

Feedback on the Legislative Review 2013

Review of the Workers' Compensation and Injury Management Act 1981 – Discussion Paper

Presented to WorkCover WA

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Executive Summary

The current *Workers Compensation and Injury Management Act 1981* (the Act) underwent a legislative review in 2009 (the first stage of review). The Act is currently in the second stage of the review, based on the 2013 discussion paper. This second stage will focus on outstanding recommendations from the first review, technical and process issues with the current Act and focus more on introduction of plain language to reflect contemporary drafting conventions. Some improvements to administrative or decision making processes are also suggested in this second stage of review.

The APA acknowledges the importance of maximising available funds devoted to compensating injured workers, so as to achieve the best health, recovery and rehabilitation outcomes. Any improvements to the structure of the WA worker's compensation scheme, as well as administrative or decision-making processes that expedite recovery and save costs to the scheme in the long run are supported by the APA.

The APA recommends that:

- appropriate training be provided to other professions who will provide medical certificates.
- consent authority to provide relevant information for a claim, be provided to all those involved in the claim
- a consent authority for the release of relevant information
- WA workers compensation legislation outlines clear timeframes for responses to medical and ancillary expense claims and that a head of power for regulations be appointed to oversee the process;
- insurers should report within regular intervals on compensation entitlements;
- there should be clear processes to alert medical practitioners as to the recurrence of injury;
- minor claims should be paid out, without admission of liability;
- travelling expenses should be excluded from calculations of medical and allied health entitlements;
- a minimum permanent impairment rating be added to receive lump sum payment and ongoing medical expenses
- further clarity be given to the definition of what is unreasonable or impractical for the employer to determine suitable duties
- case conferences will provide an opportunity for communication which will assist injured workers to recovery
- the fixed scale of fees should keep pace with market rates for physiotherapy services; and
- WorkCover WA "provide guidance" with respect to the Clinical Framework when intervening rather than "issue direction"
- WorkCover WA intervening in clinical decisions could bring about positive results of early access to the most appropriate health services and encourage early recovery.

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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1. Minor claims processes

Allied health issuing medical certificates:

In some jurisdictions, nurse practitioners and/or allied health service providers are able to issue certificates for workers' compensation purposes in certain circumstances. It is proposed a head of power be introduced to prescribe persons other than medical practitioners who may issue certificates in specified circumstances for workers' compensation purposes.

The APA supports the introduction of the ability of other professions to provide medical certificates, with the expectation that appropriate training would be provided to any professionals outside the medical profession being given authority to act in this way.

Consent authority

It is proposed the new statute introduce a consent authority for the release of a worker's medical and personal information relevant to a claim and that the authority be mandatory, irrevocable and extend to all relevant medical and other information sources.

The APA supports the clarity surrounding the consent authority particularly the need to provide relevant medical information for a claim to be processed, for all those involved in the claim.

Timely payment of compensation

In keeping with Recommendation 15 of the *Legislative Review 2009*, it is intended the claim process for medical expenses be integrated with the process for claiming weekly payments and be generically referred to as a 'claim for compensation'.

Decisions on claims for medical expenses will require consideration of the three-tiered threshold question, namely:

- i) is the injured individual a *worker* for the purposes of the Act;
- ii) have they suffered a *compensable injury*; and
- iii) do they have *medical certificates or medical evidence* to support a claim for entitlements?

- i) The APA understands that there will be no change to the fundamental entitlement to compensation for incapacity and payment of reasonable medical and ancillary expenses, provided the worker meets the threshold requirements. However, changes are proposed to the process by which claims are made, assessed and determined. It is proposed the new statute introduce a head of power for regulations to prescribe the process for making a claim. The APA supports this.

Subject to the proposed minor claims process, insurers must within the prescribed period, issue a prescribed notice to the worker in relation to a claim indicating that they have accepted or denied the claim and the reasons for this. If the claim is denied or a decision is not made, the matter can be resolved through WorkCover WA's Conciliation and Arbitration Services. The APA endorses the timely resolution of claims and supports alternative dispute avenues.

