

Mid-term review of the *National Return to Work Strategy 2020–2030*

Submission to Safe Work Australia

29 November 2024

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to Safe Work Australia as part of the mid-term review of the *National Return to Work Strategy 2020–2030* ('the Strategy').
2. The ALA notes the aim of the *Strategy*:²

...to minimise the impact of work-related injury and illness to help injured workers have a timely, safe and durable return to work. The Strategy creates a framework to develop research and national policies on return to work to facilitate shared insights and guide future policies in Australia.
3. With that in mind, the ALA's submission will focus on three main areas:
 - a. the need for the Strategy to encourage greater consistency regarding return to work across all jurisdictions, which would provide clarity for workers;
 - b. the importance of the Strategy being updated to address the impact of work from home and flexible working arrangements on return to work, as well as the impact of and adapting the response to an increase in psychological injuries; and
 - c. gig worker considerations.

Consistency across all jurisdictions

4. The ALA submits that there is a role for the *Strategy* to encourage consistency in return to work schemes across all jurisdictions. Consistency, we submit, will provide clarity for workers and will also ensure that no worker is disadvantaged because of where they happen to live.
5. For example, some return to work schemes require employers to have return to work plans and policies in place as part of starting a business,³ while others emphasise that employers should act once a worker is already injured.⁴

² Safe Work Australia, Australian Government, *Guide to the National Return to Work Strategy* (Web Page) <www.safeworkaustralia.gov.au/workers-compensation/national-return-work-strategy>.

³ See, egs, *Workers Compensation and Rehabilitation Act 2003* (QLD) s 226; *Workplace Injury Management and Workers Compensation Act 1998* (NSW) s 52.

⁴ See, egs, WorkCover WA, Government of Western Australia, *Return to work* (Web Page, 19 July 2024) <www.workcover.wa.gov.au/employers/return-to-work>; Seafarers Safety, Rehabilitation and Compensation

6. Employers must provide safe working environments, and the ALA submits that injury prevention should be a priority for all employers. Nevertheless, in the event a worker is injured, the ALA submits it will be best for the rehabilitation and recovery of injured workers that employers are already prepared and are ready to support those injured workers, including with return to work planning and support.
7. **The ALA, therefore, believes the *Strategy* should reflect and encourage consistency in terms of best practice standards and entitlements for injured workers with regards to return from work across all jurisdictions.**

Updates to the *Strategy*

8. The ALA submits it is essential that the *Strategy* is updated to address the impact of work from home and flexible working arrangements on return to work, as well as the impact of an increase in psychological injuries.
9. First, since the *Strategy* was released, the world experienced the COVID-19 pandemic. Among the many lasting effects of this pandemic has been the rise in people working from home through ongoing flexible working arrangements – 39 per cent of workers in 2023, a marked increase from 13 per cent in 2015.⁵ Having the option to work from home in a safe and comfortable space can greatly assist injured workers in returning to work, while also managing their rehabilitation and healing. Return to work schemes across Australia should, the ALA submits, incorporate safe and appropriate work from home and other flexible work arrangements.
10. Secondly, the ALA notes that the *Strategy* does address psychological injuries and the challenges of workers with psychological injuries returning to work, as compared to workers with physical injuries.⁶ Since the *Strategy* was launched, however, instances of workers

Authority, Australian Government, *Claims and rehabilitation guidance for employers* (Web Page, 15 October 2024) <www.seacare.gov.au/claims-rehabilitation/claims-and-rehabilitation-information-for-employers>.

⁵ Australian Bureau of Statistics, Australian Government, 'Working from home', *Working arrangements* (August 2023) <www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release>.

⁶ See, eg, Safe Work Australia, *National Return to Work Strategy 2020–2030* (January 2020) 14.

sustaining psychological injuries have increased by as much as 36.9 per cent.⁷ The *Strategy* should, the ALA submits, reflect how return to work strategies, plans and timeframes need to adjust to this reality. The *Strategy* should also encourage that any changes to workers' compensation entitlements for those suffering from psychological injuries must not be brought into effect until the associated return to work processes in that jurisdiction are updated to support those workers.

11. **The ALA, therefore, recommends that the *Strategy* is updated to address the ongoing impact on return to work schemes of work from home/flexible working arrangements and the increase in psychological injuries.**

Gig worker considerations

12. Gig workers often face significant challenges when it comes to workplace protections and entitlements, including not being able to access workers' compensation benefits like return to work.
13. Unlike traditional employees, gig workers – such as those in rideshare, delivery or freelance jobs – are generally classified as independent contractors, which means they are excluded from receiving workers' compensation. This absence of a safety net leaves injured gig workers without coverage for medical costs, lost wages or rehabilitation. This makes returning to gig work an unfeasible option for those recovering from injuries sustained at work.
14. Without access to essential benefits, the financial and physical burdens of returning to work in the gig economy can be overwhelming for gig workers.
15. Furthermore, this gap in coverage also highlights a broader systemic issue. Workers who are injured in other employment settings may turn to gig work as a temporary solution to meet their financial needs. However, the lack of workers' compensation protections exacerbates those workers' vulnerability. The absence of such benefits creates an environment where injured workers cannot safely transition into gig work, as they lack the necessary support during recovery. Therefore, for many individuals who cannot return to their original work, gig

⁷ Safe Work Australia, 'New report on psychological health in Australian workplaces' (Media Release, 27 February 2024) <www.safeworkaustralia.gov.au/media-centre/media-release/new-report-psychological-health-australian-workplaces>.

work is not a viable or sustainable option for return to work, as it fails to provide the security and compensation needed during their rehabilitation.

16. If gig workers were covered by workers' compensation. this would open a viable option and further enhance return to work success.

17. **The ALA, therefore, supports workers' compensation rights – including support for returning to work – being extended in all jurisdictions to gig workers.**

18. **We submit that the *Strategy* moving forward should consider gig workers' rights and to encourage all jurisdictions to address gig workers' rights in their workers' compensation and return to work schemes.**

Conclusion

19. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Safe Work Australia as part of the mid-term review of the *National Return to Work Strategy 2020–2030*.

20. The ALA is available to provide further assistance to Safe Work Australia on the issues raised in this submission.



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