



Australian Government

Comcare

FAQS—SUITABLE EMPLOYMENT

1. WHAT IS SUITABLE EMPLOYMENT?

When an employee is injured, or contracts a disease at work, there is often the need to return them to the workplace in a different role than their role prior to injury. When identifying a long term or final role for the employee with respect to their injury or disease, it is important that this role be in *suitable employment*.

That is:

- a. with the appropriate employer, and
- b. doing appropriate tasks for their current capacity.

This is referred to as *suitable employment*.

There is a legislative requirement to assist an employee to return to work in employment that meets the definition of *suitable employment* for their particular circumstances and, as such, a rehabilitation program and rehabilitation goals must have regard to the definition of *suitable employment*.

S.4, Part 1, of the *Safety, Rehabilitation and Compensation (SRC) Act 1988* defines:

Suitable employment, in relation to an employee who has suffered an injury in respect of which compensation is payable under this Act, means:

- (a) *in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed—employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to:*
 - (i) *the employee’s age, experience, training, language and other skills*
 - (ii) *the employee’s suitability for rehabilitation or vocational retraining*
 - (iii) *where employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and*
 - (iv) *any other relevant matter; and*
- (b) *in any other case—any employment (including self-employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv).*



a. The appropriate employer

- > If an employee who has suffered an injury is an ongoing employee of the Commonwealth, then *suitable employment* is any employment within the Commonwealth
- > If an employee who has suffered an injury is an ongoing employee of the ACT Government, then *suitable employment* is any employment within the ACT Government
- > If an employee who has suffered an injury is an ongoing employee of a licensee, then *suitable employment* is any employment within the licensed corporation
- > For temporary employees or contractors *suitable employment* is any employment
- > If an ongoing employee separates from their employment (i.e. resignation, termination, accepts a redundancy), then *suitable employment* becomes any employment.
- > In all of the above cases, *suitable employment* must meet the criteria in the definition; 'having regard to' (i) – (iv), which will be discussed further below.
- > Even though *suitable employment* is limited to Commonwealth employment, employment opportunities outside the Commonwealth can still be explored, including work-trials with non-Commonwealth employment.

b. The appropriate tasks

The second consideration is the appropriate tasks. Although these tasks are described in (i) to (iv) of the legislation they are not given a separate name and are still legally referred to as *suitable employment*. However in practice they have become commonly known as *suitable duties*.

In effect:

- > when focusing on the appropriate employer it is referred to as—*suitable employment*
- > when focusing on suitable employment being the appropriate tasks it will often be referred to as—*suitable duties*

This is to ensure clarity about what is actually being discussed.

In practice, if someone uses the term *suitable employment*, clarify whether they mean the appropriate employer, or the appropriate tasks, or even both.

2. WHAT ARE SUITABLE DUTIES?

Suitable duties is commonly used to describe the duties or tasks being offered by an employer in relation to helping an employee return to work after injury or disease. The word 'suitable' used in this case is more of an indicator that the duties fit within the medical restrictions outlined by the employee's treating practitioner, have been approved by the treating practitioners for the employee to undertake as part of their return to work program, and/or use the skills and experience of the employee.

- i. *Suitable duties* may involve modifications to duties, providing alternative duties, or modifying working hours while on a rehabilitation program. Finding *suitable duties* requires a constructive and creative approach with cooperation from supervisors and commitment from senior managers
- ii. Ideally, the Employee, Supervisor, Case Manager, Rehabilitation Provider, GP, and other treating practitioners will be involved in the discussion and develop a shared understanding of; the employee's pre-injury duties, possible options when alternative duties are required to keep them at work, or to enable a return to work
- iii. It is very important for treating practitioners to have a clear understanding of what is required of an employee at work. Treating practitioners will rarely have inherent knowledge of what it is like to work in the employee's pre-injury employment, and may not have an understanding of the dynamics, or expectations of a workplace. It is important to inform the treating practitioners to understand what is inherently required by the employee at work, and how that particular workplace operates. This will allow the treating practitioners to provide appropriate advice on what the employee can and cannot do, how their medical condition can be best managed and supported in the particular workplace, or if necessary, an alternate workplace
- iv. A *suitable duties* plan is developed and attached to a rehabilitation program to specifically outline what duties, hours, responsibilities etc, an employee will be undertaking to return to work following a workplace injury or disease
- v. The *suitable duties* do not have to be linked to a vacant position.

3. WHAT IS SUITABLE EMPLOYMENT IN CASES OF LIMITED OR NO COMMONWEALTH EMPLOYMENT AVAILABILITY?

A Commonwealth employee may relocate to an area with limited Commonwealth employment availability, such as a rural or remote location or may be unfit for Commonwealth employment.

While this employee is still employed by the Commonwealth, the definition of *suitable employment* remains the same until such a time as the employee separates (i.e. resignation, redundancy, termination) from their Commonwealth employer.

For example: a Commonwealth public servant has been unfit for work for an extended period of time and moves to rural Victoria. The employee did not resign from their work and is still employed by the Commonwealth. As such, because the employee has not been separated from their employer the definition of suitable employment for this employee is still considered as the Commonwealth public service.

External employment opportunities such as work trials with non-Commonwealth employers can be explored. The employee's rehabilitation program could also include the requirement to job seek, including non-Commonwealth employment if an appropriate employer and appropriate tasks are identified.

As non-Commonwealth employment is not considered *suitable employment*, Comcare could not deem an ability to earn if the employee refuses or fails to job seek, however, the employer, as the rehabilitation authority may suspend the claim if the employee's failure to job seek was considered unreasonable should appropriate non-Commonwealth employment be available.

The requirement to job seek in the rehabilitation program does not need to limit the requirement to job seeking only within the Commonwealth. If the requirement to job seek is in the program, any unreasonable non-compliance with this requirement can result in suspension.