

**Submission
No 141**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Australian Physiotherapy Association

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Executive Summary

The NSW Government has recently released a *NSW Workers Compensation Scheme Issues Paper* (the Scheme) that proposes seven reform principles to make the Scheme more effective and economically viable.

The costs of the current Scheme are increasing, despite declining claim numbers, which indicates that injured workers are continuing to receive WorkCover benefits for longer periods of time. Better management of the Scheme is expected to provide for improved rehabilitation outcomes and greater return to work rates. Another key objective of the Scheme reforms is to make the Scheme more affordable for employers by reducing annual premium payments.

High WorkCover premiums adversely impact business profit margins for NSW employers and to impede the competitiveness of the NSW economy, as compared with competitor states.

To help address these issues, the APA's advice is that:

Income replacement benefits

- the Scheme should aim to reduce further the specific amount of income replacement benefits based on an injured person's capacity to return to work and earn an income;

Injury prevention and early intervention

- injury prevention is important in reducing claim costs and occupational health physiotherapists are uniquely qualified to provide appropriate advice regarding restructuring of the workplace environment and the safe use of work equipment to prevent injury;
- WorkCover should support early intervention, through the provision of evidence-based treatment that would assist an injured worker to maximise function and return to work more quickly;
- all physiotherapists operating within their scope of practice are able to treat injured workers, as well as provide preventative programs;
- APA-titled and specialist physiotherapists are highly qualified and their use is essential and likely to be cost-effective, especially in more difficult and complex cases where increased function and/or earlier return to work is more problematic;
- The APA is keen to work with WorkCover in establishing the processes for referral to Titled Physiotherapists and Specialist Physiotherapists;
- WorkCover should support the provision of access to the most appropriate physiotherapist who can treat the condition at hand and that injured workers should exercise freedom of choice in selecting the physiotherapist best able to treat their injury;

Increased incentives to return to work and return to function

- in order to maintain a perspective of injured workers' likely physical capabilities, and a focus on return to work, regular capacity testing for workers should occur at three- to six-month intervals following injury to encourage early return to work and return to function;
- workers whose injuries are less serious should have greater incentives to return to work, whilst more seriously injured workers should receive increased weekly benefits and lump sum compensation payments;

Cap on medical benefits

- access to medical and related treatment should cease when the treatments are deemed by suitable health professionals to be no longer necessary to facilitate recovery and durable return to work, provided that each claim is assessed on a case-by-case basis;
- WorkCover should not apply a medical cap that proposes a blanket cessation of payments after some arbitrary time, but should instead adopt a review of the injured worker's condition by the appropriate healthcare provider at intervals not exceeding two years;

- a cap on medical payments should not be applied to restrict the rights of catastrophically injured and severely and permanently impaired workers to access lifelong medical and related treatments necessary for survival;

Improving scheme affordability

- the APA supports a collaborative partnership between Independent Consultants and treating providers to facilitate a peer review process focused on achieving the best health outcomes for injured workers and the best return-to-work outcomes;
- it is important to assess individually the needs of each injured worker to ensure that a person-centred approach facilitates access to the most appropriate healthcare and support. A person-centred approach to assessing claims should reduce the costs to the Scheme by ensuring that all workers are provided with an appropriate level of care to facilitate return to function to the best extent possible and to prevent long-term reliance on WorkCover benefits;
- WorkCover NSW should abolish the top-up system to discourage persons with less serious injuries from claiming compensation and review the threshold levels to ensure that only legitimate claims are compensated under the Scheme;
- physiotherapists should be able to write WorkCover Certificates of Capacity for the injured workers they are treating, provided the Certificate relates to injuries that fall within a physiotherapists' scope of practice;

Punitive measures

- WorkCover should be able to bar a service provider from accessing funding through the WorkCover system where a provider is found to be in breach but WorkCover should firstly adopt conciliatory/educational measures before moving on to more punitive action;
- WorkCover should be provided with the necessary authority to recover monies paid where there is clear evidence of fraud. WorkCover should explicitly define what constitutes fraudulent claiming, and disseminate this information widely, and the APA should be involved in the development of such guidelines.
- WorkCover should not, however, have legislative authority to recover payment for services that were pre-approved by the insurer.

