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Dear ██████████

Victorian Workers' Compensation System: Independent Review into the Agent Model and the Management of Complex Claims Discussion Paper August 2020

The Australian Psychological Society (APS) welcomes the opportunity to provide a submission to the Victoria Workers Compensation System: Independent review into the Agent Model and the management of complex workers' compensation claims.

The APS is the largest professional organisation for psychologists in Australia representing over 24,000 members. Many of those members deliver psychological services to injured workers with treatment entitlements under Federal, state or territory workers compensation schemes as sole providers or members of a service provider entity.

The submission that follows is based on feedback sought from those members. It addresses the Inquiry's consultation questions where relevant to psychology and member feedback.

Kind regards,



Dr Zena Burgess FAPS FAICD
Chief Executive Officer

Identifying and assessing complex claims

The APS neither has the specialist knowledge nor capacity to provide detailed responses to each of the Discussion Papers questions. In submitting to the review, it notes the WorkSafe Victoria (WSV) Scheme is subject to the same cultural problems as apply to Australia's other workers compensation and accident schemes and frames its response accordingly. It is that cultural problem - which all-too-often causes case managers within the Scheme's Insurance Agents (Agents) to approach complex cases with undue suspicion about the worker's motivation - that must be addressed to improve the administration of complex cases. If not addressed, it is highly likely any alterations to the Scheme, no matter how well intentioned, will be at risk of failure.

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

The Discussion Paper well-documents the claim characteristics which lead to claims attaining the status of "complex". The APS perceives the term "complex claim" to be a euphemism for injuries involving a primary or secondary psychological injury associated with stress or traumatic stress. Such psychological injuries are more likely to become complex where they possess certain other critical features; that is,

1. ongoing pain conditions attributable to the causal event (and particularly those associated with inappropriate work practices)
2. the failure of the insurer to promptly approve best practice interventions to address accepted conditions (ranging from allied health treatments through to surgery)
3. the employment-type of the injured worker (first responders, child protection workers, mental health workers, hospital emergency department staff fire and white collar occupations are over-represented in complex claims)
4. the type of event involved in the injury
5. the injured workers' experience of whether and how their employers care for them
6. the prevailing organisational climate¹ before, during and after the injury involved and
7. misconceptions that exist in Agents around mental health.

Such characteristics can generate or maintain a sense of injustice that motivates anger and psychological distress in injured workers around what happened, who allowed it to happen and who failed to respond to their needs post an injury they neither sought nor caused. This powerful sense of wrong and the restorative justice required to address it is common in trauma-exposed vocations (like first responders and ADF members) and amply documented in research and treatment literature pertaining to them (e.g., in the position papers, advices and guidelines described by [Phoenix Australia](#)).

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

If the system is to function optimally, claims must be assessed for their potential complexity from day one of a claim's life. The likelihood of claims becoming complex is, as noted above and in the Discussion Paper, predictable according to its features.

Case management of complex claims

Consultation question 5: Are current case management practices able to support and treat the individual needs of injured workers with complex claims? [and]

Consultation question 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.

Case management practices have this capacity. The problem is that they are not implemented in a best practice manner by the Agents overseen by WSV. There is an

¹ Cotton, P. (2014). Workplace psychological health and wellbeing: An overview of key trends. *InPsych: The Bulletin of the Australian Psychological Society Ltd*, 36(6), 9.

implementation science that guides case management in relation to mental health conditions² and WSV has peak-level position statements, guidelines and protocols which promote proper management of such claims. Such practices are, however, not implemented with appropriate diligence or as often as warranted.

There are a variety of reasons for this implementation failure. These include the employment by Agents of inexperienced case managers, the onerous workloads of case managers, the existence of a culture of cynicism among case managers and lack of sufficiently experienced (mental health) advisors who have little industry knowledge (e.g., of first responders) and inadequate field credibility (as evidenced by academic appointments or highest level credentials).

