Lawyers for the People

AUSTRALIAN LAWYERS ALLIANCE

Recommendations arising from Stakeholder Reference Group meetings 1, 2 and 3

Submission to the Office of Industrial Relations

23 November 2023

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Protecting and promoting justice, freedom and the rights of the individual.

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal people of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Office of Industrial Relations (OIR) regarding the recommendations and outcomes arising from recent Stakeholder Reference Group meetings, namely:

    a. Stakeholder Reference Group meeting 1 on Thursday, 9 November 2023;

    b. Stakeholder Reference Group meeting 2 on Friday, 17 November 2023; and

    c. Stakeholder Reference Group meeting 3 on Monday, 20 November 2023.

The ALA's position and feedback

2. The ALA refers the OIR to the tables **attached** to this submission which outline the ALA's position and feedback on the recommendations and outcomes arising from the above Stakeholder Reference Group meetings.

Conclusion

3. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide this feedback to the Office of Industrial Relations.

4. The ALA is available to provide further assistance to the Office of Industrial Relations on the issues raised in this submission.

Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance

Attachment 1: Recommendations and outcomes arising from the Stakeholder Reference Group meeting 1 on Thursday, 9 November 2023

Paper 1 – Decision making timeframes

Recommendations 39, 41 and 45

No.	Detail	ALA position and feedback
39	That the Minister consider introducing a Bill to amend the Act to require an insurer to decide an application for compensation for a mental injury within 25 business days. The amendment should also require the time frame to be reviewed every two years.	Agree. That ALA also considers that this should include a better Application for Compensation document – noting that we understand this is made as a separate recommendation. The two combined are necessary.
41	That the Minister consider introducing a Bill to amend the Act to allow the Minister to set, through Regulation, maximum periods for the provision of information to insurers for the purpose of calculating the decision-making time frame in recommendation 39. These would be: (a) information from the injured worker to WorkCover – 7 business days; (b) information from the employer to WorkCover – 5 business days; (c) information from a medical practitioner to WorkCover – 5 business days; and (d) response from the injured worker to WorkCover (natural justice response) – 3 business days.	Agree. This should include a general extension provision for good cause, including if legal advice is sought. If a request is made, then the file should be provided within 24 hours and an extension of 5 business days be provided.

45	The Minister consider introducing a Bill to amend the Act to provide that: (a) the Regulator can establish a standard on the format of the file the insurer is to provide to allow the review to proceed; (b) the file, in the required format, is to be provided to the Regulator within 5 business days of being requested; (c) an application for review is to be allocated for review no later than 10 business days after receipt of the insurer's file in the prescribed format; (d) the Regulator must then review and decide the application within 25 business days of the date after the file has been allocated for review; (e) the time frame for the allocation of the review is to be subject to a sunset clause of two years after the date of assent of the Act; and (f) the current provisions allowing an extension of time to make a decision within prescribed circumstances remain.	Agree. To also include a guillotine provision – in that if the timeframe for a decision was exceeded then all statutory payments flow and then in the event the review decision is to reject claim – there is no right for recovery of these payment, regardless of the final decision; but if a rejection was upheld, then payments would cease. The ALA considers this matter requires urgent attention, as the delays have been longstanding – that is, for some six to seven years.

Paper 2 – Early intervention

Recommendations 5 and 9

No.	Detail	ALA position and feedback
5	That the Minister consider introducing a Bill to amend the Act to require insurers to make in-person contact with primary mental injury claimants, for the purpose of enabling them to access, where	Agree. There should be set speaking points for key information – this should include the "*right to obtain legal advice with regards to this issue,*

	appropriate, relevant early intervention supports.	*letting you know most lawyers in this area will provide you with a free initial consultation".* This is important for ensuring access to justice. The speaking points should include input from the ALA and QLS. This would not apply if medical evidence suggests direct contact by insurer would be detrimental, or if a claimant's lawyer requests contact through lawyer.
9	That the Minister consider introducing a Bill to amend the Act to require early intervention services for workers with relevant physical injuries, designed to minimise the development of secondary mental injuries. In particular: (a) once a claim for a physical injury is lodged, if the physical injury is likely to lead to two or more weeks off work, the insurer should identify appropriate referrals that should be made to prevent the development of a secondary mental injury, including possible workplace discussion facilitation; (b) this identification process should be done using a psychosocial assessment tool; and (c) the threshold expected period off work (initially two weeks) should be defined in the Regulation and can be amended after evaluation of this reform.	Agree, in principle. Any recommendations for intervention and rehabilitation must be driven though by GP/Physio/allied health professionals. Timeframes must be set for gathering the relevant information. The ALA submits that lawyers should be part of the design process, and the ALA would be happy to be involved.

Paper 3 – Suitable duties

Recommendations 14 and 15

No.	Detail	ALA position and feedback
14	That the Minister consider introducing a Bill to amend s 228(4) of the Act to require that: (a) the employer, when providing written evidence that suitable duties are not practicable, describe the steps taken or the inquiries made to reach that determination; and (b) the insurer take reasonable steps to satisfy itself that no suitable duties are available, and, where appropriate, use the penalty provisions at s 228(1) and s 229 where it is not satisfied.	Agree.
15	That the Minister consider introducing a Bill to amend s 42 of the Act to include a provision that suitable duties are to be meaningful to the worker. This requirement is also to be included in the Workers' Statement of Rights (see recommendation 37).	Agree. Defining "meaningful" is important – the ALA would require further information on what the definition of meaningful is before full support for this recommendation could be provided. There should be a specific intention that is enforceable. The ALA submits that lawyers with experience in the sector should be part of the design process. The ALA is happy to be involved.

Paper 4 – Rehabilitation and return to work

<u>Recommendations 17, 19, 20, 21 and 25</u>

No.	Detail	ALA position and feedback
17	That the Principles of Practice for Workplace Rehabilitation Providers endorsed by the Heads of Workers' Compensation Authorities be given effect in the scheme by an enforceable standard or code of practice under the Act, which would ensure the quality of workplace rehabilitation providers in the scheme.	Principles that ALA supports are in original submission and the ALA's submissions made to the OIR in relation to rehabilitation and RTW guidelines. *Please see **enclosed** the ALA's submissions to the OIR December 2021 and September 2022.*
19	That the Minister consider introducing a Bill to amend the Act to provide that an injured worker has the right to choose an alternative WRP from the list of accredited providers where the worker is dissatisfied with the WRP selected by the insurer. This right is to be included in the Workers' Statement of Rights (see recommendation 37).	Agree.
20	That the Minister consider introducing a Bill to amend the Act to provide that a RRTW plan for an injured worker is to be developed within 10 business days of a claim for compensation being accepted. It may be amended from time to time thereafter, in consultation with the worker, to take account of changed circumstances.	The ALA does not currently support this recommendation. More details will be required for the ALA to consider this further. For example, if a claimant is catastrophically injured/has an acquired brain injury then it is not going to be suitable to have that person participate in this program. The ALA notes a relevant factor: WCQ's return to work rate has gone down instead of up in recent years – i.e. there has been a reduction

		in return to work, which does coincide with increase in mental / psychological injuries.
21	That the Minister consider introducing a Bill to amend the Act to provide access to workplace facilitated discussions delivered by a suitably qualified and accredited WRP. Separately, that WorkCover amend its Table of Costs to include workplace facilitated discussions. Access to workplace facilitated discussions should occur where an employer or a worker is resistant to participating in a RRTW plan, where the employer declines to provide suitable duties or if the desirability of such discussions becomes apparent during the RRTW process. It may also be activated by the screening tool identified in early intervention.	Agree. The ALA contends that the fundamentals on this need to be considered carefully with input from the ALA and QLS.
25	That: (a) the Minister consider introducing a Bill to amend the Act to oblige insurers to contact workers six months after benefits cease, and offer to pass their name on to a selected RRTW provider if, after exiting the scheme, they had become unemployed due to their injury. The provider should be selected through a procurement process; and (b) the information collected by insurers should be shared with the Regulator on an anonymous basis under a mandatory reporting requirement.	Agree. However, this would need to include a phrase that precludes circumstances where a damages claim has commenced. At common law there is already employment connect/RTW in the common law phase. The ALA submits that lawyers should assist with the design process. The ALA is happy to be involved. Any design should include communication of the importance of seeking legal advice. The ALA considers that to be an access to justice consideration.