Consultative mechanisms

- a consultative mechanism should be established between Independent Physiotherapy Consultants, insurers and the physiotherapy profession to facilitate best practice outcomes, expedited recovery, and early return to work for injured workers; and

Workers Compensation Commission Panel

- the Workers Compensation Commission should incorporate physiotherapists and/or Independent Physiotherapy Consultants, as these health professionals are most qualified to resolve conflicts relating to physiotherapy management at a workers compensation commission level.

Australian Physiotherapy Association

The Australian Physiotherapy Association (APA) is the peak body representing the interests of Australian physiotherapists and their patients. The APA is a national organisation with state and territory branches and specialty subgroups. The APA corporate structure is one of a company limited by guarantee. The organisation has approximately 12,000 members, some 70 staff and over 300 members in volunteer positions on committees and working parties. The APA is governed by a Board of Directors elected by representatives of all stakeholder groups within the Association.

The APA vision is that all Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing. The APA has a Platform and Vision for Physiotherapy 2020 and its current submissions are publicly available via the APA website www.physiotherapy.asn.au.

Submission to NSW Workers Compensation Scheme Inquiry

Background

The NSW Government has proposed reforms to the state Workers Compensation Scheme, as the current Scheme is functioning on a deficit and not achieving desirable return to work outcomes. The NSW Scheme operates under the legislative framework of the *Workplace Injury Management and Workers Compensation Act* (1998) and *Worker's Compensation Act* (1987).

Data from 2008-2009 indicates that in NSW 3,008,600 employees were covered by the workers compensation scheme, which is almost a million more employees than that of the next highest state of Victoria. Of the total number of employees currently covered by the Scheme, the number of serious claims (with 1 week or more incapacity) was 42,640. This is almost double the rate of claims in Victoria (24,130) and still significantly higher than Queensland (31,060)¹.

At present, the NSW Scheme is the least cost-effective Scheme when compared with compensable schemes in other jurisdictions across Australia.

A problem with the current Scheme is that there are insufficient financial disincentives for employees to return to pre-injury duties and instead many injured workers remain on WorkCover benefits for several years after the date of injury. There is also insufficient focus on injury prevention measures and the significant number of injured workers receiving WorkCover benefits in NSW has greatly increased the costs of the compensable Scheme. This gives rise to a serious concern that there may well be insufficient funds in future to cover the costs of income replacement and medical expenses for injured workers in NSW.

The suggested Scheme proposes seven reform principles, focusing broadly on safety education to prevent and reduce workplace incidents and fatalities and providing for affordable and competitive premiums for NSW employers. In addition, the proposed Scheme focuses on reducing the regulatory burden for NSW businesses and injured workers. The provision of quality, long-term, medical and financial support for seriously injured persons is a key component of the proposed Scheme, as is the focus on supporting less seriously injured persons to return to work. To facilitate an early return to work, the Scheme reforms seek to discourage payments and treatment services that do not directly facilitate return to work.

The proposed reforms are intended to ensure the long-term sustainability of the Scheme by making the Scheme more economically viable. The new Scheme is intended to provide adequate healthcare for all injured workers now and into the future and would keep premiums affordable for NSW employers.

The Australian Physiotherapy Association (APA) upholds that worker rehabilitation is a managed process that involves early intervention and provision of quality health services based on assessed need. The aim of worker rehabilitation should be to assist injured workers to return to work as soon as possible.

The APA supports reforms to the NSW Workers Compensation Scheme so far as the reforms encourage early return to work and are commensurate with improving health outcomes. The APA acknowledges the value of making the Scheme more sustainable in the long term, as the APA considers that a financially viable Scheme will be able to better support all injured workers through provision of access to suitable healthcare services and income support. This submission will comment on the most appropriate ways to implement the proposed reforms to better achieve the objectives of early intervention, expedited return to work for injured employees and improved health outcomes.

1. The performance of the scheme in promoting better health outcomes and return to work

1.1 Financial disincentives to remain on WorkCover benefits

Under the current WorkCover system, there is no incentive for injured workers to give up WorkCover benefits and return to work. At present, injured workers receive a special benefit for a twelve-month period while they are looking for work and if suitable duties are not available in their area.

When an injured worker returns to work, top-up weekly compensation benefits are paid up to the amount the worker would have received if the worker was totally incapacitated. Under such a system, there is no incentive for the injured worker to reduce their dependence on weekly payments by increasing the hours they work. The top-up weekly compensation system creates a financial 'safety net', so workers have little incentive to increase their working hours gradually and return to function.