The impact of these shortcomings is exacerbated by a lack of clarity. Illustrative of this, the APS was recently contacted by members following the ABC Four Corners expose relating to SIRA, and to a lesser extent, WSV. They sought clarification around the following issues:

- *The Case Manager role appears conflicted. It is unclear whether the Case Manager represents the client, the employer or WorkCover/SIRA. This undermines the client's and psychologist's trust in the system*
- *Case Managers try to seek information from psychologists and the review process to help them deny liability and*
- *In complex cases with slow recovery, Case Managers appear to blame the psychologist. To ensure their outcomes they pressure client, psychologist, rehab providers and doctors to allow a return to work before the client is physically or psychologically ready.*

Above all, however, as noted in the 2016 and 2019 Ombudsman's inquiries into WorkSafe, and reflected in the Review's "Discussion Paper", there is the effect of "gaming" by the (insurer) Agents through the selective use of advice sought and received (e.g., information provided by treaters, IMEs and medical panels) and excessive use of, often unnecessary, IMEs. There are, as noted by the Ombudsman and Discussion Paper, these and other "review practices" integral to inflexible, hard-stop rejection decisions and narrow interpretations of what may be funded within a claim.

Financial incentives and Agent decision making

Consultation question 8: What role do the current financial incentives for Agents have in the Agent's management of complex claims

Although the APS does not have detailed knowledge of the current financial incentives that apply to claims within the WSV Scheme, those incentives inevitably influence the decisions taken by Agents.

This is well illustrated by the nature of advice sought and obtained from IMEs by Agents in the management of claims. That advice, where it pertains to claims involving psychological injury, is too often inconsistent with claim decisions that promote the appropriate care of the injured worker and occasionally appears inconsistent with the expectations of the Evidence Act of Victoria (2008)³.

² King, R. (2009). Caseload management, work-related stress and case manager self-efficacy among Victorian mental health case managers. *Australian and New Zealand Journal of Psychiatry*, 43(5), 453-459.
Marshall, M., Lockwood, A., Green, R. et al. (1998). *Case Management for People With Severe Mental Disorders (a Cochrane review)*. Oxford, England, Update Software (for the Cochrane Library).
Ziguras, S. J. & Stuart, G. W. (2000). A meta-analysis of the effectiveness of mental health case management over 20 years. *Psychiatric services*, 51(11), 1410-1421.

³ Its requirements are non-negotiable and false or misleading information can be reviewed for the veracity of a deponent.

Their motivation can also be inferred from the many occasions where Agents attempt to apply the case legal precedent of *Kerridge v Monsfelt*⁴ to inappropriately influence workers to return to work (RTW) in the absence of an alternate duties job offer/match that is objectively consistent with the injured worker's proven skills and abilities. The APS acknowledges that the suitability of alternate duties is a matter of interpretation that hinges on a worker's employment history, qualifications and vocational aspirations. It emphasises that where workers are pressured to RTW prematurely (i.e., before they are physically and/or psychologically able to do so), this will inevitably negatively affect their mental health. This is unacceptable and wrong in law and it is critically important for Agents, when examining a worker's history to eliminate any alternative job identifications which have the potential to exacerbate a worker's mental ill-health and/or which are contrary to the ability of the worker to continue to pursue a career commensurate with his/her aspirations and fulfillment.

Consultation question 9: Do the current financial incentives for Agents support prompt, effective and proactive outcomes for injured workers with complex claims?

[and]

Consultation question 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**

As stated immediately above, it is clear that the current incentives for Agents insufficiently support the health and welfare of injured workers with complex cases or the recovery-oriented treatment remedies required. The APS believes that these incentives should be re-designed and systematically reviewed for influence on decision-making that is targeted to enhance outcomes for injured workers with complex claims.

The APS contends that research aimed at assessing the relationship between all altered arrangements introduced and claim outcomes be instituted contemporaneously.

Consultation question 12: Describe any non-financial mechanisms by which Agents could be encouraged to promote quality decision making

The non-financial mechanisms available to case managers in making claim decisions should be thoroughly reviewed and overhauled, as necessary. The APS believes that several are warranted.

First, the use of IMEs should be reduced. Their overuse by Agents and failure of some to act in a client-centric manner is a serious separation from WSV policy: the APS acknowledges this behaviour of Agents is not what WSV wants and is a classic example of the gaps that can exist between (sound HQ) policy and (coal face) implementation.