Attachment 2: Recommendations and outcomes arising from the Stakeholder Reference Group meeting 2 on Friday, 17 November 2023

Recommendations 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 16, 18, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43, 44, 46, 47, 48, 49, 50, 51 and 52

No.	Detail	ALA notes
1	That future reviews of the workers' compensation system and legislation, and of work health and safety legislation, include, as a term of reference, the systems, practices and legislation needed to allow better co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.	Agree.
2	That the leadership of OIR investigate and consider the systems, practices and policies necessary to maximise co-ordination between workers' compensation and workplace health and safety, without compromising the objectives of either system.	Agree.
3	That the Minister consider introducing a Bill to amend the Act by replacing the phrase "psychological or psychiatric injury" with "mental injury". Relevant regulatory and guidance documents should also be updated to incorporate this term. The *Workers' Compensation and Rehabilitation Regulation 2014*	Agree.

	should be amended to update the DSM to the latest version.	
4	That, in relation to information at the early claims stage: a) the Regulator should finalise and publish the factsheet on reasonable management action; and b) the Regulator should ensure that WorkCover and other insurers review their claims forms so they are suitable for mental injuries and provide links to the Regulator-approved factsheet about reasonable management action, subject to vetting by the Regulator.	Agree. The ALA would be happy to have input into the fact sheet. The fact sheet should include advice about the availability of independent advice on claims.
6	That WorkCover should improve workers' access to mental health support by reviewing their practices to ensure the greater use of allied health workers with relevant mental health qualifications and provides for such services in the Table of Costs.	Agree. The ALA refers the OIR to our submission about the WorkCover Table of Costs. Any misalignment between market rates for psych services and the table rates is likely to reduce practical access to such services and thereby increase stat claims *Please find **enclosed** the ALA's WorkCover Table of Costs submission from October 2023.*
7	That the Regulator commission research to identify pathways from primary physical to secondary mental injuries. These should include: (a) engaging a research provider to identify the main drivers of secondary mental injuries;	Agree. Lawyers experienced in claims for clients with secondary psychological injuries should form part of any research group.

	(b) primary research comparing the trajectories of workers with physical workplace injuries who (i) lodge a secondary mental injury claim; or (ii) develop a mental disorder but do not lodge a claim; or (iii) do neither; and if/how this intersects with policies and programs; and (c) projects examining safety leadership, culture and the drivers of secondary mental injuries in the mining and finance/insurance industries.	
8	That the Regulator establish a stakeholder reference group, including representatives of scheme psychiatrists and/or peak psychiatric bodies, to develop guidance for insurers to assist	Agree. The ALA, however, notes this is not purely or even dominantly a medical question and would recommend a wider stakeholder reference group to include those stakeholders to the scheme outside of the health profession.
10	That the Regulator establish an external expert consultative group to determine the most appropriate psychosocial screening tool for immediate use and later to examine the outcomes of the research to consider a bespoke screening tool and other measures to minimise the conversion of primary physical claims into secondary mental claims.	Agree.
11	That the Minister consider introducing a Bill to amend the Act to: (a) enable the Regulator to share information about high-risk workplaces for mental injuries with WHSQ while	Agree. The ALA is happy to be part of the design group.

	protecting the privacy of individual workers, without relying on a specific request from WHSQ; and (b) permit the Regulator to collect information from insurers about high-risk workplaces.	
12	That the Minister consider introducing a Bill to amend the Act to provide that enforceable standards or codes of practice can be issued to support the enforcement of any aspect of the Act. All guidelines and factsheets on rehabilitation and return to work should be reviewed to ensure that any which are enforceable are not referred to as 'guidelines' and to determine which should be transitioned to an enforceable standard or code of practice under the Act.	Agree – and the ALA submits that there should be a requirement that review of any such document occurs with stakeholders. We attach the ALA's submission on rehabilitation and return to work, and urge that this measure be closer calibrated to sanctions against recalcitrant employers, not merely education. That is, the OIR should be required to adopt a more enforcement-focused approach. *Please see **enclosed** the ALA's submissions to the OIR December 2021 and September 2022.*
13	That the Minister recommend that Government establish 'model employer in compensation and rehabilitation' principles to apply to all agencies of the State, drawing from the principles of 'model litigant' that lawyers acting for the State follow, and include principles on good behaviour, including an obligation to offer suitable work.	Agree. *Please see **enclosed** the ALA's submissions to the OIR December 2021 and September 2022.*
16	That the Regulator undertake regular targeted audits to ensure that all employers who are required to appoint a rehabilitation and return to work coordinator under s 226(1) of the Act	Agree.

	have an appropriately trained person in place.	
18	That, in developing the regulatory mechanism for WRPs, the Regulator consult with relevant professional bodies to set out the qualifications and types of services that can be provided by each of the professions.	Agree.
22	That the Minister consider introducing a Bill to amend the Act to require host employers to cooperate with labour hire providers to assist them to comply with their obligations to establish and implement a rehabilitation and return-to-work program and provide the pre-injury position or a suitable duties position to the extent it is reasonable to do so. This should be an offence provision.	Agree. The ALA emphasises the importance that this should include an offence provision. Labour hire entities are notorious for flouting workers comp obligation. The ALA submits that the OIR's education-based approach will rarely, if ever, work in labour-hire contexts. Serious sanctions need to be applied.
23	That the Minister consider introducing a Bill to amend the Act to enable insurers to take account, in the setting of premiums, of the claims experience of labour-hire workers on host employers' sites in the same way as their own employees' are taken into account.	Agree. This will ensure labour hire agencies make genuine efforts to ensure host placements are appropriate.
24	That WorkCover consider extending the claims cost exemption for workers taken on after the expiry of their coverage by the 'Recover at Work' scheme, from six months to 24 or 36 months.	Agree.
26	That the Minister consider introducing a Bill to add asbestos related diseases, primary site liver cancer, primary site	Agree.

	lung cancer, primary site skin cancer, primary site cervical cancer, primary site ovarian cancer, primary site pancreatic cancer, primary site penile cancer, primary site thyroid cancer and malignant mesothelioma into the Act as presumptive illnesses for firefighters.	The ALA submits that that pleural, peritoneal and testicular mesothelioma sub-types must be included in the definition.
27	That the Minister: (a) consider introducing a Bill to amend the Act to treat day work rotation as service for the purpose of s 36E of the Act; and (b) refer the qualifying periods for the new diseases, and the issue of the treatment of extended leave, for consultation with stakeholders, experts and the Special Commissioner, Equity and Diversity with the prima facie starting point for consultations being the qualifying periods used in the other jurisdictions.	Agree in principle.
28	That the Minister consider introducing a Bill to amend the Act to ensure that tertiary students (including student nurses and student teachers and others in work-integrated learning) are covered by workers' compensation insurance while in placements that are required for their studies or where those placements are performing functions benefiting the organisations for which they are working.	Agree.

29	That the Minister consider introducing a Bill to amend the Act to provide a default payment of weekly compensation after a claim is accepted and until an insurer calculates the applicable rate of weekly compensation. This would be a fixed percentage of QOTE. For part-time and casual employees, the default payment would be the fixed percentage of QOTE expressed as an hourly rate, times the number of hours per week the employee nominates they normally work. Over/underpayments would be made up through subsequent benefits once the correct rate was calculated.	Agree.
30	That an independent review of the scope and adequacy of the Act's provisions related to work-related deaths should occur, as a matter of priority, to ensure that the families of deceased workers receive appropriate support to help ameliorate their loss, both financial and non-financial. The review should include representation from kin of deceased workers.	Agree. Noting this is timely, the calculations have not been reviewed in the last decade at least.
31	That the Minister consider introducing a Bill to amend the Act to: (a) impose on insurers a positive duty to report suspected offences by employers to the Regulator; and (b) include protections for employees of self-insurers who report employer offences.	Agree. The ALA submits that failure to report without lawful excuse should be an offence.

32	That the Minister consider writing to the Commonwealth Minister with portfolio responsibility for the Fair Work Ombudsman, formally requesting greater co-operation in identifying employer non-compliance.	Agree.
33	That the Regulator undertake a review of the employer-specific obligations and offences in the Act to ensure that they are fit for purpose, meet community standards and can be practically enforced. The Minister consider introducing a Bill to amend the Act to introduce further regulatory tools including enforceable notices and on the spot fines.	Agree, especially in the return to work planning and implementation space.
34	That the Minister consider introducing a Bill to amend the Act to include an offence prohibiting employers from making payments to an injured worker in lieu of the worker making a claim for compensation.	Agree, and the OIR ought to have a positive duty to investigate where this may be occurring.
35	That the Workers' Compensation Information and Advisory Service and the Workers' Compensation Helpline be actively promoted by insurers and by the administering organisation, including by more prominently displaying these services on their websites and by written information, YouTube, webinars and on lodgement or notification of a claim, to increase visibility and accessibility.	Agree. This should also include communication about the right to seek legal advice. Further, all such services ought to include prominent statements about the right to seek legal advice, and that many lawyers practising in workers' compensation provide free initial advice.
36	That the Regulator provide a grant for the establishment of an advisory service	Agree.

	for GPs, along the lines of those funded for workers and employers, to be based within an organisation that represents the interests of GPs.	Implementation is key here and should involve WCQ/the OIR engaging with key stakeholders to ensure correct advice and that issues are dealt with.
37	That, in consultation with stakeholders, the Regulator should develop a statement of workers' rights and responsibilities in the workers' compensation system, to be distributed in workplaces, on insurer websites and provided to all injured persons on notification of an injury. The statement should include such matters as – the right of a worker to: a) make a claim for workers' compensation; b) choose their own treating medical practitioner; c) not have an employer contact the treating practitioner or attend a medical consultation except with genuine consent; d) choose their WRP where they are dissatisfied with the choice made by the insurer; e) seek advice and support from their union, the WCIAS, the WPSS or lawyer; and f) participate in the development of their RRTW plan; and the responsibilities of a worker to: a) satisfactorily participate in RRTW; and b) treat insurer staff with courtesy.	Agree.