If the weekly top-ups were reduced as a worker's capacity to work increased, this would provide an incentive for workers to return to work sooner.

The *Issues Paper* has acknowledged that some Australian jurisdictions have weekly benefit schemes which incorporate 'step downs' or reductions, after 13 weeks, to encourage workers to return to work.

The proposed Scheme would seek to introduce a cap on weekly payment benefits. The *Issues Paper* proposes that such a cap may well assist workers with a lower level of permanent impairment to return to work quicker. A cap on payments may well provide a fixed timeframe during which an injured worker knows they have to recover and work towards a certain level of work readiness.

This is a noble objective however the APA would caution that financial disincentives alone may not be sufficient to encourage return to work. The APA contends that it is necessary to combine financial disincentives with appropriate provisions in the Scheme for healthcare and support services that encourage recovery and expedited return to work.

The APA supports a workers compensation Scheme that aims to reduce further the specific amount of income replacement benefits based on an injured person's capacity to return to work and earn an income.

The APA contends that early intervention is especially necessary to ensure that workers' injuries are stabilised earlier and that the cap on payment duration is aligned with appropriate recovery measures.

1.2 Physiotherapists as consultants in prevention of injury

It is obvious that one of the most efficient ways to decrease the cost of a workers compensation scheme is to decrease the incidence of injury by increasing the investment in prevention.

Physiotherapists are often regarded solely as providers of injury treatment. However, they have the required diagnostic and clinical reasoning skills, knowledge of anatomy, and biomechanical understanding of injury to facilitate a specific and holistic approach to injury prevention.

Physiotherapists can work in consultation with employers to help create a safer work environment, whether that be in an office, a more dangerous location such as a mine, or with professional sportspeople. Physiotherapists often work with the direct support of workplace representatives to provide advice regarding aids, equipment needs and modifications and organisation of supplied equipment to help create a safer work environment and prevent workplace injuries.

The APA contends that injury prevention is important in reducing claim costs and that physiotherapists are uniquely qualified to provide appropriate advice regarding restructuring of the workplace environment and the safe use of work equipment so as to prevent injury.

Accordingly, the APA recommends that the NSW Government, through Workcover, place a high priority on injury prevention strategies to minimise the impact of potential injury claims.

1.3 The importance of early intervention in encouraging early and durable return to work

Early and durable return to work by injured workers reduces the cost of the workers compensation scheme.

It is generally accepted that the longer a worker remains absent from work, the more likely they are to remain off work on a long-term or permanent basis².

Successful return to work is usually the result of four inter-related factors: early intervention, an effective workplace-based rehabilitation program, effective claims management, and consultation between stakeholders³.

Early intervention for injured people improves health, social, financial, interpersonal and intrapersonal outcomes by promoting recovery and preventing long-term disability and work loss.^{4,5}

Through early intervention, physiotherapists can identify and treat the onset of many conditions and injuries before they progress to be chronic and therefore costly to the workers compensation scheme.

It is also important that early intervention be in the context of an effective workplace-based rehabilitation program so that physical interventions provided by physiotherapists in the clinical environment are then transferred to the workplace. For example, the practice of lifting a box in a clinic is designed in manner that ensures the injured worker is able to have the physical capability and confidence to lift a box in the same manner at the workplace. Unfortunately, it is increasingly common that the specifics of work requirements are often not known until later on with the design of intervention being hindered by this lack of specific information.

By knowing the physical requirements of the workplace earlier, physiotherapist can design specific interventions that have a direct impact on the return to work process and physical capability of the worker. As such, the early undertaking of a workplace assessment by physiotherapists (or appropriate other provider) should be undertaken to enable the design of appropriate interventions that maximise early and durable return to work

The APA contends that WorkCover should support early intervention, through the provision of early workplace assessments and evidence-based treatment that would assist a worker to maximise function and earlier return to work more quickly.

1.4 Recognition and Use of Titled and Specialist Physiotherapists

All physiotherapists have capacity to treat injured workers provided the physiotherapists operate within their scope of practice ie, use interventions in which they have appropriate training and experience.

