

Independent Review into the Agent Model and the Management of Complex Claims

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Review of the Agent Model into the Administration and Management of Complex Claims

Terms of Reference

Background

1. The Victorian Workcover Authority (WorkSafe) is responsible for the administration of Victoria's workers' compensation scheme, known as WorkCover, to ensure it provides support for workers with a work-related injury, is sustainable, fair and affordable to businesses.
2. WorkSafe administers the scheme by delegating most of its claims management and premium collection functions to appointed insurance agents. Agents are required to determine liability and entitlement for all claims in accordance with relevant legislation (principally the *Workplace Injury Rehabilitation and Compensation Act 2013* (WIRC Act)).
3. Collectively, the agents manage around 90,000 claims every year and are remunerated through an annual service fee and financial incentives for achieving performance measures. There are currently five scheme agents whose contracts with WorkSafe expire in June 2021.
4. According to WorkSafe's 2018 Annual Report, most claims managed by agents are neither complex nor contentious, with 59 per cent of injured workers returning to work within 13 weeks, 75 per cent before 26 weeks and 90 per cent prior to 52 weeks.
5. However, once a claim progressed beyond 130 weeks they are defined as complex claims. Complex claims have longer decision timelines, a higher rate of rejection, involve greater lengths of time off work and have a higher rate of disputation over agent decisions.
6. As at 30 June 2018, these claims represented about a quarter of the 18,519 active weekly payments in the scheme, or about seven per cent of the total 63,085 active claims in the scheme (including those involving medical treatment only).

Complex Claims

7. The Victorian Ombudsman undertook an investigation in 2016 into the management of complex workers' compensation claims and Worksafe oversight.
8. The investigation highlighted several deficiencies that indicated a growing number of complex claims were being mishandled by agents, including evidence of:
 - a. unreasonable decision-making across all five agents
 - b. agents maintaining unreasonable decisions at conciliation, forcing workers to take the matter to court or terminate their claim without compensation
 - c. financial rewards encouraging agents to focus on rejecting or terminating WorkCover entitlements, and
 - d. limited accountability or oversight mechanisms of agent decisions.
9. In 2019, the Victorian Ombudsman conducted a follow up investigation and found that despite targeted policy and system reforms, little had improved in the handling of complex workers' compensation claims since 2016, with continued unreasonable agent decision making and poor agent culture driven by financial rewards and ineffective WorkSafe oversight.
10. In response, the Ombudsman made 15 recommendations, two to government and 13 to WorkSafe. These Terms of Reference implement Recommendation 1 which stated:

Commission an independent review of the agent model to determine how and by whom complex claims should be managed, taking into account:

 - a. the need to ensure appropriate compensation is provided to injured workers, as well as the financial viability of the scheme
 - b. the experience of other accident compensation schemes, including Victoria's transport accident scheme (managed by the Transport Accident Commission) and other national and international workers compensation jurisdictions.

Scope of Review

11. The Review will assess the suitability, adequacy and effectiveness of the outsourced agent model in the administration and management of complex claims under the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Act).
12. The Review will determine how and by whom complex claims should be managed to maximise outcomes for injured workers having regard to the need to maintain the financial viability of the scheme.
13. For the purpose of the Review, complex claims are defined as those where the injured worker has received 130 weeks or more of weekly payments (including claims that were suspended or terminated during this period).
14. However, irrespective of the complexity of a claim, the Review should consider the personal circumstances of claimants which may ultimately contribute to them having 'complex claims', as defined at 130 weeks.
15. In forming its findings and developing recommendations the Review should inquire into:
 - a. Whether the agent model is effective in delivering and achieving positive health and recovery outcomes, including prompt, effective and proactive treatment and management of injuries.
 - b. Whether case management processes and practices for complex claims reflect best practice and provide tailored treatment and support based on biopsychosocial factors, individual circumstances and medical advice.
 - c. Whether policy, oversight and governance arrangements, including financial and performance incentives support and promote best practice, timely, sustainable and quality decision making by agents.
 - d. Any other matters that the Reviewer deems necessary including any potential system wide implications.
16. In undertaking the Review, the Reviewer will consider:
 - a. the experience of other compensation schemes, including Victoria's transport accident scheme (managed by the Transport Accident Commission) and other national and international compensation jurisdictions or insurance schemes including the National Disability Insurance Scheme;

- b. the Victorian Ombudsman's Report in 2016 and 2019 into the management of complex workers' compensation claims and WorkSafe oversight;
 - c. the impact of emerging risks which may impact claim numbers and to the viability of the workers' compensation scheme;
 - d. any relevant work that is being or has already been undertaken in this area, including recent or ongoing legislative and regulatory reforms relating to the Act and workers' compensation system; and
 - e. the implications of retaining, limiting or removing agents from performing claim management functions on behalf of WorkSafe.
17. Where the Reviewer finds the policy, legislative or regulatory framework could be improved, the Reviewer must provide recommendations to give effect to such improvements.
18. In forming its recommendations, the Review must have regard to the implications of any changes for the financial viability of the workers' compensation scheme and the cost of WorkCover insurance for employers.