38	That the Minister consider for which rights, set out in recommendation 37, it is necessary or appropriate to introduce a Bill to confirm their existence.	Agree.
40	That, to enable the above time frames to be met, WorkCover should: (a) in the short term, create a "Legacy" Claims Team to respond quickly to the remaining mental injury claims received before the new dates; (b) In the medium to long term, commit to meeting its legislative obligations regarding time frames for decision making; and (c) take into account, in the setting of future premiums, the need to meet legislative obligations regarding time frames for decision-making.	Agree.
42	That the Minister oversee discussions with WorkCover to determine the most appropriate method for imposing a 10 business day limit for the employer submission of wage information to WorkCover. This could involve either: (a) a Bill to amend the Act to allow insurers to compel employers to comply with requests for wage information within 10 business days; or (b) for employers who provide the information within time, a discount on the excess payable, administered by WorkCover.	Agree.
43	That WorkCover should continue to be excluded from staffing limitations on hiring in state government agencies, and	Agree.

	any future staffing limitations should not be voluntarily adopted by WorkCover.	
44	That the Minister seek to ensure that the Review Unit of the Regulator (the Unit that decides applications for review of insurer decisions) is adequately resourced by: (a) to overcome the backlog, providing a significant short-term increase in resources to enable most current physical and some mental injury cases to be dealt with by a legacy panel, comprising an expanded Legal Panel including barristers plus existing Regulator staff; (b) seeking to remove the Review Unit from the FTE cap facing OIR, except for staff funded by consolidated revenue; and (c) to minimise the gap between receipt and allocation of cases, providing an appropriate sustained increase in resources to the Review Unit. This may involve revisiting the regulated formula for the levy and contribution.	Agree. The ALA considers a requirement should be added that if the review unit has failed to make a review decision within the legislatively mandated time, any rejected claim is then deemed to be accepted (with payments flowing consequently) pending the issuing of the review decision.
46	That the Regulator be funded, through the levy on insurers, to provide a claims liaison and support officer/adviser (CLSO), such that: (a) the CLSO would be the principal point of contact for claimants who have lodged claims for death entitlements, very serious injuries and latent onset injuries;	Tentatively agree, with further clarification sought. The ALA is concerned that this would result in another person for the claimant to deal with and, if legally represented, this could be too many contact points for an injured worker during recovery.

	(b) the aim would be to help such claimants navigate through the system and claims process; (c) the CLSO would be separate from and independent of the case manager and their organisation; and (d) the CLSO program should be piloted for a period of one year and then evaluated to determine whether it should be continued or extended to other groups of injured workers. That the Regulator be funded, through the levy on insurers, to provide a claims liaison and support officer/adviser (CLSO), such that:	The ALA suggests that perhaps an alternative solution would be to have specialty training for WCQ staff for such claims and the CLSO apply only to self-insurer claims. Claimant should have no obligation to participate or communicate with CLSO. An alternative could be for the Queensland Government to fund first consultation, with suitably qualified lawyers on a panel.
47	That OIR should ensure implementation of the external review of the Regulator. To this end: (a) it should establish a working group comprising representatives of WCRS, WorkCover, self-insurers and WHSQ to oversee reforms; (b) the purposes of the working group should include evaluation of the implementation of reforms, and consideration of what other changes need to be made to ensure data is high quality and being optimally used; and (c) the review should report directly to the DDG of OIR. DDG = Deputy Director-General	Agree.

48	That the early intervention programs set out in recommendations 5 and 9, and other initiatives, be supported though adequate training and development of insurer staff, by: (a) the Regulator establishing appropriate standards and competencies for training and development in early intervention; and (b) insurers increasing their investment in education of staff, especially new staff dealing with initial claim lodgements or referrals to early support services.	Agree.
49	That, in consultation with relevant stakeholders, the Regulator develop an enforceable standard for insurers' claims administration and conduct to include: (a) proactive contact with workers and employers; (b) ensure relevant information is collected before the claim is determined; and (c) ensure insurers are advising employers of their obligations under the Act to supply relevant information and to enforce this.	Agree. The ALA submits that lawyers should have input on the design of this, and ALA members are available to assist.
50	That the Regulator should amend the employer reporting injury form to include a response as to whether: (a) an incident report was made (and to be attached); (b) there were witnesses to the incident; and	Agree. The ALA contends that failure to do so ought to have offence implications.

	(c) an investigation of the incident was being/had been undertaken by the employer and the progress/outcome of the investigation (with supporting information and/or documentation to be attached).	
51	That the Regulator convene a working group of stakeholders including unions, employers, legal organisations and insurers to develop guidance or a code of practice on the type of supporting information required to be provided to insurers by injured workers and employers for a mental injury claim. Claims staff of insurers should receive training in the type of information required to support a mental injury claim and how to determine the relevance of it in determining a claim.	Agree.
52	That the Regulator should implement a governance framework to ensure appropriate training/refresher training and ongoing due diligence checks for medical specialists who undertake the evaluation of permanent impairment in the Queensland scheme. The Regulator's Medical Advisor should provide advice to inform the development of the framework and assist in overseeing its implementation.	Agree.

Attachment 3: Recommendations and outcomes arising from the Stakeholder Reference Group meeting 3 on Monday, 20 November 2023

<u>Recommendations 53 and 54</u>

<table>
<tr><th>No.</th><th>Detail</th><th>ALA position and feedback</th></tr>
<tr><td>53</td><td>That, in light of the likely outcomes from developments in the federal sphere, the Minister:
1. note the absence of impediments to legislating in the area of gig economy workers; and so
2. consider introducing a Bill to implement preferred options from the CRIS. That is, in relation to gig economy workers, to:
(a) amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review); and
(b) in relation to the other insecure work covered by the CRIS, amend the Act to either: extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licence holders</td><td rowspan="2">The ALA would like to address, after further consideration, some comments made at the Stakeholder Reference Group meeting on Monday, 20 November 2023 in relation to the extension of workers' compensation coverage for bailee taxi and limousine drivers.

One point made was that the personal accident insurance policies for bailee taxi and limousine drivers is sufficient. It was stated that some 95 per cent of such drivers hold a personal accident policy. Further, that they are not expensive and provide coverage comparable to, and different then, workers' compensation.

Having reviewed this commentary, the ALA notes that personal accident insurance policies cannot cover medical and allied health treatment. In other words, injured drivers cannot access rehabilitation and return-to-work. The ALA submits this makes the policy inferior to workers' compensation coverage.

A personal accident insurance policy may provide higher level income supplementation, for longer, then workers' compensation. That is subject to the type of policy and the insurer.</td></tr>
<tr><td>54</td><td>That, after the Queensland system of workers' compensation is extended to gig workers, OIR should monitor</td></tr>
</table>

	developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act.	However, it comes at a significant additional cost to the driver, compared to low workers' compensation premiums in Queensland. The extension of personal accident insurance coverage will do nothing to deal with the critical issue: ensuring injured drivers are provided rehabilitation and return-to-work support. In the ALA's view, this makes personal accident insurance policies sub-standard to workers' compensation coverage. A second point made during the discussion was that the taxi industry is seeing a move away from bailment arrangements towards leasing or management agreements. The ALA submits that this is a means by which the provisions originally proposed in 2018 may be circumvented. It was acknowledged by the Taxi Council of Queensland representative that such arrangements would not fall within the workers' compensation coverage proposed. It is the ALA's view that such arrangements are merely a chameleon changing colours, and thus should be covered. We are happy to engage further on the draft provisions to ensure coverage includes such arrangements.

Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

ALA QLD Submission of Comments to OIR

Submissions to OIR re: (a) Injured worker medical consultations + additional consent and (b) 2 x Rehabilitation Guidelines

10 December 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

ALA has been asked to comment upon two classes of draft documents. The requests to comment arrived separately from OIR. As the issues traversed by both cohorts of documents are linked, ALA has one submission encompassing both cohorts. It appears below.

Our submission

We would welcome the opportunity to meet to discuss matters further.

1. <u>The draft "Injured worker medical consultations", and a draft additional consent.</u>

The request for comment on these documents came from Ms Hillhouse at OIR under cover of email dated 15 October 2021 at 2.10pm.

We will comment on each draft document separately:

(a) **"Injured worker medical consultations" draft.**
This document is based upon a WA Regulator document which has been in use for several years.

Members of ALA have for many years been expressing concern about some employers and self-insurers misleading, coercing and bullying injured workers about their rights in respect of medical treatment and consultations. This tends to occur more often with self-insurers. A document of this type is overdue and welcome. It will be important that the document is backed up with action where its terms are not adhered to by employers and/or self-insurers. We consider that there is a high risk of that occurring.

ALA supports the content of the document with these additions and exceptions:

(i) At the end of the section entitled "Employer attendance at medical consultations" add as new paragraph as follows:

"The fact that medical attendances may be paid for by a workers' compensation insurer is also no basis for seeking to attend at a private and confidential medical consultation. Action may be taken against employers who seek to play any role in participating in such private medical or allied health meetings."

(ii) Delete all of the "Case conferencing" section for the reasons set out below.
(iii) Delete all of the "Medical authorities" section for the reasons set out below.
(iv) Replace those deletions with:

"At the commencement of the worker's claim, each worker has signed a consent which authorises doctors, health authorities, allied health providers, rehabilitation providers to disclose to Workcover Queensland and its agents any information about my medical history relevant to the worker's claim. Workcover routinely obtains and evaluates such information relevant to the claim, and monitors new information as it is produced. Workcover also complies with legal privacy

obligations. Our employer return to work guide **[link]** provides further guidance about return to work options and your responsibilities. For some workers, a case conference involving your representative, the worker and their representative and possibly allied health professionals and doctors may be desirable. In such cases, if there is additional information relevant to the worker's claimed injury which is needed, that will be considered before the case conference occurs."

