Australian Physiotherapy Association
Submission

AUSTRALIAN PHYSIOTHERAPY ASSOCIATION

Supplementary Submission to NSW Workers Compensation Scheme Inquiry

Presented to NSW Workers Compensation Scheme Committee

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Australian Physiotherapy Association

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

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

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Supplementary Submission to NSW Workers Compensation Scheme Inquiry:

APA Response to Questions Posed by Workers Compensation Scheme Inquiry Committee on 28 May 2012

Scope

On 28 May 2012, Messrs Sabet, Bulluss and Winston, representing the Australian Physiotherapy Association (APA), appeared before the Joint Select Committee that is undertaking an Inquiry into the NSW Workers Compensation Scheme. During that appearance, the APA was asked to provide written feedback on Sections 8, 9, 10 and 11 of the submission made to the Inquiry by the Civil Contractors Federation (CCF).

This document provides the APA's response.

General

The CCF submission has many similarities to the APA's submission, with emphasis on a focus on return to work rather than compensation, early intervention, a focus on capacity rather than injury, and support of strategies that have demonstrated outcomes.

In general, the APA believes that the submission made by the CCF highlights many of the key issues relating to failures in the current scheme as it applies to workers in the civil construction industry. Further, we believe that it is fair to apply the sentiments expressed to the general experience of all workers in the current compensation scheme, and the challenges facing workers, employers, and treating providers.

In passing, the APA supports the CCF recommendation that all relevant legislation and regulation be changed to focus on return to work, rather than compensation.

We shall now address the specific sections of the CCF submission on which we were asked to comment.

Specific comments relating to sections 8, 9, 10, and 11 of the CCF submission

8. In order to meet Scheme objectives by improving health outcomes and return to work outcomes, the conduct of Work Capacity Assessment should be separated from Injury Treatment.

Part of this suggestion concerns the formalisation and physical separation of those providers providing treatment from providers whose sole function is the assessment of work capability.

It is proposed by the CCF that the function of the Nominated Treating Doctor (NTD) is to continue to manage and deliver treatment, while the assessor's ruling on capacity would be binding on all parties.

The CCF has proposed that an Independent Medical Examiner (IME) be called upon if there is a dispute between the treatment provider and/or assessor. At this point, the IME's ruling would be binding.

The APA believes that this process attempts to ensure that an independent focus always remains on working capacity, rather than other factors that may prevent the treatment provider from making a

biased decision relating to working capacity. This has always been the intention of the current scheme, and one which the APA supports in principle.

However, the APA does not support separation of a treatment provider from providers whose sole function is the assessment of work capability. Treatment providers develop rapport with injured workers that helps the providers understand the nature of physical injuries as well as other psycho-social matters that might have bearing on early return to work. For example, physiotherapists often spend hours with their injured workers, and it is this nurtured, therapist-patient relationship that enables encouragement, reassurance and motivation that can persuade the injured worker to do more. Treatment providers, NTDs and assessors need to work in concert, with the injured worker, to facilitate early and durable return to work.

The APA has highlighted, in its submission and appearance before the Committee, some of the problems with the current scheme:

1. Treatment providers do not know the injured workers' physical requirements early enough to encourage an early focus on return to work (RTW)
2. Rehab providers or appropriate providers such as physiotherapists are not engaged early enough in planning an immediate RTW plan in line with the recovery time for specific injuries.
3. Titled physiotherapists and specialist physiotherapists who have advanced skills are not engaged appropriately in more challenging or complex cases.
4. Employers and injured workers often do not have the early dialogue necessary to help negotiate suitable duties immediately after an injury.
5. Beliefs and skills of the NTD vary regarding best management of injuries and can have a negative impact by encouraging valuable physical treatment providers such as physiotherapists to be relegated to a technician/treatment role rather than the restorer of physical function and hence return to work.
6. The injured worker is usually not closely consulted, potentially contributing to disengagement and passivity in the RTW process.

The model proposed by the CCF maintains some of the problems of the current scheme, such as potentially costly, and unnecessary, duplication.

We propose a collaborative model that involves the worker and encourages all providers to work together to achieve a rapid and focused return to work.

At present, there are many people who can be involved in managing and treating an injured worker: the insurance case manager, the NTD, various health professionals such as physiotherapists, rehabilitation providers, the employer and the injured worker. There is a cost to the Scheme for each of these. It is essential that this cost is minimised by using only those services necessary to ensure early and durable RTW, wherever possible.

The APA does not believe that it is essential, as the CCF has proposed, for treatment and assessment of ability to RTW and at what level, to be conducted by separate providers. Indeed, it can be more economical, efficient and preferable from the injured workers' perspective that the treating health professional makes the assessment of capacity to RTW.