It is important to understand that there is a close to zero and even a negative correlation between IME use and successful case resolution. This is well known and yet IME use by Agents has not reduced since the Ombudsman's 2016 Inquiry.

There is also clear evidence of aberrant IME behaviour. Examples include:

- multiple examinations being conducted by IMEs in a single day (the APS understands WorkSafe is aware of 25 such IMEs being undertaken in one day by one examiner)
- poor quality reporting and unsound conclusions being made and evidence of failure by some IMEs to stay abreast of current classification systems and research
- commenting on other professions (primarily psychology) in the mental health space; e.g., via recommendations which

⁴ <https://jade.io/article/695496>

- refer to the need for psychiatry input (e.g., when psychological is the gold standard treatment for stress and traumatic stress disorders)
- are diagnostically dubious (this often happens around PTSD)
- refer to types of psychological intervention (without necessarily having the expertise to do so; e.g., imaginal exposure therapy or EMDR) and/or
- make recommendations around the frequency and duration of treatment: “six sessions of CBT” is a common implausible recommendation.

The questions posed by Agents to IMEs are too often unlikely to facilitate positive claim resolution. Without appropriate inquiry via questions aimed at establishing and reinforcing the implementation of evidence based practice (EBP) for psychological injuries, substantial improvement in the care of those with complex claims is unlikely to occur.

Second, instead of the IME-heavy approach that has historically characterised the Scheme, all stakeholders will benefit from the forming of more collaborative relationships with treatment providers around complex claims and the use of incentives to drive the uptake of evidence-based interventions. This is particularly true of psychology practitioners, given their inevitable role in complex cases. Thus, there will be clear benefit in increased collaborative consultation in complex claims with psychologists, who typically know the injured worker best.

Finally, there is a need for increased health, and, especially, mental health, literacy across Agent claims management staff. As identified in the APS’s response to question six, improved understanding of psychological injury among them will assist in addressing the notable across-Agent shortcomings of case managers and advisors () and the palpable cynicism they currently bring to decision making.

Oversight of Agents by WorkSafe

Consultation question 13: Are WorkSafe’s processes for overseeing Agents’ management of claims achieving prompt, effective and proactive outcomes for injured workers?

As made powerfully clear by the Ombudsman’s reports, this is clearly not the case. The APS believes WorkSafe’s intentions, as expressed in its policies, are sound. However, oversight of the implementation of its vision is difficult to achieve via the internal processes which operate under the Scheme’s current Agent-delegated-authority arrangements. The APS agrees that there is a need for an independent process to oversee the administration of claims.

An independent process can take a range of forms; for example, via statutory body or an independent WorkSafe function that has full oversight via high-level investigative, reporting and recommending powers (e.g., by reporting to the Minister or Ombudsman and, under their aegis, the Parliament). The Discussion Paper briefly articulated various options which exist under workers compensation Schemes across Australia. Regardless of the form the “new watch dog” assumes, it must have the independence, administrative fiat, resourcing and support required for it to achieve the sought-after improvements in the administration of complex claims.

Consultation question 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?

[and]

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

The APS views the changes introduced by WSV to be indicative of its commitment to improve the system. The Independent Review Service introduced by it in response to recommendation 3 of the Ombudsman’s 2019 report is an effective illustration of that.

Consultation question 17: How could any limitations in WorkSafe’s oversight of Agent decision making be overcome?

The APS contends that any changes to WSV’s oversight of Agent behaviour will only be effective if it is underpinned by a philosophical and practical commitment to

1. Understanding policy is not a magic bullet.
2. Implementing best practice case management treatment intentions - leaving what works on the shelf is not an option.
3. Using the levers of incentives and disincentives to change behaviour and
4. Visible performance measurement via the publication of appropriately de-identified data (including league tables).

Evaluation measures

Consultation question 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?

