

**Submission
No 266**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: RehabCo

Date received: 17/05/2012



17 May 2012

Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie St
Sydney NSW 2000

Submission to the Inquiry

To the Chairperson

Thank you for the opportunity to make submissions to this valuable inquiry into the NSW workers compensation scheme and the need for reform. We thoroughly endorse the O'Farrell Government's recommendation that scheme reform is required. I am the Managing Director of RehabCo which is an approved workplace rehabilitation provider in NSW, ACT and Victoria under both WorkCover and Comcare compensation Schemes. We also provide services to Defence and the Commonwealth Government, Individuals and Organisations. I personally have been working with the NSW Workers Compensation Scheme for 19 years. We have assisted many organisations to drastically reduce their Workers Compensation Premiums and improve their record on rehabilitation and RTW. We have assisted thousands of injured workers to return to work and health following workplace injury.

Unfortunately in recent years we have seen a greater trend away from the early engagement of Workplace Rehabilitation which has corresponded with a growing trend in long term, costly claims that place significant strain on the financial viability of the scheme while producing appalling health outcomes more likely to entrench long term unemployment and disability. In our experience, injured workers are more likely to be referred to WRP for assistance between 12 and 18 months after their injury rather than within the first 3 months when the most effective intervention can be undertaken. Spending on rehabilitation with a Workplace Rehabilitation Provider is controlled and constrained early in the life of a claim when this is most likely to achieve sustainable results. The cost of workplace rehabilitation is minor in comparison to many other scheme costs yet it is the most likely to pay a dividend by reducing all other claim costs. Effective early rehabilitation will reduce weekly benefits, medical costs, legal costs and others and should be seen as an investment in claims reduction that will pay dividends later in the life of the claim. Utilisation of rehabilitation has become excessively impeded by the over complication of services through 7-10 different service agreements with individual Scheme Agents for the same activities. More time and effort is spent attempting to meet individual Scheme Agent requirements than undertaking standard rehabilitation activity.

The Issues Paper has outlined a number of options for consideration. We would propose that a further option be considered in conjunction with some of those outlined so that the objective of improving the financial performance of the scheme while at the same time as improving health outcomes can be achieved. This option is for the earlier and more consistent engagement of rehabilitation services under one consistent model for service delivery. This would reduce costs, improve health outcomes and provide the missing link to enable the introduction of greater control in the payment of workers benefits.

In reference to the Issues Paper I offer my response to each of the *Options for Change* under section 2 of the document.

Option 1 Severely injured workers

We agree that severely injured workers will require greater access to resources than less severely injured workers. In our experience severely injured workers currently have access to all of the medical resources that they require under the existing scheme. They do require greater access to ancillary and support services under the scheme.

Option 2 Removal of coverage for journey claims

We support this option.

Option 3 Prevention of nervous shock claims from relatives or dependants of deceased or injured workers

While we have expertise in the management of psychological harm, the nature of this secondary link to workplace injury which is what is in question is outside the scope of our expertise.

Option 4 Simplification of the definition of pre-injury earnings and adjustment of pre-injury earnings

We support this option. The current inconsistency and unnecessary complication creates confusion and distracts stakeholders away from the core objectives of health and return to work.

We also believe that this should be extended to standardised guidelines around the application of continuing award payments under Section 40 of the NSW Workers Compensation Act 1987. Presently the over complication of determining work capacity, comparable wages, and real labour markets is cumbersome and ineffective and often is overly influenced by the opinion of the treating doctor outside of the scope of their knowledge or role. The current system has encouraged workers to limit their capacity rather than strive for recovery and full return to work and extended the reasonable life of many claims. A clear standard guideline here would negate the need for the Agent to seek Capacity to Earn reports and reduce the frequent frustration experienced at the commission with regard to the application of continuing awards.

Option 5 Weekly benefits – total incapacity

We support the management of total incapacity benefits through the application of guidelines around evidence based expectations for incapacity following injury. We know that most injuries recover within short timeframes and this recovery is further enhanced if the worker returns to work. However all injuries currently have access to 26 weeks of benefits under section 37. A guideline based on known evidence for recovery could be established that determines the level of allowable incapacity for broad groups of injuries under section 37 before the injured worker would need to move to section 38 benefits and commence a return to work program. At this point, if difficulty is experienced by the worker to return to work on suitable duties then this would be the trigger for referral to Workplace Rehabilitation. The combination of the management of the financial driver to encourage return to work with greater access to rehabilitation will achieve the joint objectives of

financial viability for the scheme with improved health outcomes. The management reduction in benefits alone will not drive improved return to work outcomes.