(b) The additional consent form.

ALA strongly opposes the use of this document or any similar iteration of it, because:

(i) The WCRA already imposes clear obligations upon injured workers in respect of disclosure of relevant information,

(ii) Those obligations find expression in the consent contained within the claim form, referred to above. The consent explicitly authorises the provision of "any information about [the worker's] medical history **relevant to this claim**." [our emphasis],

(iii) The additional consent is in our view a solution seeking a problem. There is no evidence that the existing consent is not fit for return to work purposes,

(iv) There is no sound rationale for allowing others access to irrelevant medical material,

(v) Any consent which would permit of the worker's entire medical history to be disclosed to employers and insurers harbours many unacceptable risks, including:

- Many, perhaps most people have matters in their medical history which they would regard as highly sensitive,
- Some employers have no respect for privacy and confidentiality, irrespective of assurances given on the draft consent. Our members see cases where what has occurred in the Workcover process, including discussion of medical issues, has been the subject of discussion, gossip and innuendo later in the broader workplace. To add to relevant medical material other irrelevant, and in many case deeply personal and sensitive information, heightens those risks. Such improper disclosure of medical information distresses workers and engenders deep distrust not only of the employers, but others perceived to be part of the system which permitted the disclosure to occur. It disrespectful to injured workers and antithetical to the objects of the WCRA.
- The disclosure of irrelevant medical information provides Workcover, self-insurers and employers with an unjustifiable, unfair forensic advantage in the litigation process. Relevance has long been the touchstone for disclosure in the Courts. Rightly so. There is no justification, included an asserted benefit to RTW objectives, to allow Workcover, insurers or employers to go on fishing expeditions, trawling through sensitive, irrelevant information.

(vi) The fact that the draft consent is cast as "optional" will not resonate with many workers. Many will perceive it as being required as a matter of law, particularly without the benefit of a lawyer, which is often the case during the statutory phase.

The proposed document should in our view be dispensed with.

2. **<u>The documents upon which comment was sought under cover of an email from Ms Fiona Martin dated 18 November 2021 at 4.20 pm.</u>**

Our comments upon those draft documents appear below.

1. <u>Rehabilitation terms, roles and responsibilities document:</u>
    a. Needs to explain the term "key stakeholders" which is used throughout the other two guidelines. The document entitled "Rehabilitation and return to work plan guideline – for insurers" has a definition on page 5 which is probably suitable.
    b. Terms rehabilitation and return to work co-ordinator – so this is used specifically in the WCRA where certain employers must have such a co-ordinator, either employed or contracted. However, in these documents they tend to refer to this coordinator far more broadly, what I would think is akin to "case management". Therefore, either they need to clarify this and/or specify that a worker has a right to choose their own medical and allied health practitioners, including a coordinator.
    c. We commend the proposition that suitable duties should be meaningful. This will be contextual; but age, education, training and experience are all factors to be considered. Our members routinely hear reports from workers placed in meaningless positions, with the worker often perceiving that the underlying rationale was to protect superiors' "no LTI" financial bonuses.
    d. Page 4 SDP at paragraph 7 – stipulates the SDP must be signed off by treater "if outlined on the Work capacity certificate…". We suggest that all SDP, RTW programs must be reviewed by, and signed off by, a *treating* medical or allied health practitioner.
    e. Page 5 – Worker – paragraph 2 states the worker "should" be consulted. I think the worker "must" be consulted on development of a rehab plan. No, or deficient worker consultation almost guarantees a lack of worker buy-in.
2. <u>Accredited rehabilitation and return to work program guideline – for insurers:</u>
    a. Page 3 – intro – end of 2nd paragraph should include "or maximise independent functioning" because a rehab program is not just about RTW under the WCRA. If not possible to RTW, then the obligation is to maximise independent functioning.
    b. Page 5 – rights and responsibilities – it is vital that this document clearly states that the worker has a right to choose their own medical and allied health providers, that the employer cannot influence this decision, and that the worker must be advised that they do not have to attend an employer doctor (if the employer offers such a service). The issues of company doctor lack of independence and behaviours has been well-ventilated with OIR in the past.
    c. Pages 6 – 7 – Rehabilitation and return to work plans – it must be made clear that such plans must be reviewed by, and signed off by, a *treating* medical or allied health practitioner, and where applicable, the appointed case manager.
3. <u>Rehabilitation and return to work plan guideline – for insurers:</u>
    a. Page 5 last dot point – this goes back to my point 1(b), if the insurer proposes using a case manager to coordinate services, then the worker ought to have a

choice in this the identity of the case manager, including being able to nominate their own.

b. Page 6 – elements of the RRTW plan, dot point 2 – details of other health conditions – is concerning including for the reasons set out above on the additional consent. Relevance must always be the touchstone.

c. Page 6 – elements of the RRTW plan, penultimate dot point – sign off, again clarifying this is to be signed off by treating practitioner and if applicable the case manager.

There also needs to be confirmation from OIR that, if there are any issues/complaints by worker or worker is requested to do anything outside the scope of the plan, they are not required to do that, and should be encouraged to report to employer, insurer and treater.

Finally, we consider that Workcover has under-utilised external case managers in the RTW context for many years. Skilled case managers can be hugely valuable in identifying suitable duties, and being a trusted liaison point between injured workers, their treating practitioners, the employer and insurer. Our members have seen the external case management model produce outstanding outcomes in the CTP and NIIS contexts; and we believe that an opportunity exists to improve RTW outcomes by a more proactive and structured approach to external case management on the workers' compensation context.

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Conclusion

Should you have any questions about any of the comments above, please do not hesitate to make contact.

Sarah Grace

Queensland President
Australian Lawyers Alliance

Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

ALA Submission to OIR

<u>Second</u> Submission to OIR re: (a) Injured worker medical consultations + additional consent and (b) 2 x Rehabilitation Guidelines

9 September 2022

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Protecting and promoting justice, freedom and the rights of the individual.

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

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[1] www.lawyersalliance.com.au.

Introduction

Thank you for the opportunity to make further comment on your draft documents. We refer to our previous submissions dated 10 December 2021 **attached** for your reference.

We apologize for the piecemeal approach to our response. Some people wishing to provide feedback were unavailable until early September.

Our comments follow. We are happy to meet, were you to consider it helpful, to discuss the documents in further detail. We preface our comments with strong support for the principle of returning injured workers, as soon as is medically feasible, safely; to meaningful work following a work injury.

Our Submission

The safety and meaningful work aspects are features we would emphasize. A safe return to work usually has both physical and psychological needs to be addressed.

Our members' experience is that the holistic assessment of the needs of injured workers commonly:

(a) Does not occur at all, or
(b) If an assessment of that nature purports to occur, it occurs:
- Later than optimal,
- In a defective way, with this usually being a product of the person conducting the assessment lacking the professional skills and training (usually tertiary qualifications in an allied health discipline) to understand and report upon the often-complex suite of injuries and sequalae thereof, the needs resultant upon the injuries, and the type and cost of rehab measures needed to optimize a return to work, and/or
- In a set and forget way, failing to re-mould a plan as the injured workers' medical circumstances evolve, and their needs and work capacity change accordingly.

Our members have also seen countless instances of injured workers being forced, as they would perceive it, to return to work prematurely and to jobs which were demeaning, misaligned with their skills and experience, and in many cases seen as meaningless.

There are two documents which have much overlap.

The first, "Overview" document is a roles and responsibilities overview and framing document. It seeks to stipulate which entity has responsibility for each core function, and in doing so, demarcates in particular between insurers (including self-insurers), and employers.

The document states an expectation that "a self-insurer maintain structural separation of these obligations." Our members have seen numerous examples of deplorable conduct by many self-insurers, who have not even had a pretense of that structural separation: the HR and rehab roles are interlinked and injured workers exposed to that inappropriate mixing of roles, amongst other undesirable conduct, do not have their rehab needs met. We would be interested to know at a practical, coalface level, how the WCRS would intend to apply vigilance to ensure that the necessary structural separation always occurs. And where it is lacking, what sanctions, including we hope, the potential withdrawal of license, would apply.

Central to our observations is the fact that the insurer has responsibility for the first, and critical steps, being:

(a) Identifying those injured workers needing a RRTW plan,

(b) Discharging its legal obligation under the WCRA, by taking "all reasonable steps to coordinate the development and maintenance of a RRTW plan…"

We agree with the observation that RRTW plans are not "one size fits all". Indeed, our members' experience is that adopting a cookie-cutter approach to assessing needs, and subsequently developing plans to assess those needs, will not enhance rehabilitation and RTW prospects.

Some injured workers usually at the lower end of the injury severity spectrum, once identified and assessed, will be professionally evaluated as only needing a "light touch" RRTW plan. But not always. Some less serious physical injuries can have a profound effect on vocational functioning, and on psychological health. And circumstances and medical insights about the injured worker can change.

