Mr Matthew Buxton, Operations Manager, Workers Health Centre

1. *What are the biggest issues contributing to cost blowouts and a lack of early intervention in the current workers compensation system?*

There appears an adversarial approach between stakeholders of which is unhelpful nor does it facilitate trust and rapport with injured workers.

In my observation there is compromised focus on assisting workers return to work as soon as possible.

Having regard to workers having sustained serious injury of which requires vocational redirection (ie. When it is assessed by Doctors injured workers will not capacity to return to pre-injury duties), I find there being little if any support for them to return to work as opposed to vocational assessment being utilised purely for the purpose and only for the purpose of administering work capacity decisions. At this point for all intense purpose it would be more accurate to inform the citizens of the State have a Work Capacity Scheme as opposed to a Workers Compensation Scheme seeking to assist them recover and return to work.

I have been requested by Mr Peter Remfrey to respond to the question related to work capacity decisions, I have done so at the completion of this submission.

The lack of early intervention is a very serious matter. Early intervention is a fundamental value of effective treatment and cost reduction to the scheme.

Currently under SIRA guidelines early intervention having regard to referral to workplace rehabilitation providers can only be made with approval made by scheme agents therefore a substantive lack of early referral to workplace rehabilitation providers has been noted. I am pleased to report a degree of improvement is noted in 2022. However the lack of early referral to providers remains an outstanding issue.

2. What process do you think needs to be undertaken to reform the workers compensation system?

Legislative reform
Reform of ideology
Return to the ideology demonstrated between the years of 1998 - 2005

Following 2015, injured workers appeared to have little or no right to information having regard to their rights and responsibilities and I believe it is ethical to inform them of their rights and responsibilities under legislation.

I refer the reader of this document to the purpose of the 1998 legislation.

3 System objectives

The purpose of this Act is to establish a workplace injury management
and workers compensation system with the following objectives--

(a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,

(b) to provide--
• prompt treatment of injuries, and

• effective and proactive management of injuries, and

• necessary medical and vocational rehabilitation following injuries,

in order to assist injured workers and to promote their return to work as soon as possible,

(c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and
other related expenses,

(d) to be fair, affordable, and financially viable,

> The answers to many of the current issues observed in the scheme can be effectively remedied by stakeholders seeking to:

"assist injured workers and to promote their return to work as soon as possible",

> If more support and assistance is provided to injured workers, the scheme performance is more likely to be

"(d) to be fair, affordable, and financially viable,"

I assert this was an observation of reality between the years of 1998 – 2005.

3. The previous workers compensation system to which you refer to on page 19 of Hansard was seen to be wasteful and unaffordable and so led to reforms.

Do you believe the previous workers compensation system was fiscally irresponsible?

I commenced being a servant of the Workers Compensation Act 1987 and a servant of the NSW Workers compensation scheme in the year 1997. I demonstrate reference base of relevant experience having regard to service provision, I observed delays in service and treatment provision.

I confirm in the years of 1997 through to the year 2000 the Workers Compensation Scheme was notoriously adversarial and commonly the first question raised being who was responsible having regard to legal liability. The common practice was for liability to be disputed by insurers therefore injured workers would not have access to treatment in a timely manner which resulted in substantive increase in duration and cost of claim. In addition referrals to workplace rehabilitation providers were commonly delayed between 6 and 12 months. Subsequently liability was accepted by the scheme agent of which resulted in sustained increased costs to the scheme due to requirement to retrospectively make weekly payments.

I bear witness to having directly reported to Mr Greg McCarthy and Dr Martin Raftery. I understand they were substantive drivers and supporters of substantial changes having regard to early intervention, undertaking a supportive approach to injured workers ensuring early intervention was undertaken regarding medical treatment of which was required for injured workers to increase capacity which resulted in them being able to return to work as soon as possible.

I understand in the 1998 legislation to implement early intervention the idea of provisional liability was introduced with positive effect.

I confirm prior to the engagement of the barrier and approach system the system provision could be described as procedural. The action / barrier approach as taught to me by Dr Martin Raftery was demonstrably the most effective with respect to reducing the cost in duration of claim through facilitating early intervention, early medical treatment, early identification of barriers, and implementing actions with intent and purpose to effectively address barriers to return to work.

My understanding in the years leading up to 1998 there was real financial deficit in the scheme to the value of $5 billion and as a result of the change in approach, implementation of early intervention over a period of approximately 5 years the scheme ended up in financial surplus. For those reasons I do not believe the workers compensation scheme between the years of 2000 and 2006 was financially irresponsible.

