

**Submission
No 253**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Work Options Pty Ltd

Date received: 17/05/2012

15th May 2012

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

RE: Submission to NSW Workers Compensation Parliamentary Inquiry

Thank you for the opportunity to make a submission to the Inquiry into the NSW Workers Compensation Scheme. As the Director of a private Rehabilitation Provider (Work Options) for 11 years, 16 years industry experience, a Council Member of the NSW Rehabilitation Providers Association (ARPA NSW) and as a business owner, I believe I have significant understanding of the Scheme and can offer valuable insight into this Inquiry. I make this submission on behalf of Work Options.

Firstly, I would like to acknowledge and thank the NSW Government for initiating such a critical review and inviting input from all stakeholders. I am pleased that the review includes both the legislation and the regulatory bodies governing the Workers Compensation Scheme in NSW. This is critical to fully responding to the deteriorating performance of the Scheme. I firmly believe that any reform must reflect the needs of all stakeholders and promote the principles of a fair, affordable, efficient and financially sustainable scheme.

Alignment with key reform principles

Work Options acknowledges the information contained in the Terms of Reference of this Joint Select Committee and support the seven principles outlined in the NSW Workers Compensation Scheme Issues Paper. The principles are aligned with the philosophy of the rehabilitation industry. We have provided detailed comment below.

(i) Enhance NSW workplace safety by preventing and reducing incidents and fatalities

Work Options support this principle fully. Work Options provides both injury prevention and management services to employers across Australia and are intricately involved in industries including retail, waste management, road transport and civil construction. Our prevention services include employer education & training, assisting with compliance, implementing injury management, WHS & risk management systems. We also specialise in the management of drugs & alcohol in the workplace. As such, we see the critical importance that the focus on injury prevention plays in keeping employees safe, minimising cost of workplace injuries and the cost to the scheme.

(ii) Contribute to the economic and jobs growth, including for small businesses, by ensuring the premiums are comparable with other states and there are optimal insurance arrangements

Work Options supports the principle of keeping premiums to a minimum. As noted in the Issues Paper the largest cost of workers compensation claims is weekly benefits. We see daily the economic pressure facing employers across Australia, and NSW employers are suffering much more than most with their high premiums. Our fear is if even further premium rises occur employers will cut costs by reducing spend on safety initiatives.

(iii) Promote recovery and the health benefits of returning to work

Work Options support this principle fully. Any reform must have rehabilitation and the return to work process at the heart of it. This must include early referral to rehabilitation – currently the average delay to referral is 31 months, well past the point of optimising return to work effectiveness. This is supported by numerous international and Australian research and is discussed in more detail below. The research also strongly supports the benefits of work on employee health. The rehabilitation industry's very existence and focus is exactly this ethos – staying at work is healthy both from a physical and psychological perspective. The culture of the current medical model is 'get better, then return to work' – a *wait and see* approach in which compensation is considered the end goal. Rather, the culture must change to 'stay at work' and that injury



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doesn't equal incapacity for all work. It is critical that the scheme embeds this philosophy in its legislation and operational aspects of the regulator and Agents for real change to be successful. Currently the average delay from date of injury to referral to a rehabilitation provider is 31months. By this time numerous other factors have come into play which significantly reduce the chances of successful return to work being achieved, e.g. disengagement between employer and employee, loss of skills, work-fitness, depression and frustration.

Work Options strongly recommend mandating early referral to rehabilitation. The work capacity test could be used as a trigger. This should be included in the operational review taskforce.

(iv) Support less seriously injured workers to recover and regain their financial independence and

(v) Guarantee quality long term medical and financial support for seriously injured workers

Work Options supports these fully. However, Work Options would recommend that these injured workers also receive rehabilitative assistance tailored to the special needs of this cohort, including consideration of higher employer incentives for employing these workers. Work Options currently provides employment assistance to disability workers under the Federal Govt's Disability Employment Scheme. We work with various long-term and significantly disabled persons and are able to assist many into rewarding and sustainable employment. Therefore, it is possible for even those seriously injured workers to return to suitable and durable employment.