For a RRTW to have reasonable prospects of efficacy, those first steps are fundamental. A high-quality, professionally (in the sense of proper qualifications) prepared, individualized and holistic needs assessment is the foundation stone upon which the subsequent steps will proceed. The more serious the injury or mix of injuries, the more critical it is that:

- The injured worker be identified and engaged as early as medically feasible on rehab,
- The person charged with responsibility for formulating the RRTW plan be independent; and have the proper qualifications, skills and experience to do so.

Page 5 of the document states:

The insurer's claim manager [by whatever title] is responsible for … developing, leading, monitoring, reviewing and updating rehabilitation plans…, providing progress updates to all stakeholders when relevant or at completion of the RRTW plan; and keeping all stakeholders advised of any changes to the RRTW plan."

We consider that there is insufficient guidance on these matters, and related problems. We frame those in questions:

1. <u>Whom at the insurer has the task – is the claims manager way out of their depth?</u>

The vast majority of insurance claims managers do not hold tertiary allied health qualifications. Ignorance about injury type, severity, duration, psychological impacts, treatment options and all of the other needs which flow from the injuries will, often irrevocably, lead to the formulation of deficient RRTW plans.

We understand that Workcover Qld employ some staff with allied health qualifications. Their roles, reportedly, include assisting claims managers in various ways to develop bespoke and proactive rehab plans and carefully considered RTW options. Our members have seen little direct evidence of this.

The model, as the overview document contemplates, is of the claim's manager being the fulcrum. The role of the insurer claims manager in the italicized extract above is, in effect, that of a rehabilitation case manager. This person is the hub, from which various spokes emerge and must operate collaboratively towards the common goal of supporting the worker to a timely, safe and meaningful return to work.

Without proper qualifications, and even if the conflicts issue below in 2. were absent, there are serious doubts as to whether the vast majority of insurer case managers have the professional qualifications, skills and experience; to properly discharge the rehab case manager role. Put simply, the documents expect of the case managers, something which nearly all of them lack the professional qualifications and skills to do. This is a fundamental deficit.

2. <u>Is the insurer and hence claims manager conflicted?</u>

This will be an uncomfortable question for both Workcover Qld and self-insurers.

Particularly, but not only, at the more serious end of the injury spectrum, a comprehensive and professionally formulated needs assessment will require expenditure. Also, the implementation of the plans will sometimes require substantial further expenditure. Often, rehab needs assessments identify needs which had been overlooked by the claims manager and sometimes by treating medical practitioners who are time-poor. Common examples include:

- Housing modifications
- Transportation issues
- New injuries not yet accepted formally by the insurer
- Post-surgical therapies to aid recovery
- Paid care
- Psychological supports. Many workers, and blue-collar males in particular, are reticent to reveal their psychological distress.

There are many other examples.

The meeting of those new or upgraded needs will invariably involve expenditure which we regard as an investment in the worker, their optimized recovery and therefore improved prospects of a timely and meaningful return to some form of work.

This expenditure will usually be more than presently allocated for the worker's rehab needs, and more than the financial modelling for the future of that worker's statutory claim.

There is, and will continue to be a tension between insurers' desire to limit claims cost, and the needs and expenditure flowing from a thorough, professional needs assessment. We do not accept that the claims manager can, comfortably and to the benefit of the worker, walk both sides of that street. In our view, the higher the anticipated additional expenditure – a general correlation with injury severity – the more acute the tension and conflict.

In our members' experience, the early investment pays dividends in the form of:

- The worker feeling genuinely supported,
- Other stakeholder being kept informed and their views being respected,
- Improved chances of an RTW in some form

3. <u>Were the skills/qualifications and conflicts issues absent, precisely how would the claims manager discharge their responsibilities?</u>

That is, what guidance do the documents provide on the specific methodologies required to be adopted by claims managers to develop, lead, monitor, review and update RRTW plans and effectively liaise with stakeholders?

The documents are short on this important issue. Whilst the documents clearly require liaison between the claim's manager and each of the worker and employer; the primary deficits we consider exist are at the front end: the holistic evaluation of needs at the earliest opportunity, then a model for acting on such an evaluation.

The documents provide little guidance on how a claims manager will fully evaluate the injured worker's

needs. We emphasize again that such an evaluation, properly conducted, will differ according to many factors. Cookie-cutter formulas are to be avoided. Nevertheless, and particularly due to the absence of formal case-management qualifications in the claim's manager cohort, one would expect a greater level of specificity on how the claims manager would discharge their stated function.

Proposed Solutions:

In our respectful view, the documents would benefit from a structural re-think. Whilst we again endorse the guiding principles, we consider that the documents will have limited utility in improving Queensland's mediocre RTW metrics. In a scheme which we regard as, in many other respects, nation-leading; there is an opportunity for greater improvement.

We believe that a pointer to a key initiative is found in a note forming part of the second document. Page 5 of that document, in referencing workers who have not been able to RTW in their pre-injury role, some of whom will have had their statutory claims closed; states:

"In practice, a referral to the insurer's RRTW program may involve referral to a workplace rehabilitation provider (WRP), who will develop a plan tailored to the individual worker, detailing how they will assist the worker in their rehabilitation now their claim is closed."

In our submission:

1. A referral to an external provider at that late juncture (post statutory claim) might help some injured workers,
2. However, the optimal time for a referral to the external provider is far earlier in the claims process.

Development of a model whereby timely evaluation of injured workers' needs by a firm, independent of the insurer and the employer, is central to our view of remediation of the present draft model. We again apprehend the possibility of discomfort. There are non-workers' compensation scheme injury scheme contexts where such a model resists the flaws borne of the issues explored in the questions posed above.

There is more detail which would need to be developed under each of the below points. At a top level, the guiding principles and design fundamentals for the model we would recommend are:

1. The insurer acts as the insurer, not a rehabilitation case manager. The role of the claim's manager is to manage the claim in accordance with the Act. And, crucially, only within the professional expertise of the claim's manager.

2. As a matter of urgent priority upon a statutory claim being accepted, the claims manager allocates the worker's claim within the insurer:
   (a) To a person with suitable allied health qualifications (ideally in Occupational Therapy), or
   (b) If no such person exists at the insurer, to a suitably qualified external expert.

That person determines if a formal needs assessment is required, and if so the timing thereof and identity of the independent external firm to be commissioned to conduct the needs assessment. A set of criteria be developed to inform the "yes/no" needs assessment decision, and the triage to the independent firm.

3. The insurer makes the referral to the external firm. Employers cannot be trusted to do this properly, consistently.

4. A needs assessment be undertaken promptly. As is indicated above, not all matters will require a needs assessment. Some claims will be plainly straightforward, and where a full recovery and RTW in pre-injury duties reasonably expected. However, some matters which are initially seemingly simple, may be proven to be more complex. For example, an injury originally thought to be a hamstring tear, subsequently diagnosed as referred pain from an intervertebral disc injury, requiring spinal surgery.

5. The firm conducting the needs assessment have demonstrated experience in conducting needs assessments in a vocational rehab context, and staff with the suitable tertiary qualifications. A small panel of providers, perceived to captive to the economic direction of the insurer, is to be avoided.

6. The needs assessment has a major vocational rehab focus. The needs assessment report would be informed by the author of that report liaising with and considering views of all key stakeholders including:
   - (i) The worker,
   - (ii) The worker's family, especially where cognition and capacity issues may be live,
   - (iii) The employer and other key people therein, such as the pre-injury supervisor,
   - (iv) Treating medical and allied health practitioners,
   - (v) Where additional unmet needs requiring new treatment, treating provider options,
   - (vi) The injured worker's lawyer,
   - (vii) The insurer.

7. The needs assessment, with (usually) a RRTW plan in it, be delivered within mandated timeframes from the referral in 3, above. Time will usually be of the essence.

8. The insurer trust and abide the professional opinions in the report. The report effectively umpires the injured worker's needs and the content of a RRTW plan. Whilst the report and the needs and costs arising from it, need to be evaluated by the insurer through the prism of the WCRA, the guiding precept must be "hands off – we have commissioned an expert and their professional opinions need to be trusted". That is, neither the insurers nor the employer should seek to nit-pick, dissect or dismiss the report.

9. The firm conducting the needs assessment hold, where necessary, a stakeholder meeting to coordinate the effective implementation of the need's assessment and embedded RRTW plan.

10. Implementation. All stakeholders are kept informed.

11. The external firm monitors, adjusts and keeps stakeholders informed of key refinements to the worker's needs and the RRTW plan.

12. Shortly before the cessation of the statutory claim, consideration of the merits of keeping the external firm, now acting as case manager with oversight of the RRTW plan, involved post the statutory claim. There will be merit in some matters, to a continuum through to the resolution of any common law claim.

13. Dispute resolution throughout, on an informal basis, be encouraged. Skilled rehab case managers are usually adept at reconciling competing views and interests. And where this is unsuccessful, parties have various rights under the WCRA.

Conclusion

Thank you again for the opportunity to comment on this important initiative.

Should you have any questions about any of the comments above, please do not hesitate to make contact. Should you consider it helpful would be happy to meet with you to discuss further at a mutually convenient time.

Sarah Grace

Queensland President
Australian Lawyers Alliance

Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

Table of Costs Review 2023

Submission to WorkCover Queensland

26 October 2023

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA's Queensland members have been regular contributors on policy issues concerning workers compensation for over 25 years.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal people of the Eora Nation.

[1] www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into Table of Costs Review 2023, being conducted by WorkCover Queensland ('WorkCover').