Indeed, evidence has clearly demonstrated that experienced physiotherapists have higher levels of knowledge in managing musculoskeletal conditions than medical students, physician interns and residents, and all physician specialists except for orthopaedists⁶. When magnetic resonance imaging (MRI) was used as the gold standard, the diagnostic accuracy of physiotherapists for clients with musculoskeletal injuries was found to be as good as that of orthopaedic surgeons and significantly better than that of non-orthopaedic providers⁷.

The APA National Physiotherapy Service Descriptors for 2012 identify a Level 1 physiotherapist as an APA member, a Level 2 physiotherapist as an APA-titled member (clinical Masters degree or equivalent), and a specialist physiotherapist as a practitioner who is a Fellow of the Australian College of Physiotherapy. These service descriptors clearly identify the increasing level of expertise within the physiotherapy profession.

Just as more difficult and complex medical cases will sometimes be referred to medical specialists, the APA submits that more difficult and complex cases be referred to titled and specialist physiotherapists where such referral could result in improved treatment outcomes such as increased capacity, earlier return to work and reduced compensation costs.

The APA contends that all physiotherapists operating within their scope of practice are able to treat injured workers (as well as provide preventative programs).

APA-titled and specialist physiotherapists are highly qualified and their use is essential and likely to be cost-effective, especially in more difficult and complex cases where increased function and/or earlier return to work is more problematic.

The APA is keen to work with Workcover in establishing the processes for referral to Titled Physiotherapists and Specialist Physiotherapists.

1.5 Worker's choice of practitioner

The APA's experience with health fund preferred-provider schemes is that they fail to recognise the differing levels of experience and additional training that different physiotherapists may have.

The APA is concerned that WorkCover might introduce contractual arrangements on a take-it or leave-it basis, as is the case with private health insurers, and that WorkCover could restrict the number of physiotherapists able to provide services to injured workers.

Injured workers are entitled to receive the same level of service that they would in the community. This includes the right to choose the practitioner that they feel meets their needs. Choice of practitioner provides the worker with the opportunity to take ownership of the management of their own injury.

The APA contends that WorkCover should support the provision of access to the most appropriate physiotherapist who can treat the condition at hand but the APA strongly advocates that injured workers should have freedom of choice in selecting the physiotherapist best able to treat their injury.

1.6 Collaborative Peer Review by Independent Consultants (ICs)

Under the current Scheme, WorkCover appoints Independent Consultants (ICs) such as Independent Physiotherapy Consultants (IPCs) and Injury Management Consultants (IMCs) to review treatment of injured workers provided by their respective provider peers

Referral to ICs can occur either by referral from the treatment provider or the insurance case manager. In most cases however, it is the insurance case manager that makes a referral to an IC later on in the claim. As a consequence it is a common perception of APA physiotherapists (and other professions) that the involvement of ICs is adversarial rather than collaborative. The APA believes that improved mechanisms supporting the early (rather than late) involvement of ICs by the treating providers, would encourage a greater collaborative relationship that greatly assists in the achievement of the best outcomes for injured workers

The APA therefore supports a collaborative relationship between ICs and treating providers and believes that in such a relationship ICs can provide education and advice to the treating provider about how to achieve good treatment and return-to-work outcomes. The APA also acknowledges that ICs can assist WorkCover to reduce the costs of treatment by recommending cessation of

treatments that are not reasonably necessary. However, collaborative peer reviews, undertaken early and focussing on effective management, are likely to ensure the delivery of only reasonably-necessary interventions.

The APA supports a collaborative partnership between Independent Consultants and treating providers to facilitate a peer review process focused on achieving the best health outcomes for injured workers and the best return-to-work outcomes. The APA is keen to work with Workcover on improving the mechanisms that enable referral for early peer review by the treating provider for injured workers that are challenging and/or not improving.

1.7 Capacity testing injured workers for earlier return to work

At present, there are no provisions in the NSW WorkCover system for work capacity testing at specified points of the claim.

In order to maintain a perspective of injured workers' likely physical capabilities, and a focus on return to work, the APA recommends that regular capacity testing for workers should occur at three- to six-month intervals following injury to encourage early return to work and return to function.

