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Mr P Rozen QC
Reviewer
Independent Agent Review

By Email: agentreview@justice,vic,gov,au

Dear Mr Rozen

Thank you for your email dated 10 August 2020 and for your invitation to respond to the questions contained in the discussion paper for consultation on your independent review into the management by WorkSafe of complex workers compensation claims.

This response, provided in my capacity as a member of the WorkCover Advisory Committee, will be brief. A more substantial response has been provided by Gallagher Bassett Services Workers Compensation Vic Pty Ltd and I endorse the content of that response in my role as CEO Australia of Gallagher Bassett Services Pty Ltd.

I seek to provide my thoughts on three issues:

1. Agency Model

   I am a strong advocate of WorkSafe's agency model. I believe that this model, properly implemented and subject to appropriate oversight, affords greater investment in people and innovation and exports many risks that a regulator might have to address if claims were managed internally.

   I am also aware of the risks that the model brings, the most relevant of which has been identified by Ombudsman Victoria's reports of claims decisions being influenced by consideration of financial gain. This issue is best addressed by removing, or dramatically reducing, the size of the incentive component of the contract, and shifting these funds in part or in full to the base fee component of the agent contract. This would not only reduce the risk of poor injured worker outcomes, but enable agents to have more security of income to support greater investment in innovation, case manager decision support technology, claim prevention initiatives and up-skilling of the agent workforce. Concurrently, WorkSafe should enhance the quality of its monitoring of agent claim management outcomes.

2. Complex Claims Management

Nowhere is the importance of people capability, strong organisational culture and structural support more obvious than in the management of complex claims. This is apparent whether the claims are managed in an agency model, either general or specialised, or in a structure managed directly by a regulator.

I have no doubt that a change to a centrally managed model will drive better outcomes for the injured worker, and provide better consistency of outcomes from a scheme perspective. The challenge is in clearly defining what constitutes a complex claim, and the fact that claims will move in and out of that definition as circumstances change and evolve.

We must ensure that the benefits of centralisation are achieved without compromising the recovery of the injured worker through the impacts of the handover of responsibility of the claim management from one party to another.

I believe centralisation of complex claims within each agent would facilitate better injured worker outcomes whilst minimising the negative impacts to stakeholders from handover logistics.

I do not intend to expand on these comments as this issue has been addressed at length in the Gallagher Bassett response.

3. Balance

Despite more than thirty years in the workers compensation industry, I have never ceased to be aware of the tension between the need to properly compensate injured workers, and the essential requirement of a financially viable compensation scheme.

As a result of this experience, I am acutely aware that a significant proportion of complaints from injured workers has, at its base, the loss of control they experience whilst remaining within our scheme, and the widely accepted view that the longer they remain on compensation, the higher the risk of worsening their “whole person” health.

These two attributes of the workers compensation scheme in Victoria, and my less-than-perfect knowledge of different aspects of other schemes, causes me to wonder whether now is the time to implement a major shift toward empowering injured workers with complex claims through reworking existing benefits within the Act to address both these issues.

Some thoughts:

- Unlike other jurisdictions, the Victorian scheme does not have an end-date for weekly compensation payments prior to retirement age, resulting in significant financial impact on its viability, and the need for injured workers to remain within the scheme for many years to receive their entitlements.
- Our Act contains limited redemption benefits which are minimally (authorised agents are prevented from offering this entitlement), if at all, utilised. These clauses potentially enable injured workers to access future benefits (such as self-employment business initiatives) in a manner that removes the need for them to continue to respond to the multitude of requirements to remain in receipt of benefits on an ongoing basis.
- Our scheme is also unusual when compared with other Australian schemes insofar as it has retained the injured worker’s right to seek common law damages. The cost of common law claims is very significant and continues to grow. The system of delivery of common law benefits is also expensive in its reliance on legal and court resources. These expenses do not directly

benefit the injured worker, save for facilitating a common law outcome. Finally, the common law system is fault-based, which is at odds with the fault-free nature of the wider scheme.

I wonder whether the same benefits might be made available to injured workers by the removal of the common law right, replaced with an enhancement of the lump sum benefit regime that currently exists (such enhancement to reflect community expectation of pain and suffering entitlement), future medical expenses and loss of income to retirement age. This initiative might be cost neutral to the scheme overall, as cost savings from reduced reliance on legal and court resources may offset the cost of implementing the redemption initiatives.

I believe the focus should always remain on return to work. However, the reality is that if an injured worker has not returned to work by the 2.5 year mark, that worker's future employment prospects are slim. I believe we should shift the RTW focus to providing the future benefit entitlement upfront to the injured worker. This must be done in a manner that ensures their financial security in the longer term and, more importantly, provides them choice, empowering them to be in control of their own future.

I believe we should create a "whole person" management action plan (similar to the NDIS participants plan) at the 2.5 year mark of the life of the claim (or earlier for profoundly injured workers). This action plan considers and facilitates in a sophisticated way the future health requirements, financial requirements and return to community/return to life (bio-psycho-social) requirements of the individual injured worker.

Centrally managed within each Agent, highly skilled personnel could collaborate with the injured worker and their representatives to establish this individualised plan, and utilise the revamped benefit structure to deliver a holistic roadmap to ensure a secure, structured and empowering future for the injured worker. In some cases for profoundly injured workers, we may require ongoing central monitoring of this plan in a manner similar to the NDIS or State Trustee process.

This might, with appropriate stakeholder protocol controls, ensure better financial and health outcomes for the injured worker whilst being cost neutral from a scheme viability perspective.

I conclude my response by expressing my appreciation for the opportunity to engage in a discussion, the purpose of which is to improve the experience of those who suffer the types of injuries that result in complex claims.

Yours sincerely

John McNamara
CEO – Australia
Gallagher Bassett Services Pty Ltd
Member, WorkCover Advisory Committee