2. As is well known, and acknowledged in WorkCover's own publications, rehabilitation is an essential pathway to recovery and a successful, sustainable return to work for injured workers. Rehabilitation is not an expense; it is an investment. Early, quality rehabilitation and eventual return to work are the best indicators for reduced common law claims and future claim costs. We have consistently submitted that Workcover has an irreconcilable conflict of interest in seeking to manage rehabilitation in house and that better outcomes result from early investment in high-quality independent external rehabilitation case managers being appointed. We refer to our submissions to the Office of Industrial Relations dated 10 December 2021 and 9 September 2022, **attached** in that regard.

3. The ALA submits that good rehabilitation policy should be informed by these matters:

    a. market rates for various forms of treatment, care and support used for rehabilitation differ for a range of reasons, and in particular can vary significantly as between urban settings, on the one hand; and rural, regional and remote settings on the other;

    b. accordingly, the touchstone for payment of rehabilitation costs ought simply to be reasonableness by reference to market rates for suitable services in the area that the injured worker needs to access those services. Reasonableness is the touchstone in CTP under section 51 of the *Motor Accident Insurance Act 1994* (Qld), and for CTP participants in NIISQ. WorkCover having a different approach is inconsistent and unnecessary;

    c. whilst we recognise WorkCover's legal right to promulgate a table of costs, it ought not to do so; and should withdraw the existing table of costs because such a table fails to fully respect differing market rates referred to above; and

    d. if a table is to be utilised by WorkCover Queensland and the self-insurers operating in the scheme, the table should:

        - reflect true market rates accurate at the time of publication; and
        - contain an overarching discretion and sufficient flexibility whereby particularly in thin markets, higher rates can be paid if failure to do so would mean injured workers not receiving optimal rehabilitation. ALA

members report that WorkCover will in some cases pay at rates above the table rates. We surmise that this is an appropriate exercise of a discretion not specifically mentioned in or ancillary to the table.

4. Greg Spinda, Chair of the ALA Queensland's Workers' Compensation Special Interest Group, previously made a submission in his own name to the Review of the Allied Health Table of Costs on 19 April 2023. A copy of that submission is **enclosed** with our submission. Since that time, the ALA notes that a number of changes became effective from 1 July 2023. For example, positively we note an increase in various items in the Physiotherapy Table of Costs of between 5 per cent and 10 per cent. Despite that, the physiotherapy table of costs do not reflect present market rates and this problem, not just for physiotherapy, is exacerbated by the higher CPI environment in which Australia remains. However, we reiterate the content of Mr Spinda's earlier submission, as a number of matters continue to be relevant and unaddressed.

5. In addition to the comments made in Mr Spinda's earlier submission, the ALA makes the following further submissions.

National Injury Insurance Scheme, Queensland and the WorkCover Table of Costs

6. Since the inception of the National Injury Insurance Scheme, Queensland (NIISQ), insurers have contracted management of NIISQ functions to the NIISQ Agency. The position adopted by the NIISQ Agency and insurers has been that treatment, care and support needs were funded at market rates. That is, at the rate as ordinarily charged by the provider.

7. That, in the ALA's view, is the correct approach subject to those rates representing what is the generally accepting pricing for that specific service in that geographic area.

8. However, it has come to the ALA's attention that insurers and the NIISQ Agency are now adopting the position that treatment, care and supports for injured workers will be funded in line with the WorkCover Table of Costs rates, and never above it. To be clear, there are broadly two classes of entrants of the NIISQ Scheme: CTP, and injured workers, with the latter now receiving different and usually less favourable rates for treatment, care and support to the former. This is highly troubling, and the ALA submits that the legal foundation for such an approach is questionable. ALA recently sought from WorkCover Queensland a copy of the documents evidencing the formal arrangements between NIISQ and WorkCover

Queensland. Access was refused by WorkCover, which we consider to be obstructionist and entirely inconsistent with the transparency and collaboration values espoused by both entities.

9. For a national injury insurance scheme, which operates also for those injured in motor vehicle accidents, it is extraordinary that the rates paid for treatment, care and supports now vary depending on how the injury was sustained. In any case, the severe disadvantage that would be caused by applying the Table of Costs is notable when comparing the National Disability Insurance Scheme (NDIS) rates for personal care activities, which vary from $65.47 per hour to $221.43 per hour, to the Table of Costs' rates for personal care assistance of $56 per hour for weekdays and $80 per hour for weekends.

10. The ALA is aware that, in at least one instance, the NIISQ Agency has advised the provider of personal care activities of a reduction in the rate by adopting the Table for Costs, and the provider has indicated they are unable to continue supplying their services at that rate. The provider has been engaged with this participant for some two years. The potential upheaval of services being cancelled is significant, including:

    a. Needing to find an alternative provider – given high care needs, this will be difficult;
    b. Training of sufficient carers;
    c. Re-engaging the participant and their family with new people in their home;
    d. The inevitable hurdles and difficulties in re-establishing a new timetable or supports; and
    e. The participant will be left with no qualified support during this time, with their family having to manage alone a participant with high care needs.

11. Further, NIISQ participants will most often require not just personal care support, but nursing support from either Enrolled or Registered Nurses. Medical supports may also be needed. The NDIS nursing rates vary from $93.06 to $320.43 per hour. WorkCover's Nursing Services Table of Costs only allows home nursing services by a Registered Nurse at a rate of $83 per hour. There is no reference to Enrolled Nursing services.

12. Podiatry rates in the WorkCover Table of Costs are $124.00 for an initial consultation and $97.00 for subsequent consultations. Yet, the NDIS rate is $193.99 per hour to $290.99 per

hour. If it is accepted that the NDIS rates will commonly be reflective of market rates, the Workcover rates are obviously lagging far behind in some instances.

13. The NDIS rates specifically acknowledge differing market rates in remote and very remote areas. There is no acknowledgement in the WorkCover Table of Costs for higher provider input costs for those working in regional and remote communities. Any travel allowance in the Table of Costs still does not compare favourably with the NDIS rates. This is not to imply that the NDIS rates will *always* reflect market rates. Particularly in rural, regional, and remote areas, NDIS will sometimes not reflect market rates. But the Workcover Table, now being applied by NIISQ, fails to acknowledge the reality of market rate differences for the same services. This issue is especially important, as Queensland is the most decentralised State in the nation.

14. There is considerable risk of providers refusing to provide services to complex cases, those with major personal injuries, if insurers and the NIISQ Agency insist on adopting the (in our view erroneous) position that the WorkCover Table of Costs mandatorily covers NIISQ participants.

15. The ALA understands, from WorkCover, that WorkCover have contracted their functions pursuant to Chapter 4A of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld), to the NIISQ Agency. As we understand it, WorkCover have taken a hands-off approach and do not interfere in decisions of the NIISQ Agency. We have been informed that WorkCover was not aware of the present issue of the NIISQ Agency refusing to continue to pay market rates of providers any longer and now determining that the appropriate rate is the Table of Costs rates.

16. Whilst we understand that WorkCover's agreement with the NIISQ Agency may grant the NIISQ Agency a prerogative, in respect of this issue the ALA contends that WorkCover cannot take a hands-off approach. We believe that NIISQ has a discretion to apply market rates. If that is not correct and WorkCover or a self-insurer is the final arbiter or decision-maker in respect of all issues arising under Chapter 4A of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld), WorkCover should instruct NIISQ to exercise discretion on its behalf to meet market rate. A similar instruction ought to be issued by OIR to self-insurers.

17. **Pending judicial determination or other resolution of this issue, the ALA calls on WorkCover to immediately direct the NIISQ Agency to ensure that NIISQ participants' treatment, care and support is paid for at providers' market rates, not the Table of Costs' rates. Further, any**

decision already made in this regard be nullified and the providers' original rate be re-established.

Unreasonable and unnecessary delays

18. Low hanging fruit, which has not yet been actioned, remains the improvement in decision-making processes and approvals for treatment plans. Quick, early and consistent decisions will allow early commencement of rehabilitation, better prospects of improved outcomes and improved return to work rates, which in recent years has gone backwards.

19. **The ALA agrees with Mr Spinda's submission encouraging WorkCover to arrange a round-table with a variety of medical and allied health providers and lawyers to determine what are the pain points, and why, so that WorkCover can seek efficiencies in decision-making and approvals processes.**

Costs of specialist, senior or Titled Physiotherapists

20. This is particularly an acute issue for serious personal injury claims and complex claims, including but not limited to NIISQ participants. Those with serious personal injuries and complex injuries require highly trained and experienced practitioners to look after their treatment, care and support needs. Appropriate remuneration for those with additional qualifications or expertise is a critical way for WorkCover to ensure the right providers are able to provide the right level of expertise in such matters.

Conclusion

21. The Australian Lawyers Alliance (ALA) welcomes engagement with WorkCover Queensland on the critical issue of rehabilitation and the Table of Costs.

22. Fundamentally, we are in agreement that early, quick and consistent rehabilitation will lead to better health and return to work outcomes. We contend that effective rehabilitation is not enhanced by a table of costs and rigid application of that table. Reasonable market rates ought to be the touchstone, as they are for CTP participants under section 51 of the *Motor Accident Insurance Act 1994* (Qld), and CTP participants in NIISQ. If a table of costs is to be

used, it must have flexibility in the form of a discretion, explicitly expressed, to ensure no diminution in the quality and availability of rehabilitation. The present table does not reflect market rates and its rigid application by NIISQ is unacceptable to our members.

