

**Submission
No 140**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: Australian Rehabilitation Providers Association - NSW
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ARPA
NSW

Response to:

***NSW Workers Compensation
Scheme Issues Paper***

By:

**Australian Rehabilitation
Providers Association NSW**

May 2012



15 May 2012

The Hon. Robert Borsak, MLC
Joint Select Committee on the
NSW Workers Compensation Scheme
Parliament House
Macquarie St
Sydney NSW 2000

Dear Hon Robert Borsak MLC,

RE: Submission to the Parliamentary Inquiry into the NSW Compensation Scheme

Thank you for the opportunity to provide recommendations on improving the NSW Workers Compensation Scheme as part of the Parliamentary Inquiry into the NSW Compensation Scheme.

The Australian Rehabilitation Providers Association of New South Wales (ARPA NSW) acknowledges and supports the Government's current review of the legislation as well as the regulatory bodies governing the workers compensation scheme in NSW. ARPA NSW recognises the deteriorating performance of the Scheme and the need for urgent action.

As the industry's only truly independent mediators between, and advocates for, workers and employers, the workplace rehabilitation industry can offer a unique insight into the current public policy debate around workers compensation. We are the Return to Work (RTW) specialists. We achieve this through taking a holistic view towards return to work, focusing not just on the medical model, but a broader bio-psycho-social approach.

The remainder of this letter sets out ARPA NSW's response to the commentary contained within the *Workers Compensation Scheme* Issues Paper, including: (i) alignment with key reform principals; (ii) the need for early intervention; and (iii) analysis of the options for change.

Thank you once again for the opportunity to present ARPA NSW's perspective and we look forward to continuing our dialogue in pursuit of a partnership approach in improving the WorkCover Scheme. Please do not hesitate to contact me directly on (02) 9460 2444 or nikki@interactgroup.com.au should you wish to discuss these matters further.

Sincerely,

Nikki Brouwers

President, ARPA NSW



I. ALIGNMENT WITH KEY REFORM PRINCIPLES

ARPA NSW supports the seven key reform principles outlined in the Issues Paper. The principles, which focus on developing a fair, affordable, efficient and financially sustainable scheme, are aligned with the ethos of the workplace rehabilitation industry and, in many cases, directly supported by our work. Increasingly, the work of workplace rehabilitation providers as return to work specialists has been frustrated by scheme issues, such as inordinate delays to referral. These issues have negatively affected return to work (RTW) outcomes and limited the potential value that we can deliver to the Scheme through early, safe and sustained return to work.

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

The workplace rehabilitation industry in which ARPA NSW represents directly supports this principle. We regularly work with employers to develop and implement workplace injury and illness¹ prevention strategies. Likewise, following a workplace injury, we work with employers to modify the workplace and/or practices to prevent the injury from occurring again. This can include, but is not limited to, providing advice on rotation of duties, hazard identification, risk management, ergonomic modification and WHS training. For example, whilst working with an employee who sustained an injury due to poor manual handling techniques, our members will discuss and offer appropriate manual handling training as well as advise on changes to equipment/the workplace to prevent future workplace injuries. Our health professionals are well placed in providing this level of intervention. Our ability and experience working 'on the factory floor' enables us to provide sound, relevant advice within the confines of individual workplace context.

(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

Keeping insurance premiums down is essential in reducing NSW businesses' cost base and promoting growth. The workplace rehabilitation industry directly supports this principal. The Issues Paper lists the single largest spend category within the Scheme as weekly benefits. It follows then that reducing weekly benefits spend will significantly reduce Scheme costs and thus premiums. International research clearly demonstrates that early intervention with an injured worker produces the best results. With a key focus on early and sustainable return to work, the workplace rehabilitation industry directly contributes to the reduction in weekly benefits and overall Scheme spend.

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

The workplace rehabilitation industry wholly recognises the health benefits of returning to work. With our key focus on return to work, all workplace rehabilitation providers' activities directly support this principle. To enable the greatest return on investment with respect to promoting and supporting the health benefits of returning to work, early referrals to rehabilitation must be mandated. International research clearly shows that the longer an injured worker remains off work, the less likely the chance they will return. An upfront investment in rehabilitation, therefore, is a good preventative strategy and will be the single most significant way for the Scheme to support recovery and the health benefits of work.

