

**Submission
No 114**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Mend Services

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**SUBMISSION TO JOINT SELECT COMMITTEE
ON THE NSW WORKERS COMPENSATION**

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A submission by:

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- o The issues facing Agencies and the consequences – a provider's perspective
- o What WorkCover Scheme is doing and not doing – a from a providers perspective
- o Suggestions for improvement – in costs, service standards and fairness – in short medium and long term time frames
- o Availability



Overview of Mr Peter Tingle's (Psychologist) experience

- 32 years in Behavioral Sciences, initially as a Psychiatric and Registered Nurse and 22 years as a Psychologist
- 20 years working in the NSW Workers Compensation system and other jurisdictions
- 20 years of assessment, system development and evaluation of complex client assessment and management systems in the disability field. Papers presented in international forums.
- Joint development of injury management system software for workers compensation system – system focused upon provision of information for case managers working within specific decision making time lines.
- On 2010 APS working party reviewing the experiences of Psychologists working within The WorkCover System before and after the regulation of Psychologists in 2010 – (responses received from 640 APS members)
- In all areas the work has been in context of need for a team approach of all parties within budget constraints
- I have seen the best and worst of coordinated approach to service delivery. Unfortunately the worst has been in workers compensation jurisdictions.



Summary of Ms Cherie Marantz's (WRP) experience

- 22 years as an Occupational Therapist/OHS Consultant/Trainer and Manager, working predominately in the workers compensation arena.
- Experience in working for QBE (Agent) and Coles Supermarkets (Self Insurer / Employer)
- I have also worked in Queensland for two years working with the WorkCover QLD, an in house insurer / rehabilitation provider
- I am representing Workplace Rehabilitation Providers in NSW. I have worked for five workplace rehabilitation providers including two National providers being the Commonwealth Rehab Services and Recovre, and three companies of which I have had part or full ownership with the main presence being in NSW.
- I have specialties in injury prevention training, driving assessments and pain management coaching



Inherent complexities of the Workers Compensation system

Workers Compensation in NSW

Workers Compensation is inherently complex due to factors such as :

- The number of stakeholders
- The inevitable conflicting interests of stakeholders
- The conflict between an adversarial litigation system associated with lump sum payments and liability, and the team approach to injured worker care that is suppose to occur when assisting injured workers recover and get back to work
- WorkCover has attempted to manage and oversee the workers compensation scheme and has developed and implemented initiatives (directed top down from Government of the day to improve the system, or occasionally from their research findings)
- The definition of “improvement” is not always straight forward. It is influenced by factors such as the stakeholders concerns and priorities - i.e. costs reduction, need for fairness, efficiency and timeliness. This can result in biased agendas of lobbyists of the various stakeholders.
- Complexities associated with the timeliness of appropriate medical care, treatment and return to work services




Changes in the Workers Compensation System from the late 1980's to current: from two treatment provider's perspectives.

History

HISTORY

- There have been a number of changes in the way the NSW Workers Compensation system has been organised and managed that has relevant to where things are today.
- In about 1987 there was a change in the focus of the system – from a “lump sum payout” focus to one of returning people back to work, including those with residual injuries.
- The resourcing of the system moved away from large pay outs with workers expected to live on what they got to a system where the emphasis was on treatment, rehabilitation and getting back to work. A small amount of lump some payment remained for permanent injuries and impairments.
- Between 2001 and 2003 there were changes to lawyer fees and the beginning of crack down on perceived over service in areas such as physiotherapy.



Changes in the Workers Compensation System from the late 1980's to current: from two treatment provider's perspectives.

History (continued)

- Between 2002 and 2006 there was increasing emphasis from WorkCover, taken up with varying degrees of willingness by insurers to embrace the concept of “active injury management” as opposed to “claims management”. This meant that increasing emphasis was on the employment of health sector qualified staff (call Injury Management Advisors) who were to work collaboratively with the stakeholders. Their role includes advising claims officers in the insurance companies on medical, treatment and rehabilitation issues. IMA's usually had a qualification in the health sciences of some sort (many however had not actually work as practitioner in their field and had limited practical knowledge of applying their skills in a workers compensation environment). Despite the lack of experience of some IMA's the cultural shift to a team work approach with less emphasis on adversarial litigation and liability was a positive thing for all stakeholders. QBE were leaders in the field and from a providers perspective were the most “switched on” in regards to taking a pro active stance in supporting and assisting injured workers back to work.
- In about 2008 the Workers Compensation systems was in the black.
- In about 2008 WorkCover initiated another approach (which from a service provider's and injured worker's point of view) was the beginning of a down turn in the performance of the system, Agents (previously called Insurers), were asked to tender for contracts and to provide services under a business model – the emphasis has appeared to be that Agents were free to manage claims as they wish as long as they adhered to guidelines and rules and regulations governing the system.



