

The Chair
NSW State Parliament Legislative Council
Standing Committee on Law and Justice
NSW Parliament House
6 Macquarie Street
SYDNEY NSW 2000

Re: 2022 Review of the NSW Workers Compensation Scheme – Supplementary Submission

I refer to the 2022 Review of the NSW Workers Compensation Scheme and to my attendance before the Standing Committee on Law and Justice on 8 September 2022.

I acknowledge receipt of supplementary questions on 16 September 2022 addressed to me.

I now provide these supplementary submissions in answer to the questions posed.

Background

You may not be aware that I have been an Engaged Return to Work Coordinator/Rehabilitation Consultant since 1989. I started with an ABN and later owned and operated Rehab Options. The company was set up to provide outsourced Engaged Return to Work Coordination services in line with WorkCover NSW Legislation. The company has expanded, adapted and updated to now provide this service on a National basis. My companies include Rehab Options Injury Management, Rehab Options Provider Services, Rehab Options Work Conditioning and Rehab Options Management Support.

In 2001, I participated in a WorkCover Pilot where I was given a number of Workers Compensation Claims that had been to at least three Rehabilitation Providers with no resolution. The reason I was given the Pilot, was because I had voiced my concerns about the lack of intelligent intervention in Workers Compensation matters which disadvantaged the potential of getting early, effective and a safe and durable return to work. During the Pilot, I successfully returned all the injured workers to work. As a result, I was requested to participate in WorkCover's Changing the Status Quo Conference Series. I participated as a WorkCover Facilitator communicating to employers the advantages of having a trained and motivated Return to Work Coordinator intervene in a matter upon inception. Since that time, I have continued to provide services to my valued clients and achieved excellent results in return to work outcomes.

I supply in this response a brief snapshot of my engagement by WorkCover to improve return to work rates and outcomes.

- July 2001: Facilitated the "New directions in injury management" with myself lecturing alongside WorkCover.
- 30 July 2001: A letter of appreciation for my participation and expertise in that initiative.
- 28 May 2007: A document supplied by WorkCover to inform clients of their obligations and informing them of the shared/engaged return to work coordinator arrangements. This was the final stages of the promotion that commenced in 2001.

Answers to Supplementary Questions

Question 1: Are the learnings from your work, such as referred to on page 21 of Hansard, still relevant today?

a. If so, how?

Yes. The learnings from my work are certainly still relevant today.

I set out below how they are relevant.

I will go through the Transcript supplied of my comments and reinforce the relevance.

- i. Identify the bona fides of the matter. This is to confirm all the details of the circumstances, without delaying or withholding any medical treatment or intervention. Often, we have found that there is an underlying HR/IR Grievance that can cause a person to conclude that they wish to pursue a Workers Compensation Claim. There can be a disgruntled employee or otherwise the employee has been given a Disciplinary Warning for Underperformance or Unacceptable Behaviour (Misconduct) and chooses to put in a claim to avoid his or her employment being terminated whilst the claim is active. I have these matters come up as regularly as monthly.

I have continuing experience with reported injuries that, after investigation, are withdrawn without admission that they were false in the first place. Otherwise, there may be admissions early on that the injury was done outside of work and thus no claims costs are incurred.

- ii. Insurers' inexperienced or inactivity adversely affects the claim and therefore the appropriate reasonable outcome. It is extremely disappointing that we regularly, certainly weekly, have to liaise and engage with Scheme Agents, in NSW Workers Compensation Insurance EML with regard to intelligent, appropriate and reasonable management of a Workers Compensation claim. EML is often unresponsive and otherwise deliver considerable delays in either taking action indicated as appropriate, reasonable and necessary. Often, we need to formally request a meeting with the Case Manager, Team Leader, Technical Advisor and IMA (Injury Management Advisor), in order to state our concerns over the inactivity and poor management of claims. I also appreciate that I have been able to obtain the support from the dedicated ICare Strategic Employer Managers to assist in getting the Workers Compensation Scheme Agent to listen to and then appropriately act on matters we bring to their attention.

There is a distinct and noticeable naivety with some of the claims team. Again, no actions are taken to prevent the supply of suitable available duties or medical treatment but you would expect those people to have knowledge of the options available under the legislation and scheme to effectively manage a claim, identify anomalies and respond decisively especially with our assistance.