To re-iterate, the APA sees the following as essential:

1. All employers and workers to be educated on procedures to remove or reduce the potential for work injuries.
2. All treatment providers to have education in the workers compensation scheme.
3. All treatment providers in the scheme to agree that the primary focus is for rapid return to work and social functioning, wherever possible.
4. All treatment is to have a direct impact on functional and durable RTW. Paced, incremental rises in work hours and duties are to occur contemporaneously with the worker's increase in capacity to work.

5. Decisions about an injured worker's capacity to work must be made objectively by the professional most suited to assess this (eg, the physiotherapist for physical injuries, surgeon for post-surgery RTW, etc).
6. Titled physiotherapists and specialist physiotherapists who have advanced skills are engaged appropriately in more challenging or complex cases.
7. Rapid and early peer review for injured workers not demonstrating adequate progress.
8. Disputes relating to physical capacity or treatment provision must be rapidly assessed by a suitable peer (eg, Independent Medical Examiner (IME), Independent Physiotherapy Consultant (IPC)).
9. Workcover's robust criteria of Reasonably Necessary treatment continue to be applied throughout the claim duration.

9. In order to meet Scheme objectives by improving health outcomes and return to work outcomes, there must be more structure in the work capacity assessment management process. Clear lines of authority are required to ensure the focus remains on a timely return to work.

The APA agrees with this and is happy to work with WorkCover NSW and other relevant parties to help develop improved procedures.

10. In order to meet scheme objectives by improving health outcomes and return to work outcomes, the injured worker's exclusive right to select their NTD to do assessments and treatment should be removed.

The APA believes that injured workers should maintain the right to select their NTD and treating professionals from amongst those practitioners who are capable of providing the necessary services.

All providers in the scheme MUST BE subject to rapid and early peer review by the relevant professional in the event of demonstrated lack of benefit, deviation from practice guidelines (eg, recommending one month off work for back pain), inappropriate treatment, costly interventions etc. The APA believes that the method for the assessment of Reasonably Necessary intervention is robust and not often triggered appropriately by the case manager. We have suggested a that this may be better managed with known scheduled peer review by the appropriate provider at early points in the return-to-work process.

Failure by practitioners to provide satisfactory services should trigger education processes for the practitioners.

11. In order to meet scheme objectives by improving health outcomes and return to work outcomes, Work Capacity Assessments must be undertaken at key benefit trigger points, and at regular periods throughout the life of a claim.

There is a difference between "assessment of work capacity" and "Work Capacity Assessments". As the APA stated during oral evidence, some research has found that formal testing methods such as Work Capacity Tests/work capacity evaluations/work capacity assessments have poor or unknown validity[1-3] and are not strongly predictive of a worker's capacity to function in a workplace. This means that what is discovered in a formalised test of work capacity will not necessarily be reflected in an individual's capacity to achieve durable RTW at the workplace.

Furthermore, there is no standardised method for work capacity assessment and these tests are conducted on one occasion rather than the demonstration of capacity over a number of repeated occasions that can be witnessed by physiotherapists in the clinical setting or work-simulated setting.

We strongly advocate that work capacity be determined continuously by the provision of interventions only by providers who have skills in diagnosis, clinical reasoning and treatment, and in close collaboration with the injured worker. For example, if the injured worker is demonstrated to be lifting 10kg as a simulated work task over a number of occasions with the physiotherapist and with no

significant complaints, then this should be used as the basis of changing the worker's lifting capability in the workplace.

Assessment of an injured worker to RTW requires a clear and holistic understanding of job demands and, as noted elsewhere, this cannot be done properly, for many injured workers, without on-site inspection or at minimum, detailed knowledge of the job demands and duties. Also, whether someone is capable of RTW is not only determined by an assessment of their physical capacity; psycho-social factors can play an equally important role. All health professionals involved in the treatment of an injured worker need to recognise this and to communicate with each other and with the injured worker.

References

1. Gross, DP, and Battie, MC. "Does Functional Capacity Evaluation Predict Recovery in Workers' Compensation Claimants with Upper Extremity Disorders?" *Occupational & Environmental Medicine* 63 (2006): 404–10.
2. Gross DP, and Battie MC. "Functional Capacity Evaluation Performance Does Not Predict Sustained Return to Work in Claimants with Chronic Back Pain." *Journal of Occupational Rehabilitation* 15 (2005): 285–294.
3. Cotton, Adele, Eva Schonstein, and Roger Adams. "Use of Functional Capacity Evaluations by Rehabilitation Providers in NSW." *Work* 26 (2006): 287–95.