

**Submission
No 136**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Australian Society of Orthopaedic Surgeons
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Australian Society of Orthopaedic Surgeons

Submission to the Joint Select Committee on the NSW Workers Compensation Scheme – May 2012

1. NSW orthopaedic surgeons first formed an agreement with the predecessor of NSW WorkCover namely the Licensed Insurance Association in 1951.
2. The Australian Society of Orthopaedic Surgeons (ASOS) was formed in 1983 and incorporated on 29 June 1992 and since its formation has been actively involved in representing orthopaedic surgeons in WorkCover matters.
3. ASOS has 230 orthopaedic surgeons in its NSW branch. A member is required to hold a fellowship with the Australian Orthopaedic Association (FAOrthA). The AOA is the leading training and standards body for orthopaedic surgery in Australia.
4. ASOS members act as consultant orthopaedic specialists to WorkCover compensable patients. Some members act as assessors of Whole Person Impairment (WPI) on behalf of the Workers Compensation Commission utilising the American Medical Association Guides.
5. ASOS members treating compensable patients follow the terms of a fee agreement with WorkCover NSW which is gazetted annually (in January each year)¹. The agreement details the administrative arrangements for the billing of WorkCover compensable patients by treating orthopaedic specialists.
6. Orthopaedic surgeons play an important role in the treatment of WorkCover compensable patients given that in NSW injuries to the musculoskeletal system were 74% of all WorkCover injuries in 2001 and 67% of all injuries in 2008/09.²
7. ASOS communicates and meets regularly with WorkCover administrators to discuss relevant issues concerning the treatment of compensable patients and potential improvements in the scheme.
8. **ASOS also notes that in the report by the Heads of Workers' Compensation Authorities report of 2011³, that in NSW "the doctor" is significantly greater an influence on helping compensable patients return to work compared to all jurisdictions. ASOS is proud that its members are part of this impressive result and believes that the cooperative arrangement with WorkCover NSW has contributed to that achievement.**

¹ Workers Compensation (Orthopaedic Surgeon Fees) Order 2012

² Workers Compensation Statistics 2000/01 and 2008/09

³ Australia & New Zealand Return to Work Monitor 2010/11, June 2011, p53

Performance of the Scheme

9. A summarised model of the treatment process mirrors that of private patient referrals.
10. Approved WorkCover compensable patients are usually referred to an orthopaedic specialist by General Practitioners (GPs), hence ensuring patient choice of GP and specialist.
11. After the initial consultation, reports are sent to the GP, with a copy to the relevant WorkCover claims Agent on behalf of the patient. The report contains essential information on the patient's condition and future treatment options if required. The Agent generates a claim from this information.
12. If a procedure is required the orthopaedic specialist will submit a request to the Agent along with item numbers and any other relevant information.
13. The agreed process is designed to minimise paperwork, and facilitate prompt decisions by Agents (case managers) where established treatment options are proposed, hence causing no further delay than necessary in treating the compensable patient.
14. Where the recommended procedure is more highly specialised and/or complex (a 'red flag' condition) agents may seek further medical advice before approving treatment. Such conditions would include major operations in the spine, or occasional amputations where emergency surgery is not required.
15. Where a compensable patient is admitted to a public hospital with severe trauma and urgent procedures are required, the formal approval process is bypassed, and approval of expenses is sought in retrospect. It may not always be easy for a compensable patient, having been admitted to a public hospital, to elect to be treated privately.
16. The above process is designed to deliver the following outcomes:
 - prompt treatment in order to relieve and eliminate suffering, and prevent deterioration of the patient's condition,
 - maximise the prospect of return to work,
 - patient choice of doctor,
 - Agent scrutiny of all non-emergency requests for orthopaedic procedures,
 - prompt payment of accounts rendered in accordance with the gazetted schedule, and
 - early identification of bottlenecks and unnecessary delays in the treatment/administrative pipeline.

Comment

17. ASOS maintains that there are no inherent defects in the above process. However the following points need to be made.
- The scheme relies on the ability and experience of case managers to act on information promptly.
 - Claims management of Worker Compensation insurance in general has additional challenges to other classes of insurance as no two claims are alike and there are several issues associated with each claim where prompt and important decisions have to be made.
 - Problems can arise when the initial report sent to agents (via case managers) is not acted on (either lost, ignored, set aside or referred elsewhere in the organisation). This delay often results in requests by the agent for information already provided in the initial report (backwash). Backwash is unfortunate as it delays treatment and adds unnecessarily to claims costs. Sometimes the backwash consists of photocopied sheets of standardised questions that have already been answered in the initial report⁴.
 - Medical practitioners are not always easily accessible and the demedicalisation of an agent's staff may also add to difficulties for case managers in the interpretation of medical terminology and understanding of what can be complex treatment modalities, hence adding to delay and inefficiency. ASOS has always supported the engagement by agents of senior orthopaedic surgeons to advise younger and less experienced case managers and improve communication.

Financial Sustainability

18. ASOS notes that "at June 2011 the balance sheet result was a reported deficit of \$2,363 million (funding ratio of 85%). The main drivers of the \$1,720 million deterioration in the deficit over the last six months are:
- \$1,083m due to reductions in the risk free discount rate used to calculate the present value of the outstanding claims liability. The risk free discount rate is derived from the observable yields on Commonwealth Government Securities which have reduced significantly since June 2011,
 - \$ 460m due to increases in the assessed insurance liabilities."⁵
19. Furthermore, ASOS notes that as far as medical costs go actuaries claim that, "the liability in respect of future medical benefits is \$3,339 million (24% of the gross outstanding claims

⁴ The initial report must contain the following information: 1) the patient's diagnosis and present condition, 2) the patient's likely fitness for pre-injury work or alternate duties, 3) the need for treatment or additional rehabilitation, 4) collateral conditions that are likely to impact on the patient's condition in accordance with privacy considerations.