2. The financial sustainability of the scheme and its impact on the NSW economy, job growth and state competitiveness

2.1 Inequity in payments for seriously injured workers compared with less injured workers

Under the current Scheme, payments for seriously injured workers are barely above the poverty line⁸. Up to 26 weeks, the injured worker is paid 100% of their pre-injury earnings if under an award or industrial agreement and 80% of their pre-injury earnings if not under an award or agreement. After 26 weeks, the statutory rate of benefits for injured workers drops to \$432 for a single person, with allowances for dependants.

Less seriously injured workers are not encouraged effectively through financial incentives to return to work. Such inequities between seriously and less seriously injured workers are expensive for the Scheme, as many workers with less serious injuries remain on WorkCover for lengthy periods of time. This is because the current system provides little financial incentive for recovery and early return to paid employment.

The APA recommends that workers whose injuries are less serious should have greater incentives to return to work, whilst more seriously injured workers should receive increased weekly benefits and lump sum compensation payments.

2.2 Improving Scheme affordability

The cost of the current Scheme is increasing at an unsustainable rate and currently operates at a deficit of \$4 billion. With a current claims liability of roughly \$14 billion, there is a real concern that Scheme funds may be insufficient to meet the costs of all workers compensation claims in future⁹.

At present, employers pay premiums based on actuarial forecasts of claim costs, and rates are generally pooled across similar risk-profile groups¹⁰. The increasing costs of operating the Scheme give rise to increasing premiums, which have the potential to affect small businesses adversely in NSW which may not be able to meet the administration expenses of running a small business as well as meeting payments for workers compensation insurance premiums. Rising premiums

discourage investment in NSW businesses and impede the competitiveness of local state businesses, compared with businesses in jurisdictions with lower premiums.

The APA contends that it is important to assess individually the needs of each injured worker to ensure that a person-centred approach facilitates access to the most appropriate healthcare and support. A person-centred approach to assessing claims should reduce the costs to the Scheme by ensuring that all workers are provided with an appropriate level of care to facilitate return to function to the best extent possible and to prevent long-term reliance on WorkCover benefits.

2.3 Reform proposal to cap benefits for medical and related treatment

The current Scheme does not provide for a cap on benefits for medical and related treatment and many injured workers, including those who have retired, have access to medical treatment several years after their injury has stabilised. The only current requirement that exists in NSW is that medical expenditure above \$50,000 requires regulator approval¹¹.

A central problem is that WorkCover has limited power to discontinue payment for medical treatments and services that do not contribute to recovery. Section 52A of the *Worker's Compensation Act* (1987) provides that weekly payments for partial incapacity for more than two years can be discontinued if the worker is not suitably employed, or is not seeking suitable employment or participating in rehabilitation, and if the worker has previously unreasonably rejected suitable employment¹². No such legislative provisions exist for cessation of medical benefits.

The APA would support a reform to the Scheme that makes provision for medical treatment to cease after a certain period of time but only following careful and robust assessments of the injured worker by a multi-disciplinary panel of health professionals who are suitably qualified to make such an assessment. The APA does not support applying a blanket medical cap after an arbitrary period of time such as two or three years.

The APA proposes that a review be conducted at regular and appropriate intervals to assess the nature and progression of the injury sustained and to assess whether ceasing treatment is clinically justifiable. As to the question of exactly how frequently such a review should be carried out, the APA would propose that this should be judged by the healthcare provider panel but that a re-assessment of the injured worker should be carried out no later than two years following injury. This timeframe is proposed acknowledging that at times patients with chronic conditions may access healthcare treatment such as physiotherapy in "bursts", often with six-month delays between treatment consultations. This is because the symptoms of the condition may subside for a period of time and become manageable, only to return again at a later period of time.

The APA would support cessation of medical and related treatments when the treatments are deemed by suitable health professionals to be no longer necessary to facilitate recovery and durable return to work, provided that each claim is assessed on a case-by-case basis.

The APA submits that WorkCover should not apply a medical cap that proposes a blanket cessation of payments after some arbitrary time, but should instead adopt a review of the injured worker's condition by the appropriate healthcare provider at intervals not exceeding two years. This review should include a comprehensive health assessment of the injured worker to decide if further treatment is necessary to facilitate recovery, rather than adopting a general cap on payments after a certain period of time.

The APA cautions against a medical cap that in any way compromises the rights of catastrophically injured and severely and permanently impaired workers to access medical and related treatments for the duration of their lifespan.

