INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Name: Name suppressed

Date received: 15/05/2012

Parliamentary Enquiry

The author of this submission has been an active contributor to NSW Workers Compensation Scheme for over 10 years. He manages a panel of 260 medical specialists, is a qualified psychiatrist evaluating thousands of claimants for the scheme as an independent examiner, injury management consultant and permanent impairment assessor. He is an alumnus of the Harvard Business School

Workcover NSW released a well-reasoned position paper that seeks to address the under-funded scheme. It does this by introducing sensible modifications that have the potential to save large sums of money making the protection of injured NSW workers a sustainable endeavour. The position paper broadly adopts the External Peer Review by Ernst and Young[i]. What both the position paper and the external review do not address are the more intangible, qualitative issues that may account for deteriorating claims performance with legislation and regulation that has been largely static over the past decade. This suggests that remedies may need to go beyond legislation and regulation in order to address community expectations.

The comments in this paper seek to go beyond the identified issues and remedies. This is because the offered solutions necessarily address parameters and procedures but has been silent on communication, value and leadership or more simply culture. It is a reflection on what the present government has inherited and does not reflect adversely on the momentum of reform and recent appointments.

Background

> " Culture consists of patterns, explicit and implicit, of and for behaviour acquired and transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artefacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values; culture systems may, on the one hand, be considered as products of action, and on the other as conditioning elements of further action."[ii]

According to Workcover NSW, the key contributors to the scheme are to be found in the diagram below. The diagram is an accurate reflection of the perceptions of the scheme managers and the corresponding organisational structure informs the reader about the strategic priorities of the Authority.

The question one should ask about the existing legislation and regulations is whether better performance could be extracted. The performance evidence suggests that it has not been. Why then, with the existing culture, could we expect better performance with new regulation and legislation?
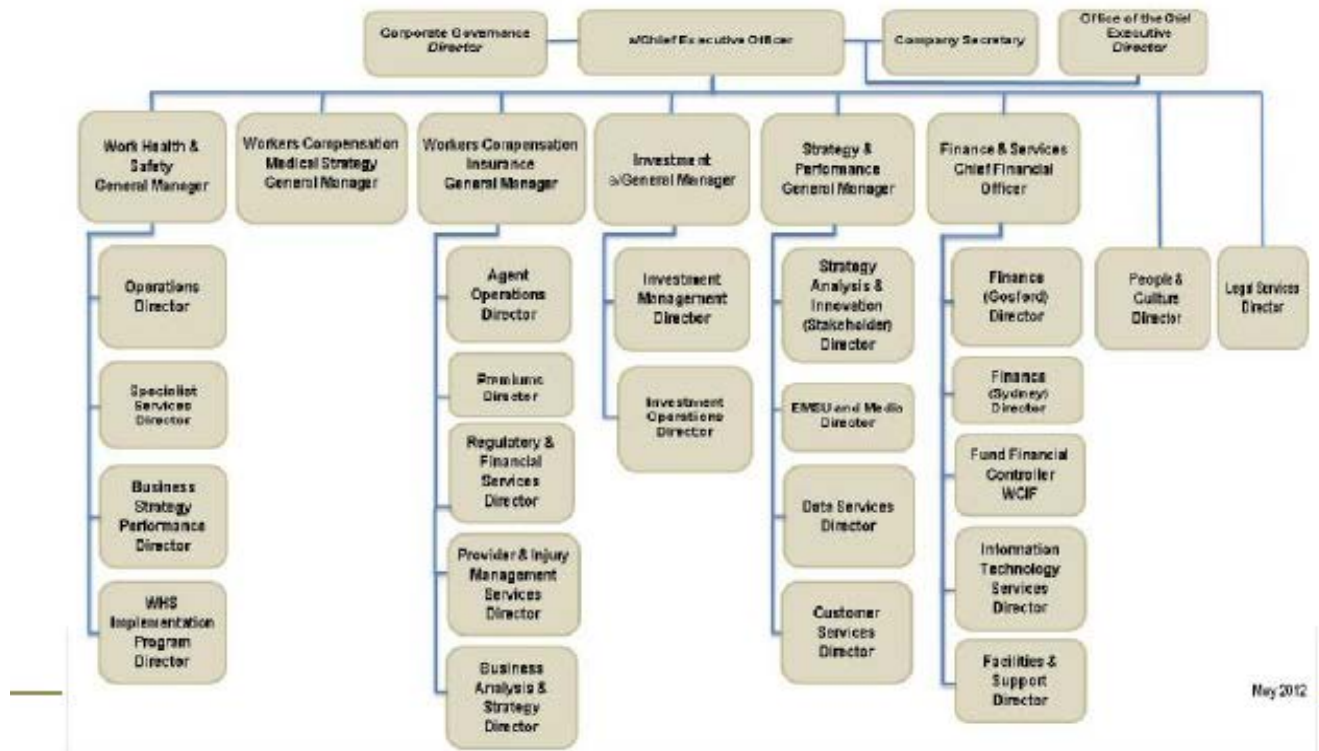
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At its most fundamental conception, the scheme was established to restore and compensate medically injured workers. However, its conceptualisation of the stakeholders and corporate structure suggests conceptual obstacles to fundamental reform.