Changes in the Workers Compensation System from the late 1980's to current: from two treatment provider's perspectives.

History (continued)

- WorkCover has appeared to have taken a more “hands off” approach. Although injured workers, employers and service providers can all make complaints and get assistance through WorkCover’s various help services, breaches of guidelines, particularly in areas such as payment benefits or response times for treatment requests don’t appear to be enforced – Examples to reinforce this point can be supplied when requested.
- In the last 4 years more strategies have been put in place to cut back on costs generated by the services providers, e.g. OT’s, the regulation of Psychologists in 2010. Psychologist regulation included cutting back on maximum hourly rates, travel entitlements, abolishment of written reports unless requested by Agents and mandatory completion of standardised treatment plan. Many psychologists have commented that the lack of opportunity to document the context of treatment and progress has silenced treatment providers from having any real input into issues such as liability, barriers that are being experienced in returning to work and the distress of the workers in the system.
- The reduction of documented information flow also means also that when the next claims manager takes on a new case (on average 2 to 3 times a year) inaccurate conclusions are being made by the latest case manager and progress is set back and delayed.



Summary of problems with Agents from a Psychologist Provider's Perspective

- Inadequate Training: The type of training, amount of training and emphasis placed on different aspects of claims management varies considerably between the Agents. From our observations and experiences dealing with claims the following issues were identified:
 - Some insurers and staff appear well trained in legal aspects of the claim and management and focus mainly on this aspect of claims management with less regard for injury management and team work.
 - Many staff managing claims appear to have little or no knowledge of injury management issues, particularly psychological aspects of injury management, even at relatively senior levels.
- Work load - case managers appear overloaded and unfamiliar with claims
- Decision making times are not within guidelines i.e. no decisions or delayed decisions
- High Staff Turnover – Changes with Agent's case managers leads to inconsistent service provision and significant service gaps.
- Inadequate Communication Systems – Crucial information not recorded or communicated to key stakeholders either at all, or in a timely matter.
- Backward shift in Approach to Adversarial and Less Team Work. In recent years there appears to have been a shift to a more directive approach from Agents regarding case management requirements. The focus has shifted to immediate cost cutting initiatives without understanding of the longer term implications for the costs and the duration of the claim.



Summary of problems with the System & Agents from a WRP's Perspective

In an analysis of referrals to ARPA members recently in NSW (over 75,00 cases) over a period of 5 years, the average referral time to the workplace rehabilitation provider was 31 months and for RTW services the average duration was 22 months. This delay for referral challenges our industry.

- Currently ARPA Providers are achieving an 80% RTW rate for those people referred within 12 months of sustaining the injury. Our effectiveness drops dramatically if we receive the referral more than 12 months after the injury.
- Agents often overworked and therefore slow to approve our involvement or slow to arrange the necessary assessments and services to facilitate an outcome.
- WorkCover introduced a three point contact process in the mid 90's to help determine what was happening with a file initially and to try to see if a high risk case could be highlighted early. Agents have review points, however there is no consistent screening process to ensure the right service at the right time.
- Longer term costly files tended to have delays in a correct diagnosis. Sometimes surgery or treatment was delayed and therefore it was too late when approved. The majority of costly claims have complex secondary and tertiary issues.
- Independence and autonomy is taken away from injured workers when comparing this to other non worker's compensation related injuries. The recovery rate and successful outcome is statistically lower with worker's compensation related injuries
- Frustrations with claims management can lead to an increase in litigation eg pay issues, late reimbursements.
- Injured Workers who are classified as "Unfit for Work" tend to have less Agent activity and can be largely ignored. Referrals made to WRP are generally delayed and effectiveness is reduced.



