

**Submission  
No 68**

## **FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME**

**Organisation:** Workers Health Centre

**Date received:** 10 October 2016

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# WORKERS HEALTH CENTRE

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## Purpose

The purpose of this document is to provide submission of information for the purpose of the First review of the Workers' Compensation Scheme in accordance with Section 27 of the State Insurance and Care Governance Act 2015.

## The Workers Health Centre

The Industrial Health and Research Foundation, trading as the Workers Health Centre is a not for profit organisation that provides return to work and injury management services for injured and ill workers, government, business and the community. Our clients are predominately workers from the manufacturing, transport and logistics, warehousing, construction and essential services such as Police and Fire. The Centre has been in operation since 1976 and we are a small business. The business is genuinely committed to the fundamental principles of Delivering Quality Rehabilitation.

## Barriers to effective Return to Work

The guide Nationally Consistent Approval Framework for Workplace Rehabilitation Providers August 2015 has become incoherent, illogical, stipulating that only suitable employment options be identified in the vocational assessment that meets the legal definition of suitable employment. This appears prejudicial against seriously injured workers.

The prior definition of a vocational assessment was to identify vocational options to assist an injured worker where they could not return to work performing pre-injury duties. At a later time in the history of the claim an earning capacity assessment could be conducted as an instrument under the law with the aim of reducing weekly payments of workers. The earning capacity assessment commonly consisted of a vocational assessment and a functional capacity evaluation, two assessments for 2 different purposes.

Under the current system the vocational assessment is administered and interpreted as the earning capacity assessment which entitles an insurer to make a work capacity decision and cease a workers entitlement to weekly payments. Up until recently a work capacity assessment can be done at any time and as frequently as desired by an insurer. Previously there was some level of protection for injured workers. In 1997 an injured worker had an entitlement to 104 weeks of payments pursuant to Section 38 of the Workers Compensation Act 1987. Following the expiration of that period they had ongoing entitlement to weekly payment at the statutory rate if they were considered totally unfit or unable to work in suitable duties. At a later time the legislation was reviewed and the duration of weekly benefits under Section 38 were reduced to 52 weeks. There is a direct relationship between the cost and duration of claims – the longer the claim goes the higher the cost and weekly payments comprise about half the cost of most claims. Therefore there is financial incentive to reduce claims with high durations.



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## Case studies - the true tales of two workers

Note: for the purpose of the case studies pseudonyms have been utilised in order to maintain client confidentiality.

### Case Study 1

Jim was working as a truck driver delivering a large slab of foam on his shoulder. A strong gust of wind blew and the foam acted like a sail, compressing Jim's neck severely and causing him to effectively lose control of his arm immediately. That was in 2011. He was transported to hospital via ambulance as he could not drive and was seen by a neurosurgeon. He had a MRI scan that demonstrated a significant disc prolapse for which he required immediate surgery. He had surgery and had post surgery treatment in the form of physiotherapy. After the surgery the doctor advised he should not return to work performing pre-injury duties as there is lifting up to 20kg involved and as a truck driver frequent turning of his neck is required of which he should avoid.

Jim had a complex set of psychosocial circumstances. Jim had decades of drug use and dependence issues. Jim was homeless for extended periods. Jim was abandoned at birth due to forced adoption. He experienced high levels of depression and anxiety. After the injury he had severe pain and an exacerbation of depression. He worked very hard to change his personal circumstances and confronted his substance use and other issues in order to be employed and set an example for his children.

The Workers Health Centre provided Jim with the following assistance. A vocational assessment that identified vocational options for him to pursue. Vocational retraining gained largely through the recognition of prior learning – Jim had been a volunteer and acted as a mentor with charitable organisations providing support for people with dependence issues. Through the vehicle of the recognition of prior learning Jim was awarded with a Diploma of Community Services Work.

Jim was provided assistance by the Workers Health Centre to seek employment as a community service worker. The Workers Health Centre provided Jim with a current resume, education how to write a cover letter, advice on where to look for work and how to look for work. Jim was provided the opportunity to gain new skills through the Worktrial scheme. He completed a worktrial. After the worktrial Jim actively looked for work. His anxiety and depression were both aggravated as when he attended interviews he was nervous and when his application for employment was not successful he got depressed.

Jim eventually secured work about a year ago. He applied for the job, got an interview and was the successful candidate for the role based on the merit of his application. Jim disclosed his injury and the new employer expressed interest in claiming the benefits of the JobCover Placement Program. The Workers Health Centre facilitated the employer claiming benefits of the JobCover Placement Program. Jim now works as a community service worker on a full time basis in a centre that provides education and support for inmates integrating into the community after serving a custodial sentence. All of Jim's personal issues and what he has learnt has prepared him to be able to provide vital assistance in the community through employment.

If it were not for the provisions of the previous entitlements of the NSW Workers Compensation Scheme this return to work outcome would not have been achieved for Jim.



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## Case study 2

Barry was a young man working as a rigger – a job that was very heavy in physical demand. Barry was at work one day in 2015, he fell some 4-5 metres in height through a floor that was not safe. In the fall he fractured his spine and his hand. The fracture of his spine did not cause neurological damage or sever his spinal cord but did not heal in an aligned fashion. It was a complex fracture. Barry also had a complex set of personal circumstances. He had primary care responsibility of a child under 4 years of age. During the period when he was totally unfit Barry was not paid by the insurer in a manner consistent with the law. Barry was underpaid to the value of about \$40,000.00 by his insurer.

Barry was referred to the Workers Health Centre to get help to return to work. Under the Guide the Workers Health Centre must identify job options in the vocational assessment that currently meets the definition of suitable employment. Once the requirements of suitable employment are met, the insurer is legally able to cease making weekly payments to Barry.