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

ARPA NSW agrees that seriously injured workers should be guaranteed long term medical and financial support. It is important to recognise, however, that long term unemployment prompted by any level of injury, remains harmful to both physical and mental health. Research in this area is well documented. It also shows that that diagnosis is not a predictor of return to work. As such, support should also be given in keeping seriously injured worker engaged in the workplace and exploring RTW options as soon as possible, and where practical.

¹ Henceforth, workplace 'injury' refers to both injury and illness.



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

This principal directly aligns with the core function of the workplace rehabilitation industry. Our mandate is to support injured workers to remain in, or return to, sustainable employment as soon as possible following a workplace injury. Workplace Rehabilitation Providers employ a range of allied health professionals, including occupational therapists, physiotherapists, psychologists, rehabilitation counsellors and social workers to assist in the process and ensure programs are tailored to individual circumstances. Our recognition that medical diagnosis is not a predictor of return to work and that other psychosocial factors may be inhibiting return to work enables us to utilise a bio-psycho-social model, rather than the medical model. Appropriately and quickly addressing all of the factors inhibiting return to work is the key to our success and the success of the Scheme in this area.

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

ARPA NSW strongly supports this principal. Reducing the high regulatory burden within the Scheme would allow the focus to remain on return to work. Under the current system, Scheme providers can often spend more time on process based activities than on activities that achieve outcomes.

For example, a National Approval Framework exists for the workplace rehabilitation providers and industry. This governs how services to injured workers should be delivered in line with best practice principles. In NSW, however, each Scheme Agent (and even subsections within Scheme Agents) has developed their own models for service delivery. This is akin to a doctor being required to change what treatment can be delivered to an injured worker based on which Scheme Agent is managing the claim. The need to overlay the national framework principles with additional and sometimes conflicting requirements for service delivery takes the focus off the injured worker and places it on compliance with administrative tasks that are not essential to the return to work process.

Likewise, there is no centralised and consistent dataset for Scheme Agents. In the workplace rehabilitation provider sector alone, each Agent has created an individual data reporting mechanism that shifts the burden of data collection on to the workplace rehabilitation providers and drastically convolutes the data that is obtained. This not only exacerbates administrative burdens, but also diminishes its value to overseeing Scheme performance.

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

ARPA NSW strongly discourages any payments, treatments or services which may promote dependence on service providers. A successful return to work outcome relies on the alignment of *the right service, at the right time, at the right price*. It also requires the application of a more holistic view than the incumbent medical model. With such disparate contextual factors at play, the pathway to a successful return to work outcome is different for all injured workers. It follows then, that treatment oversight requires specialist knowledge in workplace injury management that utilises evidence-based principles. ARPA NSW strongly supports independent assessment and review of treatment services. It is critical that these assessments are legally binding to ensure that the review process is aligned in a non-adversarial way to return to work, and can promote moving forward in a process that supports return to work.



II. THE NEED FOR EARLY INTERVENTION

There is a clear link between the Scheme's key reform principles outlined in the Issues Paper and the workplace rehabilitation industry's core principles and value proposition - to promote and sustain early and safe return to work. The language of the Issues Paper clearly places recovery and return to work at the heart of the reforms. It is clear that the workplace rehabilitation industry has an important role to play in promoting the success of the future NSW Workers Compensation Scheme.

In NSW much has been said about the decrease in the number of injuries and illnesses but an increase in the number of workers on long term benefits. This figure needs to be read in context. The problem has not been the application of workplace rehabilitation to assist return to work; it has been the timing of the referral or application of appropriate rehabilitation services. ARPA NSW supports all services for injured workers to meet the simple framework of *the right service, at the right time, at the right price*.

Research completed by Casey in 2011² 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 return to work outcome and the higher the costs incurred on the claim. Cases referred within the first 12 months post-injury achieved a much higher return to work 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 (2011), 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 return to work 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 return to work outcome after 31 months is less than optimal.