(vi) Reduce the high regulatory burden and make it simple for injured workers, employers and services providers to navigate the system

Work Options supports this fully. The current system is burdened with bureaucracy and significant administrative tasks which compromise and undermine the focus of returning injured workers to work. As an example, a National Approval Framework for Workplace Rehabilitation Providers was bought in following the Heads of Workers Compensation Authorities (HWCA) review & recommendations for harmonisation. It was strongly supported by the rehabilitation industry. This governs how services to injured workers should be



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delivered in line with best practice principles. Each Rehabilitation Provider is accredited under this framework and went through a lengthy and costly process to align to the model. However in NSW each Scheme Agent (and even different groups within Agents) has developed their own models for service delivery, documentation and reporting requirements and these change frequently. This forces rehabilitation providers to spend enormous amounts of time and cost establishing separate systems, data collection (including IT re-programming), reporting procedures and training staff on all the nuances, when a perfectly good nationally agreed framework already exists.

Work Options also operates under the Victorian workers compensation scheme which utilises one service model, one set of documentation and has recently introduced one data report – across all Scheme Agents. Further, we operate under the Federal Govt's Disability Employment Services scheme which has one Deed. It monitors performance closely, however, does not interfere with day-to-day servicing. Therefore, comparatively the administrative burden is significantly lower and simpler.

(vii) Strongly discourage payments, treatments and services that do not contribute to recovery and return to work

Work Options support this fully. Treatment and services must contribute to recovery and return to work, not create long term dependency. The focus of the rehabilitation industry is the *'right service, at the right time for the right price'*. The current medical model is in direct conflict with this ethos and the principle of early return to work – using the *'wait and see'* approach.

Work Options recommend strengthening the existing decision-making powers of independent medical examinations and Injury Management Consultants in relation to the need for ongoing treatment beyond recommended (existing) treatment guidelines.

THE NEED FOR EARLY INTERVENTION – additional proposed principle

Work Options believe this principle should be included as a separate principle to '(iii) promoting the health benefits of return to work'. The benefits of return to work are well supported by research and stakeholders, however, it is compromised if it is not in line with early intervention. The rehabilitation industry has long supported shifting the intervention of rehabilitation services to the front-end, rather than the current average delay to referral of 31 months.

There has been much conjecture about the success of workplace rehabilitation, however, our strong view is that it is the poor application of the timing and use of rehabilitation services that is the real issue. There has been much energy, time and cost spent by Agents and WorkCover on 'tightening the reins', changing fee models and increasing process around rehabilitation services - with no impact on return to work rates. It is difficult to understand WorkCover's reasoning to over-regulate a portion of the industry, which represents such a small percent of the overall cost, yet plays such a vital role in reducing the largest cost – weekly benefits.

Our long held view, and that of the workplace rehabilitation industry, is simply move the rehab spend (not increase it) to the front-end of the claim – *'the right service, at the right time, at the right price'*, as all the evidence supports, will have far more positive impact on return to work rates, the health and well-being of the injured worker and reducing the cost of claims for the employer and scheme.

As noted by ARPA NSW: *"Research completed by Casey in 2011¹ supports this framework within the WorkCover NSW context. The study quantitatively demonstrated that the greater the delay in referral for rehabilitation assistance, the less likely the injured worker would achieve a positive RTW outcome and the higher the costs incurred on the claim. Cases referred within the first 12 months post-injury achieved a much*

¹ Casey, P (2011). Effectiveness of Rehabilitation: RTW Outcomes. Report 4 of 4 prepared for Australian Rehabilitation Providers Association, April 2010.



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higher RTW rate, and had a significantly shorter period of rehabilitation at a significantly lower cost, than those referred after 12 months.

In the extensive literature review conducted by Cortex, the study's conclusions were corroborated by volumes of quantitative research evidence, both nationally and internationally, showing that the longer an injured worker is off work, the less the chances are of being able to achieve a successful RTW outcome.