23. **The ALA reiterates a number of prior recommendations made in the attached earlier submission from Mr Spinda**, such that WorkCover Queensland should:

    a. Formally adopt, and communicate to all stakeholders, the position which has been in place since the commencement of the NIISQ, that treatment, care and support services will be funded at market rates for NIISQ participants. We will provide a copy of this submission to NIISQ and OIR and urge upon them that course, and the same level of transparency.

    b. Arrange a round-table with a variety of medical and allied health providers and lawyers to determine what are the pain points, and why, so that WorkCover can seek efficiencies in decision-making and approvals processes. We would be pleased to engage in this process.

    c. Arrange a stakeholder session with medical and allied health providers to determine how to create items providing for a higher rate for experienced, senior or specialist practitioners.

    d. Put in place a systemic guaranteed annual increase to bring the Queensland scheme's rates in line with the NDIS rates, subject to the overarching discretion mentioned in our submission.

24. The ALA is available to provide further assistance to WorkCover Queensland on the issues raised in this submission.

Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance

19 April 2023

By Email: Matthew.Bannan@workcoverqld.com.au

Mr Matthew Bannan
Head of Stakeholder Engagement
WorkCover Queensland

Dear Matthew,

Submission on the Review of the Allied Health Table of Costs

Thank you for allowing extra time for feedback on WorkCover's review of the allied health practitioner's table of costs for the 2023/24 year.

Travis Schultz & Partners are plaintiff personal injury lawyers with offices at the Sunshine Coast, Brisbane, Gold Coast and Cairns. We have experienced personal injury lawyers, with a number of accredited specialists, who have daily dealings with our client's rehabilitation journeys and tribulations whilst on workers' compensation statutory benefits.

We applaud WorkCover's regular engagement with stakeholders on topics relating to rehabilitation. As is well known, and acknowledged in WorkCover's own publications, rehabilitation is an essential pathway to recovery and a successful, sustainable return to work for injured workers. Rehabilitation is not an expenses; it is an investment. Early, quality rehabilitation, and eventual return to work, are the best indicators for reduced common law claims and future claim costs. Thus, front-end investment in rehabilitation by WorkCover, through an appropriate table of costs, is a critical part of a sustainable workers' compensation scheme for Queensland.

With this background, we will deal with a number of pain points that we have received feedback about from our client's treatment providers, in particular Physiotherapists. Unless otherwise stated, these submissions deal with the Physiotherapy Table of Costs.

The 2022/23 review

The last review of the Allied Health table of costs acknowledged that Queensland's scheme remained well behind the fees paid by the National Disability Insurance Scheme. Despite a marginal increase, this continues to remain the case. For most NDIS items the hourly rate for Physiotherapy is $193.99, with remote areas treatment being $224.62 and very remote areas $314.47.

For Physiotherapy, the key change at last review was combining the single and multiple injuries items into one, with the combined initial consult fee being $117 and subsequent consultations $88. There has been a fair bit of disquiet concerning this change.

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Examples from Physiotherapists:

- Physio 1 – as I see a lot of complex, chronic pain patients who have multiple injuries, 30mins is not always a sufficient period of time to provide adequate treatment to these patients.

- Physio 1 – patient's with a language barrier that it takes a lot longer to explain/comprehend concepts/exercises/educate them, 30mins is not enough to provide effective treatment as you often have to explain things in several different ways and more slowly, or in the presence of a translator

- Physio 1 – my patients with chronic pain with central sensitisation++, fear avoidant behaviour++, boom and bust behaviour++, not enough time to hear them out, acquire the detail we need for effective treatment planning, allow for sufficient rest periods between exercises and assessments, provide sufficient education around chronic pain and activity/behaviour modification

- Physio 2 – patient's with more than one injury, we are doing a 'half job' on each area and everything is going to take twice as long to get better

- Physio 3 – I have a client who was involved in a motor bike accident recently and he has 7 injuries (neck, shoulder, wrist, lower back, hip, knee, ankle). A 90 minute consultation to assess and treat all areas competently is more cost effective and time efficient compared to seeing a client multiple times per week.

Costs of initial & subsequent consultations

A simple Google search can elicit informative data about the average costs of Physiotherapy in Queensland. Initial consultations vary from $100 - $185.[1] Subsequent consultations cost between $90 - $180. Fees can vary based on the seniority, specialisation or Titling of the provider and whether multiple conditions are being treated. This is for patients where the provider is not having to communicate with WorkCover, prepare provider treatment plans, progress reports, seek ongoing funding and the like.

We are regularly hearing the difficulties that Physiotherapists face with having to use their initial consultation time to do their ‘usual work’, that is undertake a fulsome assessment, provide treatment, develop goals with the patient, and write clinical records; but, with WorkCover patients then having to spend additional time in preparing a provider treatment plan, and then spent considerable time on back and forth communication with WorkCover for approvals.

[1] A few examples: https://www.barefootphysiotherapy.com.au/physiotherapy-pricing/
https://modernphysio.com.au/our-fees/
https://physiowise.com.au/?page_id=736

This is especially true for patients with multiple injuries. Whilst the volume of such claims may be small in WorkCover's databases, the real-world impact for providers (who are in Queensland often small businesses) is substantial.

Examples from Physiotherapists:

- Physio 1 – my biggest complaint, and I think every physio in Queensland would be in agreement, was the removal of extended consultations for multiple/complex injuries (item codes 100313/100102). Though the majority of our Workcover appointments are one injury site, occasionally we see multiple (particularly in the case of MVA's), and/or see those with complex psychological yellow flags where it is ideally necessary to have an extended consultation.

- Physio 2 – The PMP form: it is crucial that this form is completed thoroughly and accurately for the benefit of patients. Without compensation for their time and effort, busy clinicians simply cannot afford to add additional paperwork to their already overflowing schedules. In order to provide the best possible care, clinicians will need to block out valuable time in their already busy schedules to complete this form. Without appropriate compensation, clinicians will be unable to devote the necessary time and attention to completing this form, which could ultimately lead to suboptimal patient outcomes. When healthcare providers aren't paid for their time, it can limit the amount of time and resources they are able to dedicate to each patient.

- Physio 2 – the fees provided are not close to what private fees would be, which means that we as healthcare providers are forced to charge patients a gap fee to cover the cost of their clinician's time. This can be a major financial burden for patients, especially those who are already struggling financially with a reduced wage.

Not only are providers utilising their own time to meet WorkCover's requirements, but doing so without reimbursement of their time and at a fee less than (sometimes substantially) the WorkCover Table of Costs. What is, for a non-WorkCover patient an hour long $150 consultation, is for a WorkCover patient $117, but with additional 30 minutes to 1 hour of unpaid work including preparing the treatment plan and communicating with WorkCover. That is a loss of $183 ($150 x 2 hours less WorkCover rate). This is simply not sustainable for most Physiotherapy practices in Queensland which are small businesses, and we are already seeing Physiotherapists (senior ones in particular) not taking on WorkCover patients.

Even more troubling is commentary we are hearing about WorkCover patients having to pay 'gap fees'. This is in circumstances where they are injured through no fault of there own, likely not working or on suitable duties and therefore on reduced weekly benefits, and with high costs of living pressures. It is patently unfair and unreasonable that workers, already down, have to then pay additional treatment costs out of their own pocket despite Queensland having a scheme that was set up to cover such costs.

It should also be noted that the differential between initial consultation and subsequent consultation fees is far too large and without foundation. As noted above, the publicly available information about market rates demonstrates the difference in initial consultation and subsequent consultation fees (in the market) is not vastly different.

Examples from Physiotherapists:

- Physio 1 – In the case of an initial consultation and a follow-up consultation for WC patients, both require the same amount of time, expertise, and effort from healthcare providers. This means that it is fair and logical to charge the same amount for both types of consultations.

- Physio 2 – The follow up fee is only 75% of the initial. This is definitely not reflective of the workload differential between the two types of appointments. Whilst an initial appointment involves taking more of a subjective history and wider ranged objective examination- a subsequent session involves more reassessment, goal setting, education and progression of treatment. There is really not less workload just a different distribution.

- Physio 3 – Increase the physiotherapy subsequent consultation cost to at least $110 to more accurately reflect market rates and costs associated with general consultations.

We would encourage WorkCover to make a substantial increase to the initial and subsequent consultation rates now; with a view to bringing the two items closer to reduce the differential between them. We would also encourage WorkCover to put in place a systemic guaranteed annual increase to gradually bring the Queensland scheme's rates in line with the NDIS rates.

The cost of doing so, we appreciate, will increase front end investment in rehabilitation, but it will also:

1. Ensure providers can allocate appropriate time to treatment, assessment and reporting;

2. Prevent and reverse the exit of Practitioners from WorkCover patient consultations;

3. Keep senior practitioners engaged with WorkCover patients (further comments below); and

4. Assist with improving outcomes for injured workers, and with it the prospect of increased return to work rates.

Cost of reporting, communication & travel

In addition to an initial treatment plan, it is common practice for WorkCover to seek progress reports, new treatment plans, or to communicate with providers throughout the course of treatment. Communication and reporting is essential to monitor progress of rehabilitation and to ensure the injured worker, WorkCover and the treatment provider are aligned as to progression and eventual return to work.

