

17/09/2020

Mr Peter Rozen QC

Review Team

agentreview@justice.vic.gov.au

Dear Mr. Rozen,

Thank you for forwarding the *Independent Agent Review Discussion paper around the Management of Complex Claims -August 2020*.

The Document has been forwarded to the Australasian Faculty of Occupational and Environmental Medicine(RACP) for a Faculty submission

However, I have taken to opportunity to submit a personal reply.

I note the **specific questions** posed;

Background

1. For individuals, please explain your experience of the workers' compensation scheme if any.

I have been a Consultant Occupational Physician for the past thirty plus years. I own HDA Medical Group, which has been a multi disciplinary consultancy practice with a focus on return to work management. I have worked across the various Victorian workers' compensation systems , including VARC / WorkCover and WorkSafe. I have worked as a Rehabilitation Provider; an on site Occupational Physician; a consultant Occupational Physician receiving referrals from my medical colleagues to assist with complex return to work management; and as a medicolegal practitioner – both IME work and plaintiff lawyer referrals. I was appointed to the DVA – National Technical Advisory Committee for 10 years – a committee set up to implement the most recent legislation effecting veterans and to advise on best practice return to work evidence. I was appointed to the Workcover Advisory Committee three years ago. I have been reappointed. My experience across the system has been extensive and varied.

2. For organisations, please describe your organisation.

Identifying and assessing complex claims

3. What are the features of a claim for worker's compensation that make it complex, or at risk of being complex?

Definition of a complex cases : "In her 2016 and 2019 reports, the Victorian Ombudsman characterised *claims that progress beyond 130 weeks as 'complex*

claims'. Under the WIRC Act, an injured worker's entitlement to weekly payments of compensation in respect of a workplace injury usually ends when a worker has received 130 weeks of weekly payments. However, payments will not cease where the worker is assessed as having no current work capacity and as being likely to continue indefinitely to have no work capacity.⁵

"Complex claims make up only a small proportion of the total number of claims. As at June 2018, complex claims made up around a quarter of the 18,519 active weekly payments, or approximately seven per cent of the 63,085 active claims. However, these complex claims represented approximately 90 per cent of the scheme's liabilities (the amount calculated on actuarial assumptions as being the value of all benefits payable by the scheme).⁶"

Claims by definition are considered complex if the claim continues for greater than 130 weeks.

However, this is an *administrative definition*.

Currently, psychosocial risk factors are not systematically identified and addressed, in the Agent model.

A case is complex in a *biopsychosocial sense* if the worker is:

- vulnerable (older worker, very young worker, co morbid medical conditions that potentially impact upon work capacity; CALD etc),
- the association with the employer is tenuous - casual worker, the financial viability of the employer is in question; pre existing poor relationship with the employer; rejection of claim, the worker blames the employer for the injury; poor engagement with employer post injury etc
- relocation or retraining is not straightforward - poor educational background; literacy issues; learning disabilities; poor verbal English skills; no or limited access /skills to useable technology at home etc,
- primary or secondary mental health issues are present - impact upon concentration and attention span and new learning; strain upon family and workplace relationships; poor motivation, etc.
- the injury is significant to the worker – significant physical or mental health injury ; physical capacity tied to body image and self esteem; cultural norms, etc

Complex cases are then further disadvantaged by systemic issues such as poor communication with the Insurer, regular turnover of claims staff, lack of engagement of claims staff, poor case management.

Healthcare workers can also add to disadvantage with poor or lack of engagement with the Insurer; poor identification and management of psychosocial issues; short consultations with the claimant, secondary to inadequate payment for complex and lengthy consultations etc.

Using the *biopsychosocial definition*, a case can be considered complex from *day one, post injury*. Only with early identification of potential barriers to recovery and return to work, and addressing those issues appropriately and in a timely manner, will the *potential biopsychosocial complex case* not become an *administrative complex case in 130 weeks*.