2.4 Reform proposal for WorkCover lump sum benefit payments

Under the current Scheme, the threshold or level of impairment an injured worker must reach, for claiming a lump sum payment for whole person impairment (WPI) is 1%. This is a very low medical assessment threshold. For primary psychological injury, the threshold is 15% WPI and for binaural hearing loss the impairment threshold is 6% WPI. In assessing eligibility for compensation for pain and suffering, the threshold for physical injury is 10% WPI and for primary psychological injury it is 15% WPI.

A problem with the present Scheme is that workers frequently make successive or top-up claims for deterioration following the work injury and this succession of claims can increase their overall impairment assessment to 15%, which is the threshold for claiming a common law claim¹³. What this means is that a worker can claim a lump sum benefit for permanent impairment by meeting a low 1% threshold, but at the same time top-up and combine successive claims (say an ankle injury, a wrist injury and back injury) to claim under common law. Other jurisdictions do not offer separate compensation for pain and suffering and states such as Victoria do not make allowance for successive top-up claims.

As at 30 September 2010, lump sum benefits were set at \$200,000 (plus an additional 5% for permanent impairment of the spine). The maximum amount for pain and suffering was set at \$50,000.

The APA submits that the thresholds for lump sum benefit payments are inappropriate because the threshold for WPI is set quite low, enabling almost all injured workers to claim a lump sum impairment benefit payment, and 'top-ups' serve to exaggerate further the overall level of impairment.

The APA supports the provision of a fair and equitable WorkCover scheme and, to this end, considers that WorkCover NSW should abolish the top-up system to discourage persons with less serious injuries from claiming compensation and review the threshold level to ensure that only legitimate claims are compensated under the scheme.

The APA recommends that a revised scheme emphasises the value of physiotherapy intervention in assisting WorkCover to assess the extent of a worker's impairment and to educate injured workers to self-manage their pain and to use work equipment safely to prevent further injury.

2.5 WorkCover Certificates and unnecessary administrative burdens

Under the present Scheme, WorkCover Certificates of Capacity are required to be written and approved by the Nominated Treating Doctor (NTD). Often the injured worker attends the physiotherapists, and following this is reviewed by the NTD for the completion of working and physical capacity. This results in increased costs to WorkCover, which has to cover the costs of the physiotherapy consultation and the costs of a subsequent NTD consultation. It is also an unnecessary administrative burden because the NTD is seeing the same patient to fulfill an arbitrary, administrative requirement.

Furthermore, the establishment of work capabilities is the result of the NTD's estimation of the worker's capability, without the vital information from the treating physiotherapist. The APA contends that physiotherapists, by having the appropriate skills in diagnosis, clinical reasoning, and by providing interventions that directly influence physical capacity, be provided with the capacity to determine the physical capability of the worker and to be able to provide this without having to wait for the worker to be reviewed by the NTD at a lengthy time point.

The APA submits that physiotherapists should be able to write WorkCover Certificates of Capacity for the injured workers they are treating, provided the Certificate relates to injuries that fall within a physiotherapists' scope of practice.

3. The functions and operations of the WorkCover authority

3.1 Punishment of practitioners who oversubscribe or otherwise defraud the system

At present, there are no provisions for WorkCover to sanction service providers who do not comply with service standards.

The APA has no objections to a change in legislation that enables WorkCover to investigate cases of suspected fraud, as long as the procedure is robust and includes opportunity for external review. The APA submits however that sometimes statistical data indicative of over-servicing may not be representative of actual fraudulent practices. For instance, neurology physiotherapists may treat catastrophically-injured clients for long periods of time and may see these clients several times per week. Such practitioners may be pinpointed as outliers because of their treatment patterns, even though these patterns are clinically justifiable.

Where WorkCover has proven that a provider has breached their obligations and educative approaches have been unsuccessful, legislative amendments should enable WorkCover to restrict or remove access to workers' compensation payments, and recommend that the injured worker seek an alternative provider.

Steps for taking action to remove a practitioner's workers compensation payment rights must be clearly and transparently articulated to all workers and providers. The development of such a process should be the focus of further discussion with the professions. These steps should initially be conciliatory /educational, moving on to more punitive action if a practitioner is unable or unwilling to address his or her behaviour.