4. b. Do you think the common perception, widely commented on before the 2012 reforms that rehabilitation providers abused the previous workers compensation system is true?

I believe a true and fair statement to make is some organisations purely view the workers compensation scheme in terms of viability. It is possible some rehabilitation providers may have been seen to abuse the previous workers compensation system. It is just as possible providers view the current scheme with optic to achieve viability.

However I assert it is also possible decision makers failed in their understanding to appropriately value workplace rehabilitation providers and did not demonstrate an understanding of the value of services provided. (At this juncture I disclose conflict of interest COI. However the COI is mitigated by fact I am driven to assist injured workers recover and return to work to achieve scheme viability). In the year of 2017 as an example when the number of referrals made to workplace rehabilitation providers substantively decreased, there was noticeable increase in the cost of claim due to reduced level of return to work (ie. The scheme looked like it did in 1997 having regard to early intervention). Therefore while it may be true that some providers were seen to have abused the system, it is just as factual I assert the government failed to appreciate the value of the industry and services provided to government and corporate community.

I assert the cost of administering work capacity decision processes following 2012 legislative amendment lead to inflated and increased cost of workplace rehabilitation service without any increase in RTW rate.

2. In terms of the work capacity assessment process where vocational options are being used for work capacity decisions, referred to on page 15 of Hansard, please outline how you believe the workers compensation system should be working?

I write on behalf of Mr Peter Remfrey in relation to this question. The rational for providing response on Mr Remfrey's behalf is due to the fact I am a qualified Rehabilitation Counsellor whom meets the requirements of the State Insurance Regulatory Authority to conduct a vocational assessments and demonstrate 25 years experience in vocational rehabilitation.

In the event an injured worker has sustained substantial injury of which prevents them from being able to return to work performing pre injury duties vocational assessment is indicated. The details required to conduct vocational assessment are substantive and include:

- History of injury
- Current capacity for work
- Symptoms – both psychological and physical
- Treatment
- Psychosocial information related to age, relationship status, where the workers resides and was born "where are they up to in life"
- Education, qualifications and licenses
- Employment history
- Work readiness evaluation
- Transferable skills analysis
- Labour market analysis
- Proposed vocational options
- Recommendations

The aim of a vocational assessment should be to assist injured workers identify 3 vocational options of which are safe and durable to perform enabling return to work. The idea of vocational assessment is to identify vocational options workers will have capacity for in the future inclusive of what transferable skills they demonstrate and if the worker has transferable skills to deploy in an alternate vocation in the real labour market.

Figuratively the plane has crashed, can you salvage anything from the wreckage to survive with? Or in the alternate, do we need to send emergency rescue to provide aid by manner of upskilling and retraining?

Prior to 2012 the assessments of earning capacity assessment and vocational assessment were administered as distinctly different assessments. They have distinctly different purposes.

Vocational assessment was administered for function of assessing and assisting injured workers return to work.

Earning capacity assessment was conducted with aim of establishing objectively what injured workers could earn regarding the previous definition of suitable employment and either administering reduction or cessation of weekly payment.

The aim of vocational assessment therefore should not be to administer work capacity decision ie reduction of or cessation of weekly payments.

Strong clear recommendation is made to separate functions.

Current Practices

Icare is administering vocational assessment purely for purpose of making work capacity decision as opposed to assisting a worker secure employment they can perform safely resulting in reduction of return to work rates.

Icare is not enabling workplace rehabilitation providers make assessment of a workers capacity to work, rather requiring providers dictate what vocational options meet the definition of suitable employment under Section 32a (even if proposed vocational options do not meet the definition).

Example

In the process of conducting vocational assessment on behalf of Workers Health Centre, it was identified a worker and did not currently have qualification required to work in a licenced premises. Labour market research conducted with an employer confirmed by law a registered and licenced club required staff to have completed responsible service of alcohol and responsible conduct of gambling licences. It was clarified in report the proposed vocational option of bar attendant did not currently meet the definition of suitable employment due to the injured worker not having required licence. Icare strongly recommended, and coercively required Workers Health Centre to amend and redact report and was informed if no amendment to vocational assessment report was made referral to an alternative workplace rehabilitation provider would be undertaken for further assessment. (In effect, if you don't do what I say I will pay someone else who will). This is a current course of substantive financial waste.

Further the feedback provided by Icare is bullying in nature. It can be as subtle as indicating they are "concerned" the proposed vocational options do not enable Icare to make work capacity decision immediately. Icare implies by some manner tertiary Qualified Consultants are incompetent or deficient. I have been required to provide debrief for consultants to ensure a safe place of work exists for them.