Unfortunately, providers again here note the costs paid by WorkCover are not commensurate with the time and effort in preparing, or responding to, such requests. Often this leads to the provider using their own time, uncompensated, to provided reports and responses, in between a busy patient load.

For regional and rural providers, in particular, travel is an necessary part of the role and it is felt that the Table of Costs does not adequately cover the time and costs associated with such travel.

Example from a Physiotherapist:

- Impactful for our OT's specifically is reporting time and comms poor pay - large part of role.
- also lack of clarity regarding scope of reporting types and classifications under table of costs.
- Poor travel time pay - in comparison to other schemes.

We encourage WorkCover, as with the initial and subsequent consultation costs, to provide for an improved rate which fairly and commensurately compensates providers whose work and efforts assists the worker and WorkCover with the fundamental goal of return to work.

Macroeconomic factors

Further to the above, we note more broadly the macroeconomic climate that all businesses in Australia have had to operate in; namely, a high inflation environment. The cost of running a Physiotherapy practice has increased exponentially since 2020. Headline inflation for FY 2022 was 7.8% and expectations are inflation will remain high throughout 2023/24.

The approximate average increase in the allied health table of costs from 2020 to 2021 was between 1% - 3%. It is though difficult to properly gauge the movements in each item as items have changed (i.e. the 2022 merger into a single initial and subsequent consultation). Nonetheless, in real terms it is clear that inflation and the costs of practice have far outpaced the WorkCover Table of Costs.

Unreasonable and unnecessary delays

As noted above, we are hearing regular accounts of providers spending between 30 minutes to 2 hours (in worst case scenarios) of unpaid time dealing with WorkCover's requirements to ensuring a patient is receiving the right type and degree of funded rehabilitation. The financial and administrative impost on Physiotherapists is substantial.

> Example from a Physiotherapist:
>
> To date, I have had multiple clients who have had to wait minimum 3-4 weeks, with one currently waiting 6 weeks to be assigned a case manager (who has 7 injuries – see third point). This has resulted in significant out of pocket expenses and delay in accessing required treatment and investigations (physiotherapy, psychology, specialist review, MRI and other investigations).

> Example from another Physiotherapist:
>
> - Difficulty with getting specific physiotherapy appointments approved, due to case managers being non healthcare trained, the duration of back and forth unpaid work around this, the fact that there is no gazetted timeframe in which they need to reply so we wait weeks and then the patient misses out on a ton of appointments as we have a waitlist.
>
> - NDIS allow for charging of no shows and cancellations in full. WC do not. Yes, we can charge the patient but in practice that never happens/ they don't pay etc
>
> - Patient with a severe concussion and loss of concussion, perfectly referred to us as a multidisciplinary concussion clinic. Significant disability- > 70% on post-concussion scale. A job requiring high degree balance and cognitive function, but the patient had poor cognitive function, sleep, balance issues, dizziness and constant headaches. Was seen and treated in an initial 60 minute consultation, with a detailed PMP submitted.
>
> I then tried to call the case manager, repeatedly to ensure we could book her further appointments. Anyway, we booked as much as we could around our waitlist, then had to cancel everyone of them because it took the WC people TWO WEEKS to get back to us, with a barrage of further questions which I couldn't answer after one session- and I pointed out I had already done over 2 hours of unpaid work on the case and our admin team were calling them every single day for approval! By the time they approved her and she got re-booked in, she probably missed about a month of intensive treatment and still struggles to get the treatment frequency she would like. It has been several months since the accident and the patient is still not back at work.

There are reports from treatment providers that their clinical judgement and recommendations are being questioned by unqualified individuals with no medical background. Oftentimes it is perceived this done because claims officers are following a standard WorkCover flowchart, which itself is not appropriately clinically justified. This can cause delays with commencement of treatment and prolong disability and return to work. Further, it can negatively impact the operation of treatment provider's businesses with cancelled or rescheduled appointments where approvals are not communicated by WorkCover. Alternatively, the patient/provider relationship can be tested, as most patients on WorkCover are unable to afford the cost of treatment and the provider then either cannot provide treatment or does so at the risk of not recovering the cost from WorkCover.

Example from a Physiotherapist:

Another issue we have is that when we get a referral from a Pain Physician for an assessment and report – we have to call w/c and get that approved first prior to seeing the patient. Complex cases or 60 min treatments are all requiring pre approval.

I understand – but perhaps when referred by a pain specialist you could get pre approval immediately for the assessment and report.

w/c case managers are becoming more and more difficult to speak with – often not answering phone or returning ph calls

Administratively, delayed approvals or unnecessary requests for information by non-healthcare trained claims officers second guessing the qualified treatment provider, means Physiotherapists are having to juggle or reschedule appointments or simply have a WorkCover patient wait for the next available appointment which could be 2 weeks away. This jeopardises outcomes. We are noticing that Queensland is losing talented, experienced and senior Physiotherapists from the pool of providers because of this.

A low hanging fruit for immediate effect, and at minimal expense to WorkCover, would be to improve decision-making processes and approvals for treatment plans. Quickly, early and consistent decisions will allow early commencement of rehabilitation, better prospects of improved outcomes and thus longer-term reduced number of rehabilitation sessions. Given the regular feedback we are receiving about this issue, we would strongly encourage WorkCover to arrange a round-table with a variety of allied health providers and lawyers to determine what are the pain points, and why, so that WorkCover can seek efficiencies in decision-making and approvals processes.

Costs of specialist, senior or Titled Physiotherapists

One of the biggest pain points is that the initial and subsequent consultation fees in the Table of Costs is severely lower than that charged by Physiotherapists with particular specialisations or those who are Titled, or senior practitioners.

“The Titling credential signifies a physiotherapist who is highly qualified in a particular area of practice and has undertaken a rigorous and formalised process to demonstrate their physiotherapy experience and knowledge.”[2]

Specialisation is available only to Titled Physiotherapists, who go on to complete further entry requirements.

Presently there are only a few areas of Titling and specialisation. However, in practice there are Physiotherapists who are very experienced, say 7 years plus, who have, through private continuing professional development and experience/practice, developed an expertise in a certain area. Much like say a plaintiff personal injury lawyer, but who does not hold Specialist Accreditation through the Queensland Law Society.

These Titled, Specialist or senior Physiotherapists are foregoing WorkCover patients or minimising their involvement, as NDIS rates are so substantially more beneficial for their practices and their level of expertise. This is a serious brain drain, and one that holds considerable forward risk in Queensland as NDIS participation grows and the gap between WorkCover’s rates and NDIS rates widen. This is particularly galling since the inception of the National Injury Insurance Scheme for work injury cohorts and for workers with other serious (non-NIISQ) injuries or multiple injuries and complex care needs.

There is risk to patient outcomes and return to work rates in such scenarios with complex care needs being met by less experienced providers. This is in no way a criticism of developing Physiotherapists or practices, it is an acknowledgment that some patients need that specialist/senior level input and business case for such level of input (on WorkCover’s Table of Costs) simply isn’t there to sustain most practices which are small businesses.

Example from Physiotherapists:

- Physio 1 – We were grateful that the prices increased although it is still substantially below the NDIS and fees for Private paying which is closer to $95 per half hour.

- Physio 2 - Difficulty getting them in with our senior clinicians due to the paperwork and nonsense- i personally don't see WC anymore

Consideration needs to be given to creation of an item(s) which address this gap. We would urge WorkCover to consult on this specific topic. We appreciate there may be difficulties with defining items to differentiate which providers can charge at such higher rates, but just because it may be challenging doesn’t mean it cannot or should not be done; and done as a matter of priority.

[2] Per Australian Physiotherapy Association website: https://australian.physio/pd/australian-college-physiotherapy-information

Conclusion

We are grateful for the ongoing positive engagement by WorkCover with key stakeholders on this very important topic of allied healthcare funding. As lawyers acting for injured workers, we are daily dealing with the effect of delayed decision-making, second-guessing of treatment providers by unqualified claims officers, concerns that clients cannot see their local or preferred provider because “they do not do WorkCover work”, and the administrative and financial burden on Queensland’s Physiotherapists who are often small businesses.
In our submission, WorkCover ought to:

1. Review the impact of the removal of multiple injure items for initial and subsequent consultations and reconsider these items.

2. As an alternative and/or additional consideration, provide a longer consultation item for 60 – 90 min consultations.

3. Increase the initial and subsequent consultation rates at least at a rate of inflation in 2022 (7.8%) as a bare minimum.

4. Reduce the differential between initial consultation and subsequent consultation costs.

5. Put in place a systemic guaranteed annual increase to gradually bring the Queensland scheme’s rates in line with the NDIS rates.

6. Increase the rates for reporting, communication and travel at a rate of inflation in 2022 (7.8%) as a bare minimum.

7. Arrange a round-table with a variety of allied health providers and lawyers to determine what are the pain points, and why, so that WorkCover can seek efficiencies in decision-making and approvals processes. We would be pleased to engage in this process.

8. Arrange a stakeholder session with allied health providers, such as Physiotherapists, to determine how to create items providing for a higher rate for experienced, senior or specialist practitioners.

Yours faithfully,

Greg Spinda
Special Counsel
Travis Schultz & Partners