As a starting point, and to illustrate the type of processes that could lead to the removal of WorkCover NSW rights, the APA puts forward the following steps:

- WorkCover or practitioner identified servicing problem.
- Initial contact with provider outlining problems identified.
- Review of case or cases by an expert or specialist physiotherapist in the relevant area/s.
- Interview with provider by an appropriately qualified panel, with allowance for the physiotherapist to bring a support person of their own choosing.
- If fault is attributable to the provider, the panel should focus on how the behaviour could be rectified, with a view to negotiating an agreement between WorkCover and the provider.
- An internal review/appeal mechanism should be available.
- If fault is not attributable to the provider, the provider should be eligible to invoice WorkCover to recover any costs associated with the process. This should include lost opportunity, locum costs, legal costs and travel costs.
- If fault is attributable to the provider, and he or she is unwilling to work with WorkCover to change his or her behaviour, action to restrict, suspend or remove a practitioner's right to bill WorkCover for the treatment of clients should be considered.

The APA supports WorkCover's position that there be capacity for administrative review of any decision made by this process, and that the most appropriate review body would be the Administrative Decisions Tribunal.

The APA believes that WorkCover should be provided with the necessary authority to recover monies paid where there is clear evidence of fraud. WorkCover should explicitly define what constitutes fraudulent claiming, and disseminate this information widely, and the APA should be involved in the development of such guidelines.

WorkCover should not, however, have legislative authority to recover payment for services that were pre-approved by the insurer.

The APA also believes any legislative changes in this regard must be flexible enough to allow WorkCover to be discretionary in its recovery actions. For example, it is unlikely to be cost-effective for WorkCover to reclaim small amounts. Furthermore, where it is reasonable for a provider to claim that they were unaware of requirements, an educative approach rather than a punitive approach should be taken.

The APA does not object to WorkCover barring a provider from accessing funding through the WorkCover system. However, the APA would stress that where a service provider is found to be in breach, WorkCover should firstly take conciliatory/educational steps, moving on to more punitive action where a practitioner is unable or unwilling to address their behavior.

3.2 Establishment of WorkCover consultative mechanisms

The APA would like to see WorkCover, its Independent Physiotherapy Consultants (IPCs), and its insurers work more closely with the physiotherapy profession on improving outcomes for injured workers. The APA feels that such a move would make practitioner reviews a less adversarial and more educative process for physiotherapists.

Such a consultative mechanism should provide an educative, support mechanism for physiotherapists and for insurers' case managers with long-term or otherwise difficult clients, rather than focus on punitive case reviews. For example, neurology physiotherapists can routinely treat catastrophically-injured clients for long periods of time and may see these patients a number of times per week. They may be pinpointed as outliers because of their treatment patterns and consequent income from treatment of injured workers, even though these patterns are clinically justifiable.

A consultative mechanism should be established between Independent Physiotherapy Consultants, insurers and the physiotherapy profession to facilitate best practice outcomes, expedited recovery, and early return to work for injured workers

3.3 APA's suggested reforms to Workers Compensation Commission

The Workers Compensation Commission (WCC) comprises a panel of approved medical specialists (AMS) who decide on the provision of continued medical (and physiotherapy) treatments. The medical specialists provide advice to the WCC about the ongoing need for continued intervention in treating workers compensation claimants. At present, there are no physiotherapist representatives on the panel of AMS who could provide input on the ongoing need for physiotherapy treatment. The present exclusion of physiotherapists from the WCC panel prevents physiotherapists from maximising their contribution to the health and wellbeing of all Australians.

The practice of physiotherapy encompasses a diversity of clinical specialties to meet the unique needs of different client groups¹⁴. Physiotherapists assist people who are at risk of developing or have a chronic disease to safely optimise their level of physical activity. They also help people with chronic diseases to safely and effectively manage their own care. Being primary contact professionals with excellent communication skills, physiotherapists focus on early intervention to flag preliminary signs of chronicity and to prevent acute and sub-acute conditions from developing into chronic pain. As such, physiotherapists encourage workers to self-manage their pain and recovery at the early stages of injury and promote an early return-to-work and return to function.

The APA submits that the Workers Compensation Commission should include physiotherapists and/or Independent Physiotherapy Consultants and accept that physiotherapists are the most qualified practitioners to resolve conflicts relating to physiotherapy management at a workers compensation commission level.

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