This "*wait and see*" approach creates the tail, a collection of long-term, neglected cases where chances of a successful return to work 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

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.

The model of getting better first and then returning to work has been demonstrably unsuccessful. To improve return to work outcomes and rein in costs, the current paradigm must change from *return to work* to *stay at work*. It is important to keep injured workers engaged within the work context. To facilitate this, injured workers and their employers must be enabled to drive the process and engage with a workplace rehabilitation provider early in the life cycle of the claim. Early referral to workplace rehabilitation promotes timely and durable return to work outcomes and, as a result, provides significant savings to the current Scheme.

² Casey, P (2011). Effectiveness of Rehabilitation: RTW Outcomes. Report 4 of 4 prepared for Australian Rehabilitation Providers Association, April 2010.



III. ANALYSIS OF THE OPTIONS FOR CHANGE

ARPA NSW is committed to promoting a Scheme which, via early intervention, generates timely and durable return to work outcomes. To this end, we fully support the recommendations provided in the Issues Paper that put workplace rehabilitation support at the heart of the Scheme, as detailed in our commentary below:

(i) Severely injured workers

ARPA NSW supports this option for change.

(ii) Removal of coverage for journey claims

As this option for change is largely outside the scope of the workplace rehabilitation industry, ARPA NSW reserves comment and defers to the recommendations provided by other industry stakeholders.

(iii) Prevention of nervous shock claims from relatives or dependents of deceased or injured workers.

As this option for change is largely outside the scope of the workplace rehabilitation industry, ARPA NSW reserves comment and defers to the recommendations provided by other industry stakeholders.

(iv) Simplification of the definition of pre injury earning and adjustment of pre injury earnings

ARPA NSW supports any measure that aims to reduce the amount of disputation in the Scheme and thus enable a consistent focus on return to work.

(v) Incapacity payments - total incapacity

ARPA NSW supports any initiative that drives return to work behaviours. In the context of this recommendation, however, it is important to remember that diagnosis is not a predictor of return to work. This is supported by mountains of international research, including a report by the OECD³ in 2007. It follows then, that any change in benefits alone –without subsequent workplace rehabilitation services to ensure that non-medical barriers to return to work are mitigated– will not impact positively on return to work outcomes.

Moreover, an injured worker's motivation to cooperate in return to work is not necessarily financial. Negative influences for return to work include poor workplace relationships, lack of respect for the employer, the worker's beliefs regarding their injury, the overzealous involvement of partners and advice from medical providers that sanction incapacity or dependence on treatment. These are known as bio-psycho-social factors. An injured worker who suffers from one of the above will be no more likely to return to work even if their benefits are reduced.

It is at this juncture that the role of workplace rehabilitation becomes important. Workplace rehabilitation providers are the only allied health providers that possess the specific skillset directly targeted at addressing the full range of bio-psycho-social factors that influence the capacity of the injured worker to return to work.

³ OECD(2007) Sickness, Disability and Work :Breaking the Barriers, Vol 2: Australia, Luxembourg, Spain and the United Kingdom, OECS, Paris



(vi) Incapacity payments - partial incapacity

ARPA NSW supports any initiative that drives return to work behaviours. Please refer to the discussion in point (v) above.

(vii) Work capacity testing

ARPA NSW strongly supports this option for change, however, seeks clarification on three important issues that are not addressed in detail in the Issues Paper. First, the timing of the proposed work capacity testing will be extremely important (i.e. should a work capacity test be mandated after the first seven days, eight weeks, six months, yearly, etc.). We recommend that a work capacity test be triggered when the incapacity is expected to, or does, exceed seven working days. Second, the results of the test should be binding for all parties.

Third, what are the appropriate qualifications required to complete such a test? The workers' nominated treating doctor is often required to make a determination on work capacity where objectivity can become compromised by the relationship with the injured worker – a family doctor of 25 years for example. There is also a limited understanding of the workplace of the injured worker and the application of the principles of the Scheme. If we accept the OECD's research that the diagnosis is not a predictor of return to work, then it follows that work capacity testing should be completed outside of the medical model. The test should instead look at the holistic needs of the worker (utilising a bio-psycho-social model) in the context of the workplace.