The APS considers that, notwithstanding WSV is a workers compensation scheme, too much emphasis exists within it on RTW as the over-riding indicator of progress. Indicative of this, the behaviour of occupational rehabilitation consultants (ORCs) is at times at variance with worker-empathic decision making by Agents⁵. Thus, workers report being regularly pressed by consultants for unrealistic RTW dates or options and members have reported to the APS that clients often complain that ORCs

place undue pressures on them to return to work [and that] Often their payments are delayed or denied. This often adds psychological stress and requires legal advice. Some clients feel pushed out of the system because it is too stressful. Others are unable or too ill to negotiate the pressured WorkCover process.

The APS believes that the role and impact of ORCs should be scrutinised in a manner consistent with that foreshadowed in relation to IMEs.

Consultation question 19: Describe any additional or alternative methods of measuring outcomes for injured workers that should be considered

Quality of Life measurement and the better use of objective measurement modelled, and supported and if possible mandated) by WSV would be an important addition to what is currently in place.

The current Agent model and alternative models

Consultation question 20: Does the current Agent model achieve prompt, effective and proactive management for injured workers with complex claims

This is insufficiently the case. As recognised in the Discussion Paper (page 9) the system works well enough for the vast majority (the 90%) of workers with workplace injuries, but for a significant minority of workers, their injury is not well-administered and too often exacerbated by the Scheme’s current design and operation.

The APS emphasises that in the foreshadowed system redesign, WSV take appropriate note of the “lived experience” of injured workers and the views of professional bodies via the [appreciative inquiry approach](#) of positive psychology that can be so important as a preventative measure of workplace stress and injury.

Consultation question 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?

⁵ One APS member reported the case of a then ex-Police Officer to whom the occupation of undertaker was suggested on the basis that he had “seen much death”.

The APS recommended that the Review claims administration model of the Department of Veterans Affairs with its: (a) Use of Statements of Principles to guide decision making and (b) (as per the NDIS) requirement that a Department delegate approves decisions.

Consultation question 24: Have you observed any changes to (i) Agent decision making and (ii) the oversight of Agents by WorkSafe since the 2016 Ombudsman report?

As made powerfully clear by the Ombudsman's 2019 report, this is clearly not the case.

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

The APS contends the "root causes" of the problems in the administration of complex claims are well documented in the Ombudsman's reports. In the experience of APS members, the most critical causal factors are:

1. Agent profit focus.
2. Unnecessary adversarial Agent behaviour, which in turns leads to counter-claim-behaviour by the legal representatives of injured workers.
3. Lack of effective system oversight.
4. Cultural complicity of various parties in poor decision making and outcomes and
5. IME and ORC complicity in poor claims administration.

The APS also believes the behaviour of a minority of health practitioners cannot be ignored for their contribution to system failure by neglecting to provide EBP to injured workers. That It underscores the importance of working with providers through Peak and Expert bodies to achieve better outcomes for all stakeholders.

Consultation Question 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?

The APS views those recommendations as fundamental to creating meaningful systematic change. It is particularly pleased to see two aspects of them. The first pertains the increased scrutiny of IME use by insurers. To reiterate the observations relating to question 12, the APS suggests that the prompts used to obtain information from IMEs be reviewed for their capacity to sensitively enquire about psychological issues and, where appropriate, identify the application of gold-standard EBP. It also suggests the ratio of psychologists to psychiatrist IMEs (there are currently only 4 appointed psychologist IMEs) be increased to enable best practice psychological enquiry.

The second issue pertains to the need to review what constitutes "reasonable management action", its timing relative to the development of often pre-existing psychological injury and the characteristics of a reasonable RTW plan where there are unresolved workplace culture problems or an absence of client-compatible job options.

Final comment

The APS appreciates the opportunity to submit to this important Review. It notes claims involving psychological injury are increasingly a concern WSV (and as demonstrated by the recent ABC Four Corners reportage other compensable systems).

It believes this Review is a chance for WSV to lead the way to a more effective system. It is the APS's opinion, however, that the Review's recommendations will only successfully address inherent systemic issues if they are effectively implemented and supported by all stakeholders. That implementation and translation of policy requires multi-party commitment fostered by consultation and partnership. The APS emphasises its willingness to partner with WorkSafe along with expert policy and research bodies to address the knowledge, practice and cultural problems that exist across the Scheme, in order that injured workers are better assisted to recover.