding employee’s duties and the availability of suitable duties; participate in a case conference with the nominated treating doctor**,** provide a draft return to work plan for the doctor to consider, when necessary.

4. The Rehabilitation Consultant will liaise with the Fund Claims Manager regarding the injured employee, mechanism of injury, return to work plan, injury management plan and rehabilitation strategies as necessary.

#  Returning to Work

## Returning to Work Plan

When an injured employee is to return to work on suitable duties with restrictions, the Rehabilitation Consultant or Rehabilitation Provider (if applicable) must develop and document a Return to Work Plan in consultation with all parties. The parties include (but are not limited to): the injured employee, manager/supervisor, Nominated Treating Doctor, Rehabilitation Consultant, employee representative (if appropriate), and Rehabilitation Provider (if applicable). The Return to Work plan will be circulated to all parties to ensure open communication and consent.

The Return to Work Plan must be regularly monitored and reviewed by the Rehabilitation Consultant or Rehabilitation Provider. Medical restrictions, suitable duties, hours worked, supervision arrangements, treatment information, rehabilitation goals and review dates must be clearly outlined in the Return to Work Plan.

## Continuing Rehabilitation and Case Management

The Rehabilitation Consultant will regularly review and evaluate the rehabilitation program and the Return to Work Plan to ensure that the program is progressive. In the event that the injured employee is not able to proceed with the agreed Return to Work Plan there is a need for an immediate review by the treating doctor. The injured employee may also be referred to an icare approved Injury Management Consultant who may also liaise with the Nominated Treating Doctor.

A referral to an external Rehabilitation Provider will be made by the Fund Claims Manager if/when it has been identified that provider services are required. The Nominated Treating Doctor or injured employee may request the involvement of an icare approved provider at any time.

Case management meetings will be arranged to discuss the rehabilitation program and Return to Work Plans. Rehabilitation goals will be reviewed during these meetings. Rehabilitation progress of the injured employee may also be undertaken as necessary at Case Management Meetings. Case Management Meetings may be attended by the employee, Rehabilitation Coordinator, and the Rehabilitation Provider (if involved), the manager of the injured employee, and a Union Representative or support person if requested. Case conferences with the Nominated Treating Doctor and appropriate parties may also occur to ensure the injured employee continues to receive the appropriate treatment and are improving from their injury/illness.

During the rehabilitation program injured employees may choose to access the Employee Assistance Program Services (EAP) for counselling and support.

## Releasing an Injured Employee for Medical Treatment

It is recommended that employees who are fit for reduced hours are encouraged to obtain treatment outside of these reduced work hours.

Employees who are fit for pre-injury hours should also be encouraged to attend treatment outside of work hours where their circumstances allow.

If it is not practicable for an injured employee to attend treatment outside of their work hours then they will need to give their manager at least 2 days’ notice so that suitable arrangements can be made.

#  Long Term, Permanent Restrictions, Reasonable Adjustment

The hierarchy of suitable duties/employment, beginning with the most desirable, is:

* same duties/NSLHD
* similar duties/NSLHD
* different duties/NSLHD
* same duties/different Employer
* similar duties/different Employer
* different duties/different Employer

It may become clear on medical evidence that an employee will have long term or permanent restrictions following a work related illness/injury. At this stage it is necessary to review the rehabilitation goal and consider redeployment into realistic alternate employment options – suitable employment.

## Suitable Employment

If it is not possible to make a small modification to the injured employee’s pre-injury job then consideration will need to be given to identifying suitable employment. The possibility of placing an injured employee to vacant positions within NSLHD, either temporarily or permanently is explored in accordance with the Recruitment and Selection of Staff to the NSW Health Service PD2017\_040 in consultation with key stakeholders, eg. Nominated treating providers, managers, Human Resources Business Partners.

An Injured employee is required to submit an application via E-Recruit after which the position will be withdrawn from competitive recruitment. The position must be of a similar grading, classification and remuneration.

#  Termination of Employment Contract

There may be occasions where NSLHD is no longer able to meet the rehabilitation goals of the employee. This may be as a result of no suitable vacant positions becoming available in NSLHD or the alternate employment options identified are not options within NSLHD. On these occasions the Rehabilitation Consultant is required to refer the matter to People & Culture Manager – HR Business Partners in consultation with the relevant General Manager/Director of Service.

If an employee is unable to perform the work for which they were employed the contract of employment might come to an end of its own volition. Hence consideration will be given to termination of the employment contract.

The termination process cannot commence within the first 6 months of a claim being made (WCA 1987)

* 1. **Leave**

Employees will continue to accrue annual leave whilst on workers compensation.

Employees are to discuss leave requests with their manager and rehabilitation coordinator, all requests will be assessed to ensure the return to work will not be adversely affected.

#  Record Keeping

All injury management information concerning an injured employee is confidential. This includes, for example, file notes, letters, faxes, return to work plans and medical reports. It should not be discussed with or shown or read to anyone who is not directly involved in the injured employee’s return to work. Examples of people with a legitimate need to know may therefore include the:

* Rehabilitation Consultant
* Immediate manager or supervisor
* Manager or supervisor of the area in which suitable duties have been identified
* Occupational physician
* Occupational health nurse
* Claims Manager

Workers Compensation and Rehabilitation files are kept separate from other personnel records, as personnel records are often accessed by people other than those listed above who have a legitimate need to know.