It can be as overt as indicating if consultants of Workers Heath Centre do not change written report they will cease providing approval for our services or seek alternate provider.

It has been as overt as demonstrated when Workers Health Centre made reasonable recommendation having regard to supporting injured workers assessed as having few if any realistic transferable skills to have computer skills training Icare have declined approving Workers Health Centre arranging vocational retraining.

It has been as overt as demonstrated when Workers Health Centre submitted vocational assessment such assessment being described by Icare as extremely “poor” and “unsatisfactory” for no other reason Workers Health Centre sought to support the worker to return to work but Icare sought no other objective than to apply work capacity decision.

Icare is requiring providers only identify vocational options meeting definition of suitable employment – whether or not it is considered realistic. Icare staff make recommendation having regard to vocational options despite they have no qualification or relevant experience to do so.

Example

Workers Health Centre was referred an injured worker whom was a qualified solicitor and had demonstrated experience as a solicitor for the past 25 years. In the year of 1978 to 1982 the client successfully met the requirements of a Bachelor of Economics degree qualification prior to returning to university to obtain Bachelor of Law.

Workers Health Centre reasoned the most direct way back to work was for the injured worker to deploy their recently demonstrated skills and qualifications in Law with an alternate employer and for that reason informed Icare there was one vocational option of Solicitor strongly be preferred by Workers Health Centre. Icare asserted given the injured worker had met the educational requirement of Bachelor of Economics that Economist was a suitable vocational option despite the fact the worker had not demonstrated experience in the role since 1985. Workers Health Centre was “requested” to conduct labour market analysis on a vocational option as Economist the injured worker has not worked in since 1985. Workers Health Centre opined this being unrealistic but Icare remained adamant Workers Health Centre was required to conduct labour market research on the option. In addition Icare informed Workers Health Centre was required to obtain opinion made by employers the injured worker not having worked in the job since 1985 was not a barrier to the eligibility of the job being considered suitable under the definition of section 32a of the workers Compensation Act. In undertaking these actions it would result in Icare being able to cease the workers access to weekly payments despite not being in employment nor having the capacity to work in pre-injury employment. This results in direct reduction of return to work rate.

Workers Health Centre inquired by what qualification did Icare make the request. Neither the insurance clerk nor allied health professional injury management advisor (whom had qualification as exercise physiologist) met the qualifications required to conduct vocational assessment.

Workers Health Centre was referred a client for medicolegal assessment whom sustained substantive spinal injury in the course of their duty as a earthmoving plant operator. The injured worker required vertebral fusion surgery of both their cervical spine, thoracic spine and was awaiting further surgery to be conducted on their lumbar spine, the nature of which was vertebral fusion surgery.

I assert given the injured worker had surgery scheduled in the future, the injured worker by no means had reached maximum medical improvement. An alternate workplace rehabilitation provider conducted vocational assessment and reasoned the injured worker had the capacity, skills and work experience to work as an equipment hire administrator.

Following multiple episodes of invasive surgery, it is reasonable in order to ensure the workers safety in the future they have substantive restrictions having regard to their physical capacity. In my extensive experience I would reason the client would only ever have capacity to perform sedentary duties in the future. On assessment the injured worker did not demonstrate any form of administrative nor computer skills in the conduct of their employment as an earthmoving equipment operator.

The client did not demonstrate aptitude or capacity to have completed the Higher School Certificate and the qualifications in earthmoving equipment operation was gained in practical training. Icare conducted work capacity decision with no other intent but to cease the injured workers access to weekly payments despite the fact he had surgery pending in the future and Icare sought to cease weekly payments on the basis the worker performed the role of an equipment hire administrator, tasks of which he had never performed in the past.

Icare has developed and implemented a checklist for their staff to administer against a vocational assessment. The checklist includes verbatim related to barriers to return to work, that if a barrier prevents a worker from securing the vocational option, an employer would NOT consider such barrier to prevent a worker being eligible for employment (which would therefore enable Icare to either reduce or cease making weekly payment). Icare's direction appears incomprehensible, unreasonable and basically illogical, not to mention it does not assist to address barriers. In short Icare has not demonstrated cognition required to understand why barriers to return to work need address.

To illustrate, in the example provided whereby a worker is required to obtain a responsible service of alcohol license, Icare has stipulated employers would still believe the worker is eligible for the vocational option if they do not have the required license which enables Icare to either reduce or cease injured workers access to weekly payments.