Another consideration may be that the proposed Workplace Capacity Test outlined in Option 7 could be used to determine work capacity through an objective assessment undertaken by appropriately qualified health professionals. This would take the onus away from the Nominated Treating Doctor to make judgements about work capacity and allow them to get on with the management of treatment for the injured worker. Often the treating doctor can have considerable personal pressure placed upon them by their relationship with the injured worker which places undue influence on decisions about work capacity. If this was based upon an objective assessment through a set of clear criteria by non treating allied health professional then this would in itself reduce periods of total incapacity and engage the worker with the employer in a return to work program.

Option 6 Incapacity payments – partial incapacity

Please refer to the discussion above in Option five as all of these comments apply equally to this Option. In short we believe there is clear justification for the evidence based management of partial incapacity benefits in conjunction with early intervention through rehabilitation services.

Additionally, partial incapacity benefits become unreasonably extended as there is no incentive for an injured worker to move from a partial return to work to a full return to work under the current structure. Partial incapacity continues to be extended as long as there is a medical certificate issued. As a result we experience ridiculous circumstances such as where a worker is certified fit for 7 hours out of an 8 hour day permanently. As a health practitioner of nearly twenty years I cannot recall any circumstance where such an ongoing restriction would be justified. This should be addressed through the use of a binding work capacity assessment to avoid the perpetuation of milking continuing benefits from the scheme under sections 38 and 40.

Option 7 Work Capacity Testing

Please refer to the comments regarding work capacity and the possibility for utilisation in Option 5 above.

More specifically, there is a clear example of a well functioning work capacity testing system with the Job Capacity Assessment (JCA) for those claiming Disability Support Benefits under Social Security. The JCA is well utilised to determine work capacity and connect those with needs to the right services. This could be adapted to achieve similar objectives in the workers compensation environment. It would need to be an objective measure of work capacity undertaken by appropriately qualified allied health professionals. Guidelines can be developed in a similar fashion to those of the JCA which can be applied consistently and fairly to all injured workers and provide an objective determination of work capacity. Reasonable benchmarks can be set and appropriate parameters for determination outlined so that all injured workers will fall within a category of expectation that is supported by evidence and will encourage the reasonable return to work in most circumstances. It is well understood within occupational medicine that work is good for you. Therefore a system that is based on moving people away from long term benefits and toward rehabilitation and employment is in the best interest of injured workers and all other stakeholders in NSW.

Option 8 Cap weekly payment duration

We do not support the capping of benefits. We would expect if Options 5, 6 and 7 are applied appropriately there should be no need to cap benefits. Only workers who required long term benefits should have access to these benefits whereas at present every injured worker has unlimited access to benefits even if this is actually detrimental to their health. Those with severe and long term illnesses would still be catered for under this approach however this would only represent a very small proportion of injured workers.

Option 9 Remove “pain and suffering” as a separate category of compensation

This is outside of our area of expertise for comment.

Option 10 Only one claim can be made for whole person impairment

We would support this change.

Option 11 One assessment of impairment for statutory lump sum, commutations and work injury damages

We support this option.

Option 12 Strengthen work injury damages

This is outside of our area of expertise for comment.

Option 13 Strengthen regulatory framework

RehabCo supports this option for change where health services or intervention does not contribute to return to work and function. There is evidence of over servicing in many service sectors in workers compensation. We do not however support regulation simply for the sake of regulation when there are existing mechanisms in place to adequately manage service delivery and health providers. In 2011, WorkCover NSW sought to gazette the fees of a financially stretched workplace rehabilitation industry without due consideration of the need for fee gazettal in the first place, appropriate fee structures, nor the financial health of the industry. No adequate rationale was provided to the Workplace Rehabilitation Provider Industry regarding the need for fee regulation.

Any strengthening of the regulatory framework that directly affects service providers needs to be done based on research and evidence around appropriate service provision and appropriate fees. Much has been said around the reduction of red tape for stakeholders in the scheme to reduce unnecessary burden and drive efficiency. We gave the example of multiple models for service delivery depending on the Agent in NSW when there is one accepted national approval framework. We would encourage the formation of a red tape task force that can issue additional operational instructions that would be used to improve the health of the scheme and eliminate red tape burden that does not drive outcomes. This could be applied for the benefit of all stakeholders while having the capacity to review specific circumstances and adapt to change.



Option 14 Targeted Commutation

We support this change as there are a number of individuals who would benefit from separation from the scheme psychosocially while at the same time this manages the future liability for the scheme as a whole.

Option 15 Exclusion of strokes/ heart attack unless work a significant contributor

We support any reform that seeks to exclude non-work related injury from eligibility for benefits under the scheme. Non-work related injury places undue strain on the scheme and significantly damages the credibility of the scheme as a whole.

Thank you for the opportunity to contribute to this inquiry.

Yours faithfully

Shaun Lane
Managing Director