4. How, and at what stage, should claims for worker's compensation be assessed as being complex, or at risk of becoming complex?

We know that most people (70 -80 %) return to work with minimal difficulty. The remainder take extended time off work. The identification of complex cases in a biopsychosocial sense needs to be made early. The earlier the better, for a positive outcome.

Currently much money is spent on the *long tail cases* of the system, where options have narrowed, behaviour is entrenched and long term disability, the likely outcome.

There needs to be a paradigm shift in the management of workers compensation cases. The current Insurer model, driven by established performance indicators, results in a financial focus, with 7 % of active cases becoming long tail cases that ultimately result in significant long term costs in the domains of finance (approximately 90 per cent of the scheme's liabilities (the amount calculated on actuarial assumptions as being the value of all benefits payable by the scheme), community (loss of working capacity and community lifetime contribution) and at a personal worker level (impacting upon the worker's quality of life and family dynamics). This must be improved.

The Evidence (*Reference – 'It Pays to Care' - An AFOEM (RACP) discussion paper - 2019 – this paper summarises the considerable body of Evidence*) confirms that a person centred case management approach for identified complex cases is more likely to address early barriers and result in better outcomes in all domains.

A person centred case management approach would identify specific biopsychosocial issues that need to be addressed , engage with and encourage stakeholders to work collaboratively, establish goals for recovery, build and implement a plan with regular monitoring and review of goals.

Such an approach, however, would require a seismic cultural shift in the case management delivery approach by Insurers.

Since the second Ombudsman's report, a range of positive pilots have been implemented and trialled by Work safe e.g. *Back on Track* pilot looking at increasing funding for vocational redirection and the *Recovery Assistance Program* for long term claimants. These pilots are regulator driven with the focus on support for long term claimants, which is welcome

However, at a practical level, complex cases need very early identification. Worksafe is currently piloting a data analytics approach (*Recovery office Model*) to

identify employers with poor RTW outcomes. This relies upon reviewing previous claims' histories and so focuses on Industry groups and medium and large employers. Many issues with return to work arise because the employer is small, with little experience in the workers compensation arena, little flexibility to accommodate suitable duties for an extended period, and a tight financial reality. Whilst this pilot is a very worthwhile approach, other options for early identification of potential complex cases (biopsychosocial definition) also need to be considered.

One such consideration is a refocus of Insurer directed initial IME assessments that currently determine liability (most claims are accepted). These assessments should also include a biopsychosocial assessment tool to determine the worker's potential to become a long term claimant. The result could then be used by the case manager to tailor an individualised plan to address potential barriers for RTW early post injury, with early and timely interventions such as a worksite assessment / early referral to a psychologist / referral to a social worker / early, realistic and considered vocational counselling and retraining and guided case management with collaboration with all stakeholders.

Comprehensive co ordinated case management is not currently funded (where the case manager is either internal or external to the Agent).

Comprehensive and tailored case management of identified potentially complex cases (biopsychosocial definition) would involve:

- The development of accurate, responsive systems to manage identified potential complex cases
- Better recruitment, training and retention of case managers (internal or external to Agent)
- Consistency of case manager's relationships with workers
- Proactive case management underpinned by collaboration with workers, employers and medical practitioners
- Systems that build in adequate time and resources for effective case management.

Such an approach would require that claims managers and claims teams handling complex cases are more highly skilled and experienced. Those skills would need to be identified and specific training programs introduced.

Case management of complex claims

5. Are current case management practices able to support and treat the individual needs of injured workers with complex claims?

Please note my comments above.

Early identification of potential complex cases (biopsychosocial definition) and proactive management with a co ordinated and comprehensive case management approach would be more cost effective, in the longer term. The current approach implements comprehensive case management when the case is over 130 weeks.

The behaviours are entrenched and the worker is awaiting a legal outcome. Intervention at that late stage is supportive only.

