

**Submission
No 128**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

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ARPA
NATIONAL

15 May 2012

The Hon. Robert Borsak, MLC
Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie St
Sydney NSW 2000

Dear The Hon. Robert Borsak,

RE: NSW Workers' Compensation Scheme Issues Paper

Please find the Australian Rehabilitation Providers Association (ARPA) National's response to the NSW Workers' Compensation Scheme Issues Paper. We understand that the NSW Government is canvassing a range of solutions to the problems being experienced in the NSW Workers' Compensation Scheme so that the Government can act urgently to ensure the long term viability of the Scheme to provide injured workers with the support they deserve while remaining affordable, fair and competitive for NSW.

ARPA National is the peak body representing Workplace Rehabilitation Providers across Australia. ARPA has a national membership of 123 member organisations representing in the order of 1,400 (full time equivalent) Workplace Rehabilitation Professionals.

As a national peak body, ARPA actively engages with Government in relation to key industry reforms across the country that benefit the recovery, return to work, employment participation and social inclusion of people with injuries and disabilities.

In this response we have addressed the following reform principles:

- 3. Promote recovery and the health benefits of returning to work; and**
- 6. Reduce the high regulatory burden and make it simple for injured workers, employers and service providers to navigate the system**

We welcome the opportunity to elaborate on these issues when giving evidence to the Joint Select Committee on the NSW Workers' Compensation Scheme regarding its inquiry into the NSW Workers' Compensation Scheme.

Yours Faithfully,

Annette Williams
President
ARPA National

Reform Principle 3: Promote recovery and the health benefits of returning to work

Promoting recovery, remaining at and returning to work, is core business for the workplace rehabilitation industry.

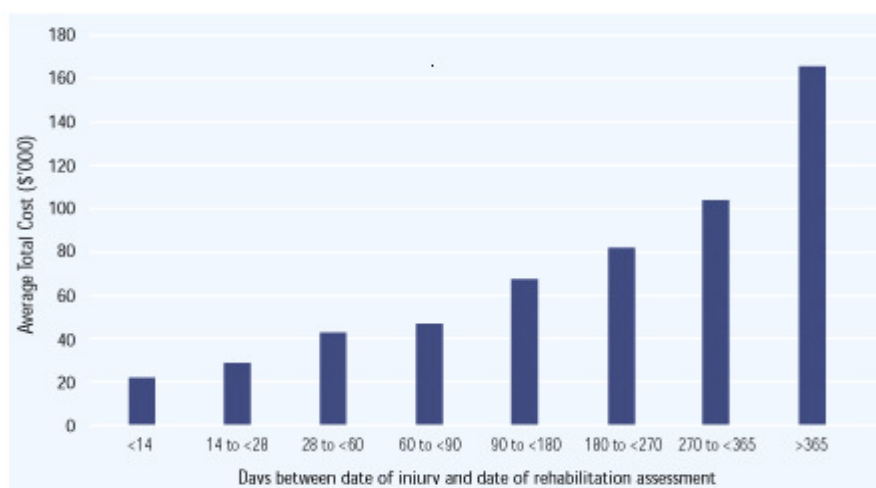
ARPA is a signatory to the Australasian Consensus Statement on the Health Benefits of Work. Apart from the work our members do every day to promote and help workers and other stakeholders to realise the health benefits of work, ARPA has committed to advocate for continuous improvement in public policy around work and health, in line with the principles of the Consensus Statement. This inquiry provides ARPA with an opportunity to further promote the health benefits of work.

Early intervention is the cornerstone of effective rehabilitation. This is well evidenced in both Australia and internationally however workers' compensation schemes have demonstrated a chronic failure to apply a systematic approach to early intervention which identifies 'at risk' claims for early intervention.

In 2002, McKinsey & Co was engaged by WorkCover NSW to review the NSW Workers' Compensation Scheme. The McKinsey report was released in September 2003 and detailed many findings and recommendations. A significant finding was that 15% of all claims accounted for 85% of the liability of the Scheme. This cohort of claims represented 'at risk' claims that resulted in a delayed, protracted or no return to work resulting in increased costs. *Source: Partnerships for Recovery - The McKinsey Review into the NSW Workers Compensation Scheme, September 2003*

Early Intervention ensures that Workplace Rehabilitation Providers (WRP's) are engaged in a timely fashion to assist with the management of at risk/complex claims to maximize RETURN TO WORK outcomes and to contain costs. Return to work reduces the cost of claims by reducing weekly benefits as well as the costs of medical and related services. The health and financial benefits of early intervention for at risk claims is well documented. The relationship between claims costs and the commencement of rehabilitation was illustrated in the Comcare 1998/1999 Annual Report:

GRAPH 10: Effect of Early Intervention on Average Claim Costs



Graph taken without alteration from the Comcare 1998/1999 Annual Report

Furthermore, Comcare data collected from Commonwealth premium paying agencies (for accepted lost time injury claims with a return to work plan, and an injury date between 1 July 1997 and 17 October 2007) found that employees who returned to work in less than 5 days had an average total claims cost of \$60,000, employees who returned to work after 12 weeks had an average total claims cost of \$110,000 and employees who returned to work after 45 weeks had an average total claims cost of \$250,000.

Comcare has identified that psychological injuries account for 7% of claims, but more than 27% of costs. There is an obvious need to ensure that these claims are managed efficiently and that a return to work outcome is achieved in a timely and durable manner.

Similarly, international research conducted in North America (State Compensation Insurance Fund, California, USA), has shown that the longer an employee is off work the less likely they are to successfully return to work:

'Injured employees who do not return to work within six months have only a 50 percent chance of ever returning to the jobs they held at the time of the injury. If absent for over one year the chances of an injured employee returning decrease to less than 10 percent.'

This also reflects the Australian experience in relation to the impact of referral to rehabilitation on return to work outcomes and costs.

In 2011, ARPA engaged Cortex Solutions, an independent consulting firm, to undertake research into the effectiveness of rehabilitation services in New South Wales. This research was jointly funded by ARPA NSW and ARPA National signifying the importance and relevance of the research from a national and industry perspective. ARPA acknowledges the work of Petrina Casey, Consulting Director, Cortex Solutions. Dr Lyn Guy was also part of the Cortex Solutions team and RDA Research (geo-demographers) assisted with the representation of the geographic distribution of the ARPA population.

The purpose of the research was to analyse return to work outcomes and to identify the factors impacting on these outcomes. Data pertaining to rehabilitation services provided by members of the NSW branch of ARPA, between July 2006 and June 2010, was made available for the study.

The study found that approximately 11% of claims that are lodged for a serious injury in the NSW workers' compensation scheme are referred to a workplace rehabilitation provider for assistance in returning to or maintaining work.

Overall, the findings of the study suggest that in NSW workplace rehabilitation providers are experiencing an increased focus on management of workers with increasing disability; socio-economic disadvantage; increasing age; and are from blue collar backgrounds, with a reduced likelihood of being successful in obtaining a durable return to work outcome. The study identified that a greater proportion of cases referred to rehabilitation providers are likely to be from areas of greater socio-economic disadvantage compared with the NSW population. This is further complicated by significant delays in referral to workplace rehabilitation with the average duration of disability at referral being 31 months.

The complexity of these claims may in part explain why in a scenario where Australian personal injury schemes are experiencing a reduction in aggregate claims costs due to lower accident frequencies and claim lodgements, payments for medical and healthcare costs are increasing beyond inflation. This scenario has significant implications for scheme performance and for workplace rehabilitation providers, who aim to assist workers with significant barriers to return to work to achieve a durable return to work outcome.

The findings also support the literature in that return to work outcomes are more likely where referral to rehabilitation occurs within the first 12 months of injury, compared to after this time, where prolonged duration of disability and time off work means that successful return to work outcomes are greatly diminished. The study found that 55% of cases referred to a rehabilitation provider were referred over 12 months post injury.

Specifically the study found that:

Nearly a third of cases (31%) were referred to a Rehabilitation Provider after 2 years post date of injury.

Nearly a quarter of cases (24%) were referred between 6 months and 2 years post date of injury.

12% of cases were referred between 3 and 6 months post injury.

A third of cases (33%) were referred within 3 months.

The average time from date of injury to referral to rehabilitation across all cases was 31 months.

The study found that a greater length of disability duration (as defined by the time from date of injury to date of referral) was seen for those with 'No return to work Outcome' compared to 'return to work Outcome'. Those referred within the first 12 months post injury achieved an 80% return to work rate, had a significantly shorter period of rehabilitation, and at a significantly lower cost than those referred after 12 months. Those referred 12 months or more post injury achieved a 68% return to work rate.

As time progresses, the findings show that as the duration of disability increases the likelihood of return to work reduces.