The APA supports the establishment of clear timeframes for responding to medical and ancillary expense claims, as well as the introduction of a head of power for regulations to prescribe the process for making a claim.

Strengthening the role of the insurer

It is proposed the role of the Director in the pended claim process be discontinued. The insurer will instead be required to provide ongoing notification to the worker on the status of the claim. If the insurer cannot make a decision within the prescribed timeframe, the insurer must issue a prescribed notice every 14 days until a decision on liability is made. The APA supports that regular notifications on the status of a claim enable greater communication with insurers throughout the claim process and prevent undue delay.

The APA supports the requirement to report within regular intervals on compensation entitlements, as it holds the insurer accountable to make a determination without unreasonable delay.

No admission of liability pathway

The new statute proposes a pathway enabling employers to pay medical expenses associated with minor claims, without being required to admit liability or notify the insurer unless the matter exceeds a specified monetary amount (defined as those involving *expenses only payments* less than \$750, to be indexed annually). The APA endorses that medical expenses should be paid in minor claims, without admission of liability, to expedite the claims process and avoid unnecessary investigations to determine liability before a claim is paid out. Lengthy investigations to determine liability in even minor claims only add up costs to the WA worker's compensation scheme, through legal fees, mediations and conciliations and unnecessary case reviews.

The APA supports compensation payments for minor claims, without admission of liability. The APA believes that a no-fault approach to minor compensation payments will save costs to the worker's compensation scheme in the long run.

Recurrent claims/injuries

Recommendation 17 of the *Legislative Review 2009* proposed an amendment to regulations to clarify the claims procedure for recurrence and to prescribe a recurrence form. Identifying an injury as a recurrence can be complex. The APA understands that the claim form will be amended to include a segment containing questions which will alert the employer to the issue of recurrence and provide details of previous relevant employment. Also, medical certificates will be amended to provide for the certifying medical practitioner to comment on the issue of recurrence.

The APA endorses WorkCover WA's proposal to implement processes to alert medical practitioners as to the recurrence of injury, so that recurrent claims can be dealt with efficiently.

Travelling expenses

Entitlements under the Act are currently found in Schedule 1. Clause 17(1) of Schedule 1 limits the entitlement for medical and other expenses to 30% of the prescribed amount. The Act provides for entitlements to other expenses which are travelling expenses and expenses associated with common law impairment assessments by Approved Medical Specialists.

The APA understands that confusion arises on occasion as to whether these expenses are included in the calculation of the limit on medical and allied health expenses. The new statute will be drafted in a manner which makes it clear 'other expenses' are separate entitlements and the APA supports this change.

The APA supports that travelling expenses should be excluded from calculations determining extension or interim payment entitlements, in respect of medical and allied health entitlements.

Permanent impairment

It is proposed the new statute provide lump sum compensation for permanent impairment as an independent entitlement and may be obtained without entering into a settlement. The receipt of lump sum compensation for permanent impairment does not impact a worker's entitlement to ongoing compensation or constrain the right to pursue and receive common law damages (unless it forms part of a settlement).

The APA has reservations about how this change to the statute may effect some claims with the possibility of some claims extending without due reason. Therefore we propose a minimum permanent impairment rating be added to this clause to receive lump sum payment and ongoing medical expenses.

Pre-injury position and suitable duties

It is proposed the new statute clarify, where a worker attains partial or total capacity for work but is unable to perform their pre-injury position that the employer is to provide suitable duties to the worker.

It is proposed the obligation to provide the pre-injury position or suitable duties not apply if:

- i) it is unreasonable or impracticable for the employer; or
- ii) the worker has been lawfully dismissed.

The APA has reservations about this change to the legislation as it relates to small and medium businesses needing to continue to employ an injured worker who has been unable to return to their pre-injury duties. Small to medium size business may find it difficult to comply with this change to the legislation. It is recommended there is further clarity given to the definition of what is unreasonable or impractical for the employer.