Like Jim, Barry may have been able to get a formal qualification through the recognition of prior learning. The Workers Health Centre recommended he be provided with retraining assistance. Because the changes to the law, the definition of the vocational assessment and current SIRA guidelines these recommendations were not accepted by the insurer. The vocational options were not agreed to by the insurer as they required training and the Workers Health Centre did not opine the options as currently suitable.

The insurer referred Barry to another workplace rehabilitation provider to get another vocational assessment in order to get the information they required by the law to cease paying him.

Barry has essentially only worked as a rigger – he has not worked in any other role that he has the qualification to do. He fractured his spine and his hand. He does not have any other qualification or education he can realistically use and does not have an alternate skill base to find alternate work. The current compensation scheme does nothing to assist Barry to return to work. No training, no worktrial, no JobCover Placement Program, no return to work and no weekly pay.

## Conclusion

We are in a scheme whereby currently an employer, a return to work coordinator appointed by an employer, an insurance broker, treating parties, rehabilitation provider, lawyer, claim investigator, a claim manager / insurance clerk, injury management advisor at a scheme agent and an insurance executive receive weekly payments, but a seriously injured worker whom cannot work does not as a result of the legislation, poorly conceived guidelines, shonky practices and the overall failure of the scheme to help injured workers.

There appeared no consultation between HWCA, the rehabilitation industry and worker representatives in developing the guide Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.



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## Recommendations

- The definition of suitable employment under the Act be reviewed to a more realistic, clear definition.
- SIRA and HWCA consult with stakeholders to develop an effective guide for the Approval Framework for Workplace Rehabilitation Providers that balances the needs of stakeholders.
- The vocational assessment not be utilised for the purpose of making a work capacity assessment and decision. The definition of the vocational assessment be amended to assist the injured worker and make recommendations to effect a workers return to work.
- iCare implement a service level agreement or enter into a memorandum of understanding with agents that provides incentive for returning injured workers to work as opposed to exiting them via a work capacity decision.

## Agent Behaviour

I have been exposed to behaviour I consider abhorrent by scheme agents. When working as a senior consultant with a range of alternate service providers I have been treated with disrespect, agents have behaved unreasonably and adversely.

On one occasion I was contacted by a personal colleague whose daughter commenced working in the workplace rehabilitation industry as an Occupational Therapist. My friend's daughter contacted me in a state of distress as on one occasion on Friday afternoon they were contacted by a scheme agent. They worked with a large national based workplace rehabilitation provider and after a relatively short period of time demonstrated talent and were promoted into the role of an account manager. Despite their apt performance they were provided what can only be described as a complete dressing down by an insurer that reportedly lasted for about an hour. The criticism made by the agent sounded unfair, unreasonable and without basis. Even if some of the feedback was warranted there should be an acceptable level of communication and behavior that is demonstrated by scheme agents that is frankly missing. That person contacted me in a state of distress on the following Sunday seeking advice and support as they were shocked at what happened. They also sought to be removed from having any dealings with that insurer.

## Recommendation

- SIRA develop and implement acceptable behavioural standards with insurers.



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## Delays in Provision of Treatment

A worker was recommended to have surgery by their treating surgeon in July 2015. I thought by the time an Independent Medical Examination was done and surgery was either accepted / disputed and then it took place the surgery could have been done by August. The treating surgeon informed 4 weeks post surgery the worker could return to work performing suitable duties. It took 9 weeks for the agent to approve surgery, after the delay in surgery that meant it was unlikely the worker would be able to return to work until early the next year as he worked in the construction industry which slows down in November / December. Despite the significant delay in the insurer acting promptly to assist the injured worker in getting the treatment they needed to get better, the insurer blamed the workplace rehabilitation provider for the delay incurred and did so aggressively. This is despite the fact repeated requests were made for the prompt assistance of the scheme agent by both the worker and myself which were not forthcoming and the agent being advised if surgery did not take place quickly it may result in significant delays in the return to work occurring.

At this point in time the relationship between many injured workers and scheme agents is fractured. I have met people that demonstrated motivation to recover and return to work however they did not have treatment approved, there was disputed liability for surgery, there were chronic periods – a duration of greater than 6 months where the worker did not get physiotherapy and hydrotherapy treatment approved in a timely manner following surgery. Repeated efforts were made by the worker and myself to ensure payment for physiotherapy and hydrotherapy treatment was made by the scheme agent however that did not occur. The worker cooperated with all requests made of them to seek employment however they had a major gripe with the scheme agent. The worker did not have regular and timely weekly payments made. There were periods in excess of 4 weeks where they were not paid. Despite these frustrations when the insurer contact changed their opening line, was “we are very concerned at your companies management of the matter”. They did not appear to even have a basic understanding they had not paid the worker and had effectively contributed to the workers delayed recovery due to their non approval of treatment. They did not demonstrate any capacity to have insight into the effect of their own behaviour rather criticised the provider unreasonably and harshly.

In my observation and experience, following personal tuition provided by and having worked for Mr Greg McCarthy and Dr Martin Raftery, that early medical intervention and treatment, adopting a cooperative and supportive approach towards workers gains the best return to work and claims outcomes and the scheme can be financially sustainable.

## Recommendation

- SIRA Develop in consultation and implement policies and procedures that promotes the recovery of injured workers though having timely access to medical treatment.



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## SIRA's Website

As at 30 September 2016 on the current State Insurance Regulation Authority website – no reference to injured workers having any rights can be found.

## Recommendation

- SIRA communicate on their website what rights injured workers have – namely to chose their own nominated treating doctor, treating parties and workplace rehabilitation providers.

Regards

Matthew Buxton

Return to Work Service Manager

The Workers Health Centre