WorkCover NSW transactional and claims data for the period 1 April 2010 – 31 March 2011 (qualified) identified the following delays to rehabilitation and impacts:

Referrals to rehabilitation for same employer services (where the worker is assisted in returning to their pre-injury employer):

Total number of referrals: 8,747

Average delay to referral: 25.77 weeks

% Return to work rate:

Delay to referral	Return to work Rate
0 -6 months	80%
6 – 18 months	76%
18 months – 3 years	76%
➤ 3 years	60%

Referrals to rehabilitation for new employer services (where the worker is assisted in returning to the workforce with a new employer):

Total number of referrals: 7,857

Average delay to referral: 149.49 weeks

% Return to work rate:

Delay to referral	Return to work Rate
0 – 6 months	50%
6 – 18 months	35%
18 months – 3 years	24%
➤ 3 years	19%

Solution:

ARPA recommends that robust measures be put in place to ensure that injured workers who require assistance to return to work, receive rehabilitation in a timely manner. This should include more effective measures to identify at risk claims, as well as the promotion of the importance of early referral for injured workers with complex needs, to key parties including injured workers, employers and nominated treating doctors.

Reform Principle 6: Reduce the high regulatory burden and make it simple for injured workers, employers and service providers to navigate the system

Workplace Rehabilitation Providers operate within and adhere to a regulatory framework The *'Nationally Consistent Approval Framework for Workplace Rehabilitation Providers' (NCF)*, which was developed by HWCA (Heads of Workers' Compensation Authorities of Australia and New Zealand) in consultation with the workplace rehabilitation industry as part a national harmonisation initiative.

The Framework is based on key principles to support the workplace rehabilitation industry to provide high quality rehabilitation services and achieve return to work outcomes without prescribing service delivery processes and inhibiting innovation. The service provision principles include:

4.1 SERVICE PROVISION PRINCIPLES

Providers deliver services to workers and employers in a cost effective, timely and proactive manner to achieve a safe and durable return to work.

4.1.1 A focus on return to work

- a. Expectations that a return to work goal, and the services required, are established with relevant parties at the commencement and throughout service provision (relevant parties include worker, employer, insurer and other service providers).
- b. Appropriate services are identified and delivered to maximise return to work.
- c. Services focus initially on return to work in the worker's pre-injury employment or, if that is not possible, with another employer.

4.1.2 The right services provided at the right time

- a. Workers receive prompt attention and intervention appropriate to their needs.
- b. Barriers, risks and strengths are identified and strategies promptly implemented.
- c. Services are actively coordinated and integrated with other injury management and return to work activities.

4.1.3 Effective service provision at an appropriate cost

- a. Needs of the worker and employer are identified by means of adequate and appropriate assessment.

- b. Service levels match the worker and employer needs.
- c. Service costs match the range and extent of service provision.

4.1.4 Effective communication with all relevant parties

- a. Respectful, open and effective working relationships established and maintained between workers, employers and other relevant parties.
- b. The provider acts as the link between treatment providers and the workplace to translate functional gains into meaningful work activity.
- c. Progress towards the return to work goal is communicated to interested parties throughout service provision.
- d. Durability of employment is confirmed 13 weeks after placement.

4.1.5 Evidence based decisions

- a. Assessments demonstrate the need for service.
- b. The type of service selected is the most appropriate and cost effective of those available to achieve the return to work goal.
- c. An equitable and consistently applied approach to recommending commencement and cessation of service delivery is undertaken.
- d. Consideration is given to workplace industrial relations and human resource matters that may affect the worker's return to work.

Regulators in all States and Territories (with the exception of Queensland) have adopted and implemented the NCF. WRP's are required to self evaluate against the NCF on an annual basis with the results provided to the Regulator and are also subject to Regulator site evaluations.

However Scheme agents continue to require WRP's to sign and adhere to service level agreements (SLAs) which prescribe service delivery processes, service elements, report proformas, time-frames and costs. Each of the seven scheme agents has its own SLA, requirements and costings. WRP's are also required to provide onerous performance and claims data on a monthly and quarterly basis to each of the scheme agents, all with differing content and formats. WRP's in NSW are subject to a more onerous administrative burden in the country, far greater than their counterparts in any other state or territory.

The significant administrative burden deflects the focus from the injured worker, employer and the outcome, to the administrative requirements for the particular agent (which varies depending on the employer's agent). The prescription of service delivery creates a 'one size fits all' approach which is largely ineffective for complex cases, does not promote best practice approaches and stifles innovation.

Solution:

ARPA is fully supportive of the NCF and considers that the regulation of WRP's, including performance measurement, is the responsibility of the Regulator. It would be advantageous if there was a standardised service level agreement, agreed to by scheme agents in partnership with WorkCover NSW.