Understanding the scheme needs, one must first examine the injury and resulting claims process before exploding the relevant necessary contributing factors. It is only after doing this can one truly appreciates the misalignment between both the conceptualisation of stakeholders and organisational structure, and the remedies for success.

The claim cycle:
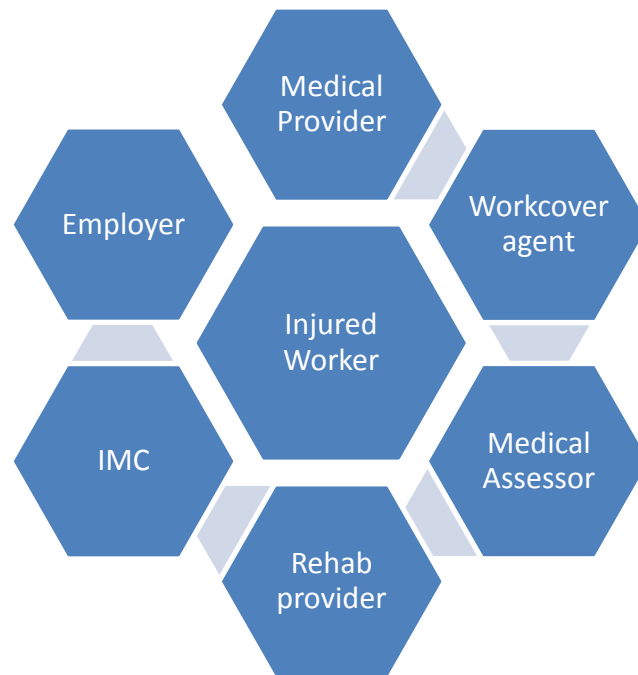
The claim cycle is iterative and simplified for this purpose. The interaction between the parties is governed by legislation and regulation.

The claim cycle is not reflected in either the organisational structure, or the map of stakeholders. It appears peripheral to the organisational imperatives. It suggests a disconnect between the day to day challenges of the scheme and the priorities of the Workcover Authority.

It is noteworthy that the despite the pivotal role of both medical providers and rehabilitation providers, neither are specifically mentioned as stakeholders by Workcover. Similarly the organisational structure reflects one general manager of medical strategy, currently with no subordinates occupying a temporary position within the organisation.

Over the last decade, there have been minor modifications that govern each of the parties above, yet the claim performance experience has continued to deteriorate. The answer is to be found in the culture of the Workcover organisation itself and its impact on each of the critical parties.

The logical question to then ask is what we know about the relevant cultural factors. One would naturally revert to feedback from claimants, agents, treating doctors, rehabilitation providers, lawyers, injury management consultants and independent examiners. Sadly there is no such data. The reader is limited to the embarrassing paragraphs on page 56 of its 2010/11 annual report[v] in which it describes 107 formal compliments over the preceding year. They do not present complaints; nor give any detail about the positive feedback. For an organisation of this size, one can infer that the presentation of such data reflects a distorted notion of the concept of feedback.

The next logical direction that such an enquiry should take would be to examine the Key Performance Indicators for Workcover staff. These should inform us about the perception of the organisation and its priorities. These parameters, if they exist, are not publicly available.

Workcover agents act on behalf of the Authority in the management of claims. Noting the EY report being highly critical of agent performance, one could ask parallel questions of the Workcover agents. Unfortunately a transparent data set on the agents is also surprisingly absent.

Workcover Agents do not formally and systematically seek feedback from claimants, medical providers, legal providers or rehabilitation providers. In short, their performance echoes that of their master.