Injury management case conferences

The new statute proposes that a worker, the worker's treating medical practitioner, and either the employer or the insurer or both be required to attend an injury management case conference if requested by the employer or insurer. The case conference is not for the purpose of obtaining a medical examination or medical report or to determine questions of liability. If the worker fails to attend, their entitlement to compensation may be suspended.

The APA supports this clarification to the legislation regarding case conferences and believes this will further assist injured workers through their rehabilitation and recovery by assisting communication.

2. Exercise physiologists gaining greater recognition

The terms 'dentist', 'medical practitioner', 'specialist', 'chiropractor' and 'physiotherapist' are all defined in section 5(1). Most link to the applicable registration boards under the *Health Practitioner Regulation National Law (Western Australia)*. Other health providers are not defined. The new statute proposes to expand this definition to include services approved by the Minister by notice in the Gazette (osteopathy, counselling, psychology and exercise physiology).

Whilst exercise physiologists are not qualified to provide clinical diagnosis, treatment of pathology and expert opinion; the APA does recognise that exercise physiologists have a role within the workers compensation system to provide exercise programs independently.

3. Power of WorkCover WA to determine appropriate treatment

Medical and allied health fees

The APA understands the proposed removal of negotiation on fees and their increases and that it is proposed the head of power will fix the scale of fees for medical and health services.

Each year, the APA commissions company Millward Brown to provide an assessment of market rates. It is a 'mystery shopper' survey of around 1000 practices at random, to enquire about the average length and cost of *initial* and *standard* consultations. The national average fee for an *initial* consultation in 2012 was \$79.25 and the national average fee for a *standard* physiotherapy consultation in 2012 was \$66.95. The current fee for an initial consultation under WorkCover WA is \$78.05, which is on par with market rates. The current fee for a standard consultation under WorkCover WA is \$62.70, slightly below market rates. The APA proposes that the scale of fees should be fixed annually to reflect annual market rates for physiotherapy services.

The APA advocates for compensable fees to keep pace with market rates and believes that a regular review of these fees should continue to occur.

Health services directions

It is proposed the new statute include a head of power for WorkCover WA to issue directions:

- i) establishing rules to be applied in determining whether a treatment or service is reasonably necessary;
- ii) limiting the kinds of treatment and services (and related travel expenses) for which an employer is liable; and
- iii) establishing standard treatment plans for the treatment of particular injuries or classes of injury.

The APA supports the application of the Clinical Framework for Delivery of Health Services within the WA Workers Compensation. However we have concerns regarding WorkCover WA being able to "Issue Direction". Instead it is proposed WorkCover WA "Provide Guidance" with respect to the Clinical Framework when intervening on treatment matters. It is envisaged this would limit misinterpretation into the future.

Health services directions and guidelines

It is understood that WorkCover WA will follow best practice guidelines in the *Clinical Framework for the Delivery of Health Services*.

The new framework is governed by five guiding principles:

- i) Measurement and demonstration of the effectiveness of treatment
- ii) A biopsychosocial approach to rehabilitation

- iii) Treatment focused on empowering the worker to manage their injury
- iv) Goals focused on improving function and return-to-work
- v) Treatment must be based on the best evidence available

Setting clear goals and gradually reducing the frequency of treatments provided over time is essential for early recovery and durable return to work. The Clinical Framework recognises that the mere provision of health services over time is not sufficient to facilitate recovery and in fact, may hinder recovery by increasing reliance on health services at the expense of the patient taking ownership for their condition or injury. Physiotherapists recognise that the period of three to six months following injury is critical to a patient's recovery. If appropriate clinical intervention and education about self-management of injury is not received – a minor or acute injury could develop into a chronic condition.

The APA supports that WorkCover WA intervening in clinical decisions could bring about positive results of early access to the most appropriate health services and encourage early recovery.