These findings are significant when put into the broader context of the referral system under WorkCover. The Study found that the average time from injury to referral to a workplace rehabilitation provider was a staggering 31 months, and the greatest proportion of claims were referred to workplace rehabilitation provider more than 2 years after the initial injury. Automatically, the probability of a successful RTW outcome after 31 months is less than optimal.

Based on the above findings this 'wait and see' approach, creates 'the tail', a collection of long-term, neglected cases whose chances of a successful RTW outcome are very low. This is significant not only in its own right, but because these tail claims contribute to 75% of total claim costs in the long term and significantly disrupt injured workers' lives.

Further analysis by Casey demonstrates the potential cost savings of earlier referrals to workplace rehabilitation providers. The results, in the multi-millions of dollars, are hugely significant".

Response to Options Outlined in the NSW Workers Compensation Issues Paper

1. Improve benefits for severely Injured Workers

Support this option fully.

2. Removal of coverage for journey claims

Support this option fully.

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

Support this option fully.

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

Support this option fully on the basis that it is currently difficult and confusing for stakeholders to understand and apply.

5. Incapacity payments-total incapacity

Support this option fully. Work Options respectfully suggests for non-seriously injured workers consideration to the following:

95% pre-injury earnings upto 12 weeks

90% from 13-26 weeks

85% from 27-52 weeks

75% from 53-104 weeks

A review at 104 weeks should occur. The argument here is that non-seriously injured workers should not be expected to have total incapacity beyond 104 weeks.

6. Incapacity payments-partial incapacity

Support this option fully. Work Options respectfully suggests for non-seriously injured workers:

95% pre-injury earnings upto 12 weeks

90% from 13-26 weeks

85% from 27-52 weeks

75% from 53 weeks

A review at 156 weeks (3yrs). The argument here is that this should be sufficient time to provide appropriate rehabilitation support into a suitable job equal to pre-injury hours. A minimum level of rehabilitation service

(i.e. skills assessment, vocational counselling, retraining, job seeking support) would be required to ensure the injured worker is properly and fully supported.

7. Work Capacity Testing

Support this option fully. Work Options respectfully suggest the following:

- That work capacity testing (WCT) be undertaken separately from the treating doctor. Currently the treating doctor determines work capacity based (usually) on the injured worker's self-report about their capacity, their duties and their employer. This is often an ill-informed view. The treating doctor should continue to provide treatment and referral for other treatment services.
- That WorkCover set-up approved assessors with specific allied health qualifications and workers compensation experience to conduct the work capacity testing and whose decisions are binding. For example, under the Dept. of Employment, Education & Workplace Relations the Job Capacity Assessment is utilised to determine: work capacity and related benefits; rehabilitation and support needs; and connect the individual with appropriate services. Much of the learning and experience from the introduction and use of the job capacity assessment could be applied to the proposed Work Capacity Test. Work Options believe the rehabilitation industry already has the skill set and experience to conduct these tests.

Alternatively, the Scheme currently has Injury Management Consultants (IMC) (approved by WorkCover) who could take on this role. IMC's have specialist training in workers compensation and return to work matters.

- That minimum frequencies for work capacity tests are set, such as:
 - Within 3 days of a significant injury (i.e. requires >7 days off work) occurring – this will set an initial benchmark and place the focus upfront on returning and staying at work
 - 2 weeks prior to each benefit step-down



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- At injured worker, employer or Agent request. Work Options believe some guidelines may assist on determining when appropriate to request – this could be developed by the operational taskforce.

8. Cap weekly payment duration

Support this option fully.

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

Support this option fully.

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

Support this option fully.

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

Support this option fully.

12. Strengthen work injury damages

Support this option fully.

13. Cap medical coverage

Support this option fully.

14. Strengthen regulatory framework for health providers

Support this option fully.

15. Targeted commutation



Support this option fully.

16. Exclusion of strokes/ heart attack unless work a significant contributor

Support this option fully.

Thank you again for the opportunity to respond to this critical reform process. Should you require any further information please do not hesitate to contact me on.

Yours truly,

Karen Castledine
Managing Director
Work Options