⁵ PWC, Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011, p 2.

liability).⁶

20. The term “Medical costs” is nowhere defined in the Actuarial Reports or the Issues Paper other than stating “the definition of medical costs is quite broad and includes Allied Health and Care benefits.”⁷ ASOS has obtained a definition of “medical or related treatment” from Mr Ian Gough, Senior Business Analyst, Data Governance, Data Services, NSW WorkCover. This definition is used in the most recent published Workers Compensation Statistical Bulletin 2008/09 which defines medical or related treatment as:
- *treatment by a medical practitioner, a registered dentist, a dental prosthetist, a registered physiotherapist, a chiropractor, an osteopath, a masseur, a remedial medical gymnast or a speech therapist*
 - *therapeutic treatment given by direction of a medical practitioner,*
 - *(Repealed)*
 - *the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles,*
 - *any nursing, medicines, medical or surgical supplies or curative apparatus, supplied or provided for the worker otherwise than as hospital treatment,*
 - *care (other than nursing care) of a worker in the worker’s home directed by a medical practitioner having regard to the nature of the worker’s incapacity, (f1) domestic assistance services,*
 - *the modification of a worker’s home or vehicle directed by a medical practitioner having regard to the nature of the worker’s incapacity, and*
 - *treatment or other thing prescribed by the regulations as medical or related treatment, but does not include ambulance service, hospital treatment or workplace rehabilitation service.*
21. ASOS draws the Committee’s attention to the fact that the term ‘medical costs,’ ‘medical claim,’ ‘medical spend,’ and ‘medical treatment’ are all broad terms.
22. In its Statistical Report for 2008/09 NSW WorkCover notes under the heading, “Percentage change in payments”, “since 2007/08 payments in all categories have increased with the largest movements belonging to Common Law damages (19%), interpreter services (18%), rehabilitation (14%) and lump sum payments (13%)⁸. Hence it would appear that increases in costs have occurred across the board in some periods.
23. The PWC Actuarial Report of 2011 states, “medical costs have increased from 19% to 22% of the estimated premium claims costs since 2005” and notes a reduction in these costs in

⁶ PWC, Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011, p 22.

⁷ *ibid*, p.22

⁸ Workers Compensation Statistics 2000/01 and 2008/09, p23

2010 and hence a write-down in December valuations of \$117 million⁹.

24. Meanwhile the Australian Government (Comcare) Report entitled, Compendium of OHS and Workers Compensation Statistics¹⁰ lists medical and rehabilitation costs as 22% of its 2010/11 workers compensation payments down from 25% in 2006/07. Hence it would appear that the NSW and Federal Workers Compensation comparisons in this category of costs are remarkably similar.
25. Statements concerning specific cost movements should also be put in context. In its 2008/09 Statistical Bulletin, NSW WorkCover stated, “the total gross incurred cost of workplace injuries declined by 16% from \$696 million to \$584 million during the 10 years from 1999/00 to 2008/09.”
26. A substantial majority of workplace injuries are associated with the musculoskeletal system. In the NSW Workers Compensation Statistical Bulletin of 2008/09, 56% of work related injuries involved sprains and strains, 11% involved fractures and dislocations, 10% open wounds, 8% contusions and crushings, 0.8% multiple injuries, 2% burns.
27. During the same period (2008/09) the total number of workplace injuries claims was 30,133, other work related injury claims 3,740 and occupational disease claims (predominantly deafness and mental disorders) 8,985.
28. ASOS estimates that in the year 2009/10 WorkCover NSW approved approximately 19,700 item number transactions for orthopaedic procedures. The cost of these procedures ASOS estimates to be around 1.4% of the Ultimate Incurred Cost of the scheme¹¹.
29. This figure of 1.4% of Ultimate Incurred Cost of the scheme is remarkably consistent with previous estimates of surgical costs which ASOS estimated in its 2002 submission to be 1.36% of total costs.¹²

Comment

30. All schemes can be improved providing there is cooperation and understanding among the participants. ASOS has and will continue to work with Scheme operators for the best possible orthopaedic outcomes for compensable patients. The ASOS Agreement with NSW WorkCover is a critical element in this process. ASOS notes the cooperation and prompt communication from the officers of WorkCover.

⁹ PWC, Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011, p8

¹⁰ Compendium of OHS and Workers Compensation Statistics, Dec 2011, p51

¹¹ PWC, Executive Summary: Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2011, p14

¹² ASOS Submission to NSW WorkCover, 30 August 2002, p 16.

31. It is universally understood that the greater the delays in obtaining efficacious treatment, the higher the risk of a delayed return to work by the compensable patient. ASOS believes that the number of participants in the worker's recovery should be kept to an essential minimum, and the stronger the doctor-patient relationship, the better the prospects for return to work.
32. ASOS members work within the approval guidelines of scheme agents before procedures are undertaken.
33. One of the great strengths of the NSW WorkCover Scheme is that the lowest paid worker is able to obtain the services of the most highly qualified specialist once his/her claim has been approved. It is therefore important to ensure that the most senior and experienced specialist are available and accessible to WorkCover compensable patients.

Recommendation

34. For WorkCover to provide an accurate breakdown of costs and cost movements in relation to medical treatment of compensable patients on an annual basis¹³.
35. That scheme agents be encouraged to engage the services of senior orthopaedic surgeons to assist in the evaluation of claims.

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¹³ The most recent statistical Bulletin on the WorkCover website is 2008/09 and the data centre for interpreting the report is not accessible by phone.