#  Psychological Injury

Workers compensation also applies to psychological injuries, defined under the law as a psychological or psychiatric disorder.

A claim for psychological injury will only be accepted if there is medical evidence to prove that, as a result of their employment, a worker suffered from a psychological or psychiatric disorder. The word 'stress' is insufficient as a diagnosis of a condition for the purposes of making a claim for workers compensation.

No compensation is payable for a psychological injury if the injury was wholly or mainly caused by reasonable actions taken, or proposed to be taken, by managers. Such actions may include, for example, transfer, demotion, promotion, performance appraisal, discipline, performance improvement process, retrenchment or dismissal of workers or provision of employment benefits.

Psychological injuries that are a result of alleged workplace behaviours will be managed concurrently to any Human Resources Business Partner actions or investigation, however the matters will remain separate. The liability decision will not impact the determination or outcome of the workplace investigation.

#  Journey Claims

The workers compensation legislation in NSW was amended in 2012 which involved changes to journey claims. These changes meant that in most cases, employees are no longer entitled to claim compensation for injuries that occur on their way to or from work. However, there are still some occupations external to the District who are entitled make Journey claims.

# 4.10 Recess Claims (Injuries during Authorised Absences and Breaks)

If an employee has attended work and injures themselves during an ordinary work break (e.g. morning tea or lunch, or temporary and authorised absence), the injury is compensable. The employee must not have voluntarily subjected themselves to any abnormal risk of injury during the absence. Recess claims only apply to personal injury and not disease.

# 4.11 Resolution of Disputes in Respect to Workplace Rehabilitation

Every effort will be made to resolve disputes through consultation between all parties. Where required, issues may be escalated to senior management. However if disputes cannot be resolved, the employee may be referred to:

• The Fund Claims Manager for assistance

• The relevant union

• iCare NSW

• SIRA

• If the dispute is unable to be resolved via discussion with the fund manager, then assistance can be provided by the Independent Review Officer (IRO).

Useful contact number to help resolve disputes:

SIRA Customer Service Centre - Phone 13 10 50 or visit www.sira.nsw.gov.au

# 4.12 Declined Claims

If a workers compensation claim is declined, NSLHD will continue to make every effort to provide workplace based rehabilitation where it is practicable to do so. Consideration should be given to whether the Department can accommodate the employee’s restrictions without significantly impacting on the functioning of the department and ensuring that the worker can safely return to the workplace.

# 4.13 Non Work Related

If an employee is unable to work due to a non-work related incident, the return to work will be managed in accordance with the Management of Non-Work Related injuries or Health Conditions procedure. [Management of Non-Work Related Injuries or Health Conditions- NSLHD](https://app.prompt.org.au/download/168357?code=f41a0bfc-2be9-495b-a385-9cd128333a13)

# References

NSW Workers Compensation Act 1987

NSW Workplace Injury Management and Workers Compensation Act 1998

NSW Workplace Injury Management and Workers Compensation Regulation 2002

NSW Workers Compensation Regulation 2003

Workers Compensation Legislation Amendment Bill 2012

# Risk of Policy Non Compliance

* Non-compliance with NSW Legislation for timely notification of workplace injuries/illnesses and provision of suitable work may result in fines or prosecution

# Related Documents

* Work Health & Safety Policy PO2012\_004 [Work Health and Safety Policy - NSLHD](https://app.prompt.org.au/download/169247?code=6a7b8633-2994-4ef0-abf4-11f82e15dcfa)
* NSW Health PD 2013\_006 Injury Management & Return to Work Policy Directive (under review by MoH called Recovery and Return to Work Procedure).
* NSW Public Service D2010\_019 Managing Non-Work related Injuries or Health Conditions (being reviewed by MoH together with NSW Health Injury Management & Return to Work Policy Directive)
* Work Health & Safety – Better Practice Procedures PD2018\_013 [Work Health and Safety: Better Practice Procedures\_PD2018\_013](https://app.prompt.org.au/download/167440?code=cdb74f58-1eeb-49e6-888f-579a12bde1df)
* Management of Non-Work Related injuries or Health Conditions – NSLHD PO2014\_003 [Management of Non-Work Related Injuries or Health Conditions- NSLHD](https://app.prompt.org.au/download/168357?code=f41a0bfc-2be9-495b-a385-9cd128333a13)
* RTW Plan Guidelines – SIRA [Guidelines-for-workplace-RTW-programs](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/574397/Guidelines-for-workplace-RTW-programs.pdf)
* Workers Compensation Guidelines – SIRA [Workers-Compensation-Guidelines-March-2021](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0011/438338/Workers-Compensation-Guidelines-March-2021.pdf)

**Appendix 1 – Summary of Return to Work Program**

# Appendix 2 – Injury Management and Rehabilitation Flowchart

