

21 September 2020

Peter Rozen QC
Reviewer
Independent Agent Review
agentreview@justice.vic.gov.au

Dear Peter

Thank you for inviting the Royal Australian College of General Practitioners (RACGP) Victoria to participate in the independent review into the adequacy, suitability and effectiveness of the agent model in managing complex WorkCover claims (the Review).

Dr Anita Munoz, Deputy Chair RACGP Victoria Council, represented the college and its members at the Consultation Meeting on 20th August 2020 providing the input set out below as per the Discussion Paper guidance.

Background – on the agency providing input

The RACGP is Australia's largest general practice organisation, representing over 41,000 members working in or towards a career in general practice.

The RACGP is responsible for:

- defining the nature and scope of the discipline
- setting the standards and curricula for training
- maintaining the standards for quality general practice
- Supporting specialist general practitioners (GPs) in their pursuit of excellence in patient and community service.

Every year, nearly 90% of Australians visit specialist GPs and their practice teams – there are more than two million visits to a GP each week. As stated in our [Vision for general practice and a sustainable healthcare system](#):

'GPs want to modernise and improve the way that care is delivered in order to improve health effectiveness, accessibility and sustainability. However, a fragmented healthcare system, limited resources and poorly targeted, inflexible and inadequate health funding for patients, practitioners and practices means that GPs and general practices are finding it increasingly difficult to offer high-quality care.'

As described in the RACGP endorsed [Principles on the role of the GP in supporting work participation](#), the General Practitioner (GP) plays a central role in the delivery of health care to the Australian community and is most likely the first point of contact in matters of personal health. GPs are critical in supporting long term health and social outcomes of individuals and their families.

The RACGP response to the review of WorkSafe management of complex claims can be grouped in to the following themes:

Identifying and assessing complex claims

The RACGP contends that the current definition of complex case as outlined by WorkSafe is inadequate (>134 weeks claim duration), for the following reasons:

- By the time a worker has passed 12 weeks out of work due to an injury, their chances of returning to work plummets to 30%. By 134 weeks, return to work chances falls to single digits if at all
- Complexity of claims is contributed to by many factors including the severity of injury, age of the patient, relationship between patient and employer and psychosocial determinants
- Complex claims are defined as such well after the window for intervention and good outcomes has closed for the patient. Unless a claim is simple in nature (e.g. laceration, sprained ankle etc) the RACGP recommends that a validated tool should be used early to assess the risk of a claim becoming complex. The attending physician can fill this assessment in and the insuring agent should then have a contracted obligation to involve an Occupation Rehabilitation case manager early and to ensure evidence-based treatment is approved expeditiously.

The RACGP recommends a reworking of the definition of complex claim occur that is not time based but defined by injury type and psychosocial determinants, noting that this will significantly alter the percentage of total claims (currently 7%) that meet this definition.

Case management of complex claims

RACGP members report that the behaviour of all 5 agents in managing complex claims has been reprehensible in many instances. This point is reflected in the two Ombudsperson's reports of 2016 and 2019 and can be attested to personally by Dr Munoz's own experiences with injured patients:

- Agents frequently refuse the findings in mediation and force patients to participate in court proceedings and Medical Panels reviews in a strategy that lengthens claims and exhausts some patients in to giving up the pursuit of their claim
- The strategy of delaying claims is known to cause further or secondary injury to complex claims patients, or to turn a previously simpler case in to one that meets the definition for complex. The proposed insurance agent complex claims teams should meet on a monthly basis with the WorkSafe Complex Claims unit and the Occupational Rehabilitation case managers. Disincentives and scrutiny should apply to agents refusing mediation findings or making unnecessary use of the judicial system.

The RACGP recommends that if a 5 agent model continues, agents must pass on complex claims to a specialised unit in which staff are trained and skilled in complex claims management. The proposed insurance agent Complex Claims Teams should meet on a monthly basis with the WorkSafe Complex Claims Unit and the Occupational Rehabilitation case managers as described above. Disincentives and scrutiny should apply to agents refusing mediation findings or making unnecessary use of the judicial system.

Financial incentives and agent decision making

RACGP member experiences highlight that inappropriate metrics are used to measure success within the scheme, which result in inappropriate and harmful claims management by agents and by WorkSafe:

- Current metrics for success, and therefore for the payment of financial incentives, are all time-based including time to return to work or time to end of claim
- Agents are rewarded if they return workers inappropriately to work, end claims within deadlines (irrespective of outcomes) and avoid paying out entitlements.