Problems with WorkCover & the Scheme from a Psychologist's perspective

- Staffing levels - There appears to be a lack of staff allocated to undertake the research of the effectiveness of initiatives WorkCover puts into place. i.e. when Psychology services were regulated in early 2010 Psychologists were advised in the initial information sessions that the 2010 initiatives were only the beginning and there would be review of the new model. To date this has not occurred.
- There is no model for chronic cases - One size fits all - Variables such as differences in injury severity and complexity, variances in local labour markets, age of workers not taken into consideration. A meeting place between WorkCover and the NSW Police Association in 2009 where this was acknowledged, however, there has been no change in approaches by WorkCover or the Agents in managing long and complex claims.
- Under the current scheme, there is no reporting requirements, only treatment plans. This is effective for straight forward cases, however, majority of the time, additional information is required. Key stakeholders such as the Nominated Treating Doctors are not receiving adequate information regarding their injured workers to make sound decisions regarding returning to work, medications and treatment modalities.
- Criticisms directed at WorkCover verbally or in writing from observation and first hand experience have been met with responses such as - “if you don't like it (the system)... leave”.
- WorkCover does not appear to be following up and policing breaches of legislation in things such as insurers following up treatment requests within specific time frames, or not paying weekly benefits on time



Problems with WorkCover & the Scheme from a WRP's perspective

- Workplace Rehabilitation Providers (WRP) have quite onerous requirements as we need to comply with Quality Systems and be audited annually to keep our accreditation. We are also required to return at least 80% of injured workers to their pre-injury employer or 50% success for injured workers into new employment. If a person moves interstate and we close the file or an injured worker resigns, this is classified as a negative result for the WRP. WRP's should be measured on how we reduce weekly benefits as this is the best result for the scheme.
- Unfortunately WorkCover has not provided statistics on WRP performance for 6 years, so as an industry, we are unaware of trends. Current WorkCover data is apparently not reflective of current measures.
- Generally medium to large employers need to manage their claims well as the costs can significantly burden the employer. One out of control claim can cost this employer group approximately \$150,000 per year for up to 3 years if a return to work is not achieved. A trend that has been identified is medium to large employers holding on to injured workers and terminating once the three year anniversary occurs from date of injury. These injured workers then are at risk of becoming long term tail claims. Small employers are in the high risk group that often do not fund the cost of the claims. Smaller employers do not have the resources and expertise to effectively manage injured workers back to work.



Summary of APS 2011 WorkCover NSW survey

In 2011 The Australian Psychological Society developed a survey to gauge the perceptions of members of the effect of the regulation on service provision and service providers. Findings were released in November 2011.

Key Findings

A total of 640 psychologists completed an online questionnaire. The largest proportion of respondents (33%) were in the 51-60 year age bracket (n=199) and 69% of respondents (n=240) had over 10 years experience working as a psychologist. 22% of APS members had left the WorkCover systems since changes were announced.

General themes emerging from those responses included:

- The new requirements were too complex and onerous
- There were difficulties dealing with case managers and Agents companies
- Ethical problems
- Unrealistic treatment expectations of psychologists
- Disregard for psychologists recommendation for clients
- Inadequate provision of services for more complex cases



Summary of APS 2011 WorkCover NSW survey (continued)

All members were asked whether they had considered leaving the system – 57.9% replied YES.

Reasons for wanting to leave included:

- Inadequacies in fee structure, 48.6%,
- Reporting requirements, 44.4%
- Mandatory Training requirements, 10.3%
- Payment details – “insurance companies taking 4 months to pay” - 57.2%
- Difficulty working with case managers in areas such as:

“ Having clinical decisions regarding a client’s case and treatment being overridden by an often inexperienced case manager ”


“ They (Agents) are clearly dealing poorly with too many claims ”

“ Constant changing of case managers ”

“ Unrealistic expectations of psychological therapy ”

“ Often not guided by best practice evidence or guidelines ”

“ Lots of unpaid time taken following up on liability, chasing stakeholders for conference calls, late cancellations and no shows ”



Recommendations for improving efficiency of the WorkCover NSW system

Immediate

- 1) Expert DESK TOP reviews of all open claims (greater than 2 years post injury) by a WRP / Doctor team to determine action to increase opportunity for a RTW.
- 2) Voluntary Commutation: Many injured workers with tail end claims would exit the workers compensation system, if a reasonable offer was provided to them.

Short Term

- 1) Develop an independent review of approach performance and cultures of Agents with input from **all** stakeholders to gain and understanding of current performance to ensure claims are managed optimally. There needs to be early intervention mixed with expert management of higher risk tail claims.
- 2) Develop a working paper with opportunities for input from all stakeholders to outline a new claims management model.
- 3) Include the presentation of several alternative models of approach eg. other States to determine what works to ensure a positive timely outcome.

Longer term

- 1) Implementation of new model, monitoring and review.



Availability

- For discussions in relation to this WorkCover NSW submission, Mr Peter Tingle and Ms Cherie Marantz are available on Monday, 28 May 2012. Phone contact can be via

Thank you