Other inferential data could be extracted from the Authority's response to the evolving problems. There have been numerous reviews and failed implementation of recommendations. The Workcover website in summarising its own performance is quite telling;

> The Annual Report 2010/2011 included the following highlights:
> - A 51 per cent reduction in workplace injury rates in the past 10 years
> - A 66 per cent reduction in work related fatality rates since the Scheme commenced
> - $1 billion projected savings to NSW businesses in 2010/11 as a result of premium reduction since 2005
> - An 8 per cent return on Workers Compensations Fund investments
> - 84 per cent of cases resolved by the WorkCover Claims Assistance Service.

The summary is self-congratulatory when the scheme was in crisis. It is a summary that suggests both obfuscation and denial.

The problem is unfortunately not a legacy issue. It is current and can be found in a recent example provided to the Workcover Advisory Council (May 2012):

"Claims for mental disorders are stable" [vi]

This claim, presented by a Workcover GM was a self-serving representation of these claims which are increasing both in cost and claim duration. This raises many questions, not least of which was how such data could be presented in front of other Workcover GMs and an acting CEO without any critical feedback.

Close examination of the Workcover organisation shows an almost complete absence of a determination of organisational critical success factors. There is an absence of tangible strategy, critical analysis regarding internal performance, innovation pathways and performance measures. Not surprisingly then, over the past decade the scheme has deteriorated dramatically and left with only piecemeal, reactive responses to the evolving crisis.

In short, the culture of Workcover NSW is dysfunctional. It has become a highly political organisation that places compliance and regulation over performance. It is deaf to feedback, has no innovation cycle and appears unaware and incapable of tackling performance issues both within its own ranks and with that of its agents. Such observations can only point to a failure of institutional leadership.

Solutions

My recommendations to the committee are focused on the cultural issues that in my opinion have prevented the Workcover scheme from being successful and responsive to challenges.

- In addition to the legislative and regulatory changes, ***a complete organisational analysis of the Workcover Authority's needs to be undertaken.*** This requires wide consultation from a political through to operational level. Such an analysis should generate a set of critical success factors (CSF)[vii] around which a corporate strategy can evolve.
- ***The results of an organisational audit should then be incorporated into a Balanced Scorecard (BSC)[viii] type approach*** at an organisational and specialised business unit level. The BSC could then be used as a public template upon which the performance of the organisation may be measured. This would necessarily include financial and human performance metrics deemed critical for the success of the organisation.

Such a process could be compelled upon the agents with reporting data to be publicly available on a quarterly basis for evaluation and possible remedy. It could be reasonably linked to the agents' ongoing licence retention, market share and remuneration.

Only after an organisational review, can Workcover establish a meaningful remuneration model for agents. Only after this review can Workcover reliably evaluate its own existing skill-set and leadership to determine if there are internal deficiencies and the potential remedies.

- ***A separate Workcover Ombudsman may be necessary to monitor the Workcover Authority and its agents.*** This could assist in depoliticising the agency and giving the public greater transparency in its operations.
- ***Feedback to the Authority on the Authority should be routine, regular and systematic***. It should be built into Key Performance Indicators and incorporated into the remuneration models of both employees and institutions.
- There must be ***transparency in performance*** of the ***Authority*** and its specialised business units.
- ***The lack of leadership throughout the scheme must be urgently addressed*** and be implemented at the level of Workcover Board, Executive management and be closely monitored and fostered in scheme agents.
- ***Future improvements to the scheme should be incremental*** to facilitate predictability and diminish the perceived threats to injured workers in order to avoid stress and disruption to services.

[i] Ernst and Young 31st December 2011
[ii] Kroeber, A.L., & Kluckhohn, C. (1952). *Culture: A critical review of concepts and definitions.* Harvard University Peabody Museum of American Archeology and Ethnology Papers 47
[iii] Workcover Authority of NSW Business Overview (current)
[iv] Ibid
[v] Workcover NSW Annual Report 2010/2011 p 56
[vi] Occupational Disease and Wellbeing Strategy 2011-2015
[vii] Chung, Kae H., Friesen, Michael E., "The CSF Approach to Management at Boeing," *Journal of Management Systems*, Summer 1991, pp. 53-63
[viii] Putting the Balanced Scorecard to Work", Harvard Business Review, Sept. 1993