The RACGP recommends a complete change to the metrics used in the scheme and suggest KPIs include:

- Timeliness of response by agents to requests for communication, approval of required medical and psychological therapies
- Number of and timeliness of case-conferences with the patient, patient's GP, occupational rehabilitation case manager and if appropriate, employer
- Timeliness of payments of entitlements to the patient
- Disincentives for inappropriate delays in progressing claims and required medical interventions

Oversight of agents by WorkSafe

The RACGP supports the authenticity of the findings of the Ombudsman on this matter. As outlined in the two Ombudsperson's reports, WorkSafe itself has contributed to the poor management of complex claims:

- WorkSafe has upheld inappropriate claim findings despite clearly outlined evidence of those findings being unjust
- WorkSafe has failed to adequately monitor agents' behaviours or respond to complaints from patients and their practitioners

The RACGP suggests that, as already outlined in the Ombudsperson's report:

- WorkSafe establish a separate Complex Claims Business Unit with appropriately skilled and trained staff who will engage at least monthly with insurers managing complex claims, in collaboration with the Occupational Rehabilitation case worker to ensure claims management is fair and appropriate
- That no unnecessary delays occur in processing claims
- That barriers to evidence-based management are removed
- That the WorkSafe business unit have the legislated power and authority and therefore responsibility to ensure the claims are handled correctly.

The current agent model and alternative models

The RACGP has misgivings about the 5-agent model in Victoria contributed to by the fact that:

- Minimal changes have been enacted by the 5 agents following the 2016 report. That the 2019 report has now had to commission an Independent Review is testimony to the agents' attitude towards the scheme and its regulation [REDACTED]
- The key customer of the agents are the employers, not the insured workers, and as such this conflict of interest has resulted in worker outcomes being of less significance than employer satisfaction and agents achieving their contracted incentives

The RACGP recommends that a redesign of the WorkSafe model places the injured worker at the centre of the scheme as both the person for whom the case worker is responsible and the person whose outcomes are used to measure the scheme's performance. A WorkSafe insurance agent who fails to meet the scheme's standards and who fails to remediate those shortcomings within a required timeframe should have their licence to act suspended or their participation in the scheme reviewed. In addition to these changes, WorkSafe agents should have their performance in ordinary and complex claims published publicly.

Concerns about future financial viability of the WorkSafe scheme

Regarding the financial viability of next iterations of the WorkSafe scheme in Victoria, the RACGP believes that:

- The current approach to complex claims is a false economy and represents a more expensive model. Lengthening claims, delaying medical interventions, relying on Independent Medical Examiner opinions over extensive general practitioner reports and complicated bureaucracy adds to, rather than mitigates the cost of running the scheme
- The key drivers of agent behaviour are time based metrics and achieving financial incentives, not timely and evidence-based interventions that are known to improve injury long-term outcomes
- Many examples exist in which delay tactics, insistence on second and third opinions, drawn out periods of compensation, involvement of legal proceedings, secondary injury and complications due to prolonged claims are more expensive to the scheme than expedient treatment of the injury in the first instance would have been

The RACGP recommends early identification and management of complex claims as this will result in better recoveries for patients, better return to work or return to life outcomes and shorter claim duration:

- A proactive complex claims model would represent a fiscally more sustainable compensation scheme as is borne out in innumerable studies regarding the benefit of early identification and management of disease and injury [REDACTED] outcomes and costs to health systems
- The WorkSafe scheme needs to reorient its metrics and measures of success to patient-based outcomes, patient experience and good management of claims

The role of Independent Medical Examiners

The RACGP proposes that the role of Independent Medical Examiners (IME) needs to be overhauled, for the following reasons:

- Currently, IMEs are commissioned by agents and are therefore partisan in their opinions
- Extremely frequently, agents apply greater weight to a single IME review of a patient's claim than that which is given to GP reports, despite the rich information provided by GPs who have reviewed their patients at least monthly for the entirety of the claim
- IME reviews are often short in duration, omit adequate examinations, do not review all of the supplied information and ask irrelevant questions that skew the impression of the claim
- IMEs are overused and often a method of delaying a claim or intimidating a patient
- Agents frequently refuse the advice of GPs and defer to IMEs or refuse/delay the therapies requested by GPs to treat the patient's injury

- Agents frequently fail to or delay in responding to GPs or in passing on IME reports, mediation findings and information about claims progress

The RACGP therefore recommends:

- That IMEs are selected by WorkSafe itself, if needed, and that IMEs have no affiliation with any agent
- That patients fill out a checklist following their IME review that surveys whether an examination was conducted, the relevance of questions asked, the adequacy of the IME's assessment of available information, duration of IME consultation
- That the patient's survey of their IME experience forms part of the new quality metrics that surveil the agents' management of claims
- As GPs are the primary care-providers in WorkSafe claims, their input be given due importance to the assessment of a claim
- A measurable metric/KPI should include the communication with GPs and response to requests for treatments and where a request is refused this should be reviewed
- Evidence-based treatments as defined by medical, surgical and psychological guidelines should no longer need agent approval if their utilisation is commensurate with agreed best practice

RACGP Victoria would like to thank you for the opportunity to provide input into this critical review. If you seek any further information or clarification in relation to this submission, please do not hesitate to contact Kon Kakris, State Manager, on [REDACTED]

Best regards,



Dr Cameron Loy
Chair – RACGP Victoria Faculty Council