The Australian Federal Government's Department of Employment, Education & Workplace Relations' *job capacity assessment* provides a perfect precedent for work capacity testing in NSW. Under the federal disability scheme, a job capacity assessment is conducted to: (i) ascertain work capacity and related benefits; (ii) determine rehabilitation and support needs; and (iii) connect the individual with appropriate services. Workplace rehabilitation providers meet the skills and understanding required to undertake this testing as currently our members are the only workplace based allied health professionals that are align to the scheme objectives.

(viii) Cap weekly payment duration

Capped weekly payments are a strong match to an early intervention model, and therefore ARPA NSW supports this initiative in principle. However, the same caveat as discussed in point (v) above applies in the instance. That is, reducing or indeed capping weekly payments will not in isolation, in many cases, encourage return to work where motivations are beyond financial. At the very best, a cap may simply shift such workers onto a different government benefits scheme (i.e. Centrelink). There is also a risk that capping payments may cause complacency in case workers handling difficult files, who are aware that benefits will eventually be terminated anyway. To mitigate this, it is important to promote an early intervention model from the start.

(ix) Remove "pain and suffering" as a separate category of compensation

As this option for change is largely outside the scope of the workplace rehabilitation industry, ARPA NSW reserves comment and defers to the recommendations provided by other industry stakeholders.

(x) Only one claim can be made for whole person impairment

ARPA NSW supports this option for change.



(xi) One assessment of impairment for statutory lump sum, commutations and work injury damages

ARPA NSW supports this option for change, however, notes the importance of further discussion around the appropriate qualifications required to complete such an assessment (as discussion in point (vii) above).

ARPA NSW would also encourage 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 that is outside the scope of their knowledge or role.

(xii) Strengthen work injury damages

As this option for change is largely outside the scope of the workplace rehabilitation industry, ARPA NSW reserves comment and defers to the recommendations provided by other industry stakeholders.

(xiii) Cap medical coverage duration

Noting its alignment with the principals and caveats discussed in point (viii) above, ARPA NSW supports this option for change.

Medical payments should be aligned with evidence based practice and clear clinical pathways. Nevertheless, the current Scheme has no provision for an appropriately qualified, independent specialist to regulate this. For example, within the medical community it is universally agreed that the effectiveness of physiotherapy is limited to six sessions. Current practice dictates, however, that as long as a GP continues to write referrals to a physiotherapist, Agents continue to pay for the service. Providing an appropriately qualified, independent regulator at designated best practice points in the recovery process would serve similar purposes to capping coverage.

(xiv) Strengthen regulatory framework

ARPA NSW supports this option for change. We do not, however, support regulation simply for the sake of regulation, particularly when there are existing mechanisms in place to adequately manage service delivery and health providers. Any strengthening of the regulatory framework that directly affects service providers should be based on sound research and meaningful stakeholder consultation.

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.

Much has been said around the reduction of red tape for stakeholders in the scheme to reduce unnecessary burden and drive efficiency. ARPA NSW gave examples of multiple models for service delivery depending on the Agent and inconsistent data platforms across the scheme. ARPA NSW is sure there are many other areas of inefficiency that would benefit from improved operational instructions under the leadership of WorkCover NSW. ARPA NSW recommends that a special committee with specialist knowledge and experience be formulated and that ARPA NSW has representation on this committee where our expertise can be applied.



(xv) Targeted commutation

ARPA NSW acknowledges that there are many appropriate occasions where the targeted use of commutation is an effective means to manage scheme liabilities, while at the same time helping an injured worker uncouple from an unhealthy dependent relationship with the workers compensation scheme.

(xvi) Exclusion of strokes/ heart attack unless work a significant contributor

ARPA NSW supports any reform that seeks to exclude non-work related injury from eligibility under the scheme. Circumstances where non-work related injury is successfully claimed place undue strain on the Scheme.