- 6. If your answer to question 5 is yes, describe how current case management practices respond to the individual needs of injured workers with complex claims.**
- 7. If your answer to question 5 is no, describe what needs to change in the case management practices of complex claims so that injured workers are better supported and treated.**

See comments above

Financial incentives and agent decision making

- 8. What role do the current financial incentives for agents have in the agent's management of complex claims?**
- 9. Do the current financial incentives for agents support prompt, effective and proactive outcomes for injured workers with complex claims?**
- 10. If your answer to question 9 is yes, describe a. how the current financial incentives for agents maximise outcomes for injured workers with complex claims.**
b. any different or additional measurements which could be linked to financial incentives to promote quality decision making by agents.
- 11. If your answer to question 9 is no, describe a. the ways in which the current financial incentives for agents could be changed to maximise outcomes for injured workers with complex claims.**
b. any different or additional measurements which could be linked to financial incentives to promote quality decision making by agents
- 12. Describe any non-financial mechanisms by which agents could be encouraged to promote quality decision making.**

I cannot directly comment

Oversight of agents by WorkSafe

- 13. Are WorkSafe's processes for overseeing agents' management of claims achieving prompt, effective and proactive outcomes for injured workers?**
- 14. Do the new mechanisms implemented by WorkSafe in response to the Ombudsman's**

2019 report address any limitations in WorkSafe's oversight of agent decision making?

15. If your answer to question 14 is yes, describe how.

16. If your answer to question 14 is no, describe why not.

17. How could any limitations in WorkSafe's oversight of agent decision making be overcome?

I cannot directly comment

Evaluation measures

18. To what extent do current measurements of outcomes for injured workers, including return to work rates and worker surveys, accurately measure whether the agent model achieves prompt, effective and proactive outcomes for injured workers?

19. Describe any additional or alternative methods of measuring outcomes for injured workers that should be considered?

The current agent model and alternative models

20. Does the current agent model achieve prompt, effective and proactive management for injured workers with complex claims?

21. If your answer to question 20 is yes, to the extent you haven't addressed your response in answers to earlier questions, describe how the current agent model achieves prompt, effective and/or proactive management for injured workers with complex claims.

22. If your answer to question 20 is no, to the extent you haven't addressed your response in answers to earlier questions, describe a. the limitations of the current agent model,

b. how the current agent model could be improved to achieve better health and recovery outcomes for injured workers, and/or

c. any alternative models to the current agent model that would be more effective in delivering positive health and recovery outcomes to injured workers.

In your answer to question 22 b. and c., consider the effect of any change to the current agent model on the financial viability of the scheme.

23. Are there practices or procedures used by other compensation schemes, in Australia or overseas, that maximise outcomes for injured workers that the Review should examine?

Victorian Ombudsman 2016 and 2019 reports

24. Have you observed any changes to (i) agent decision making and (ii) the oversight of agents by WorkSafe since the 2016 Ombudsman report? Please describe.

25. What are the root causes of the problems identified by the Ombudsman in her 2016 report?

26. Do you think the implementation of the recommendations 3–9 in the 2019 Ombudsman report will address those root causes? If so, how will that occur?

27. If you do not think the implementation of recommendations 3–9 in the 2019 Ombudsman report will address those causes, explain why not.

Further considerations

28. Are there any other matters the Review should consider in meeting the Terms of Reference?

c. any alternative models to the current agent model that would be more effective in delivering positive health and recovery outcomes to injured workers.

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General Comment;

Changing the current Agent model will not necessarily improve the management of potential complex claims (biopsychosocial definition). The inherent issues require a paradigm shift in culture, with the focus changing to person centred case management for early identified potentially complex cases, with key personnel involved, having the identified skills, experience and training to manage such claims effectively.

In addition, the appropriate resources and models of measuring performance will need to be modified.

This approach requires increased up front expenditure with the goal of better outcomes for the individual and the community and a reduction in the significant number and cost of long term claimants in the system.

Attachments;



Thank you
Yours sincerely

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