Submission No 2

INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: NSW Health

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SUBMISSION TO THE 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

1. Liability

S9A of the *Workers Compensation Act 1987* (WCA 1987) states that no compensation is payable unless the employment concerned was a substantial contributing factor to injury and lists examples of matters to be taken into account for determining whether a worker's employment was a substantial contributing factor to an injury, but without limiting the kinds of matters that can be taken into account.

Delays in determining liability can lead to delays in compensation and treatment for an injured worker. Instances where there is minimal information provided by the worker when initially advising of an injury contributes to these delays.

When making a claim for compensation for a workplace injury, it should be the responsibility of the worker and their nominated treating doctor (NTD) to provide all the clinical evidence to support the claim for workplace injury. The requirement should be to provide a clinically justified diagnosis, a clinically justified injury prognosis and clinically justified treatment recommendations.

If the prognosis is a recovery period of greater than three months, the NTD must provide a clinical rationale for the prolonged recovery period supported by the proposed treatment plan and a graded return to work (RTW) plan.

2. What is "reasonably necessary treatment"

S60 of the WCA 1987 refers to payment for medical or hospital costs on the basis the treatment is reasonably necessary.

4.2 of the SIRA Guidelines sets some rules for determining whether medical or related treatment is reasonably necessary, but details that what is determined as reasonably necessary for one worker may not be reasonably necessary for another worker with a similar injury.

Clearly this creates issues for both the insurer and the worker in regards to the ambiguity in determining what is reasonably necessary which in turn can cause delays in decisions around treatment, increased costs in obtaining additional medical evidence to support or decline treatment and often resulting in dispute resolution proceedings.

Change to evidence based treatment – by changing the wording from "reasonably necessary" treatment to "evidence based" treatment, supported by SIRA rules around what evidence may be required to make a decision, ensures that any decision to approve treatment will be made using relevant information which will increase the likelihood of the treatment being successful. Using a scientific approach rather than a subjective approach should ensure the approved treatment will be more effective in achieving a positive outcome and ensures decisions are based on accurate and meaningful medical evidence.

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3. Psychological injuries

S11A of the WCA 1987 lists those reasonable actions which, when taken or proposed to be taken by the employer, are not compensable. Nowhere does this clause include the worker's perception that these reasonable actions may occur and yet this is the criteria being applied by the Workers Compensation Commission (WCC) to determine liability.

Clearer definitions are required around what is reasonable action by the employer and when this reasonable action is deemed to have commenced by the employer. Claims arising from an initial performance appraisal meeting, provided the employer has a policy in place and this policy is adhered to, cannot be perceived by the worker as bullying. What is "bullying" and what criteria or threshold must be met in determining liability when the cause of injury is stated as "bullying" should be clearly outlined.

The diagnosis of a psychological injury and who in fact can make that diagnosis needs to be far more specific. A diagnosis of psychological injury by a GP must be supported by a referral to a specialist and for specialist treatment. A GP is not qualified to diagnose a psychological injury.

When a worker lodges a claim for a psychological injury, this must be supported by a specialist diagnosis and treatment plan, not just a GP certificate of capacity detailing a worker as totally unfit.

4. Treatment providers and NTD accountability

All treatment providers, including NTDs, should have SIRA accreditation to certify they understand the requirements and agree to adhere to the SIRA guidelines for managing an injured worker.

With alternative treatments increasingly available, and workers' natural instinct to pursue any treatment that will assist them with pain management and their recovery, it is more important than ever that all treatment providers understand the obligations of the worker, their employer, the insurer and themselves in the recovery and return to work process. NTDs need to clearly understand that as a key stakeholder in the recovery and return to work process, delays in providing information to the employer and insurer are limiting our ability to assist and support the worker. Both SIRA and WCC hold the NTD information at a high regard and NTD advice can often override independent medical examiner (IME) or injury management consultant (IMC) recommendations and as such, the NTD needs to be held to a higher standard and must provide clinical evidence for disagreeing with IME or IMC findings. When an NTD is not engaging in the RTW processes and/or does not agree or accept the IME or IMC findings and recommendations, there must be an avenue to dispute the NTD's certificate of capacity.

S33 of the WCA 1987 and Chapter 3 of the 1998 Act could be expanded to include obligations on the NTD to assist with the recovery and return to work with penalties for failure to reasonably comply.

In addition, physiotherapists and pharmacists are now authorised to provide an injured worker with a certificate of capacity. It is imperative to maintain the legitimacy of the Scheme and that all stakeholders, and possible stakeholders in the scheme are required to have SIRA accreditation.