We inherit claims from employers who have heard about our results obtained. We are amazed and disappointed about the lack of application prior to our intervention. Not surprisingly, after our intervention and relevant discussions with the Scheme Agents and the injured workers, matters are moved forward to much better status and outcomes.

- iii. No consequences system. We have found that there appears to be no longer any consequence for false or vexatious claims. Those claims, when given the attention and scrutiny required, often end up being withdrawn. The unfortunate costs to the client during the period of correcting the matters, remain.

We have instances where: (i) employees have had a change in accommodation and personal status and claim bullying and harassment to ensure an income after moving unworkable distances from their employment; (ii) workers who have bullied staff under their supervision, and who accepted termination of their employment for their actions, and who therefore were unable to successfully take Fair Work Applications, but were able to lodge compensation claims and receive monies under Workers Compensation; (iii) labour hire workers who have identified that they are not successful in a placement, submit multiple claims that required considerable communications with the Workers Compensation Scheme Agent to address the obvious anomalies.

In all the above instances, no action for recovery was considered. There is no deterrent for false or vexatious claims.

- iv. Return to Work Coordinator experience and strategy. The Return to Work Coordinator that can be engaged or outsourced is ideally placed to respond compassionately and effectively immediately when an incident or injury is reported. The Return to Work Coordinator can work with the employer's team in facilitating the injured worker to immediate and appropriate medical attention to identify the cause of the injury so as to remove the risk of a similar injury to co-workers.

Simultaneously the Return to Work Coordinator consider the circumstances and whether the mechanism of injury matches the circumstances. Also, we produce immediate communications with the injured worker and treating medical professionals to have them understand that the employer is committed to their injury management. We also produce immediate communications with the nominated Treating Doctor, ensuring a pro-active return to work plan is created rather than a reactive plan without the benefit of the input of the Return to Work Coordinator.

This early intervention that can only be done by an employer's representative, does prevent excessive or inappropriate time loss. Also, if there is a Return to Work Program that involves a process that is understood by all key players, it prevents exaggerated or false claims. In that early intervention, we ensure that we engage with the injured worker, so that he or she can see the employer is compassionate about the circumstances and committed to their full recovery and prevention of similar events. We also ensure that a Risk Assessment is done and Safe Work Method Statements are upgraded so as to identify controls to prevent a similar injury.

It is important to identify, as soon as possible, a diagnosis and prognosis so that the injured worker receives the appropriate treatment from the onset. Also, it is important to involve the injured worker in the identification and implementation of the available suitable duties. It is crucial not to adversely affect the relationship between the

employer and the injured worker and always focus on the rehabilitation. However, it is negligent to not consider any anomalies that may allow a matter to be exaggerated or prolonged or otherwise accepted when it is non-factual or credible.

b. If not, why not and what needs to change for this to occur?

As you are aware, I have answered part a. as being relevant. With regard to what needs to change, submit the following:

Scheme Agents' poor attitude and failing to reasonably access to my team's experience. The considerable learnings from my career to date in this industry are tools that I bring to every communication. I very much appreciate the opportunity that your review of the Workers Compensation system has given myself and my team to improve the system.

The NSW Workers Compensation Insurer and their Scheme Agents since changing from the WorkCover model have not sought out my hands-on, day-to-day experience. I was previously regularly contacted to assist in difficult matters. I was referred to businesses that did not have a competent Return to Work Coordinator and was therefore able to immediately intervene to improve and facilitate the best possible outcomes in the rehabilitation and return to work from a reported workplace injury.

Currently, we have to formally engage to have Workers Compensation Scheme Agents consider all of the elements and available strategies to progress Workers Compensation claims to their best possible outcome. Workers Compensation Scheme Agents seem to reject their inexperience and ignore practical and reasonable strategies and information that can help them use what is, if used to its intended capacity, an effective system and legislation to improve return to work rates and minimise unnecessary costs to the scheme.

I trust the above views are of assistance to the Committee. Please contact me should there be any queries.

Kind regards

Steve Stephens
Operations Risk & Strategy, Engaged Return to Work Coordinator/Managing Director
Rehab Options Injury Management

28 September 2022