



**WORKWISE MEDICINE**  
MUSCULOSKELETAL INITIATIVES PTY. LTD. ABN 93 073264230

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10 December 2015

Mr Anthony Lean  
Chief Executive  
State Insurance Regulatory Authority  
Email: [2015BenefitsReform@sira.nsw.gov.au](mailto:2015BenefitsReform@sira.nsw.gov.au)

Dear Mr Lean,

Thank you for the opportunity to provide feedback on the policy changes SafeWork NSW intend to implement in response to the new legislation, Workers Compensation Amendment Act 2015.

I have provided my response to your specific questions but I wish to note at the start that what has been requested for comment is the proverbial drop in the ocean in terms of overall costs.

In theory the questions posed in the Request for Comment are very reasonable as are the explanations provided. However, these become theoretical constructs based on the premise that all parties act with respect and good intentions. Sadly, this is not usually the case. The questions posed do not go to the heart of why there has been such a burgeoning cost in workers' compensation claims and skim the surface on how to make the system 'fairer, sustainable and customer-focused'.

Effectively, the request for comment pertains to the process of distributing \$1000 to any injured worker to return back to work in new employment; and \$8000 for injured workers assessed as greater than 20% permanent whole person impairment. It is not known whether such caps are required. One would imagine that these costs have been based on statistical collection as to how resources have been spent in the last three years. However, it does not appear that this information is publicly available. On first appearance if every injured worker seeking new employment were provided with resources to these capped value one might consider the system to be generous indeed, however, one must remember that there have been many return to work incentives employed for many years. Only now is there a suggestion to cap them. It remains unknown whether it is too much or too little and this needs to be guided by what has been spent to date and whether it has resulted in successful outcomes i.e. return to the workforce.

The \$1000 incentive may not cover the education and training costs of some individuals. Does that mean they end up with nothing or training that is meaningless? There appears to be

no scope for flexibility in this ceiling limit. For some of the suggestions on how this \$1000 might be spent, the reasoning provided in the document such as costs of transport and cost of childcare are indirect costs that many in the community are subject to at some stage of their working life and therefore such benefits could be perceived as inequitable and subject to abuse. One might consider that placing a cap on expenditure as has been suggested in the document is one strategy to limit abuse of the system, however, it does not override the fairness and careful vigilance of the people administering the system. Whether the need to place a cap on this expenditure is truly effective remains publicly unsubstantiated.

It is conceivable that an offer of \$1000 will encourage more short term Workers' Compensation claims or amongst those intending to change employment. With respect to the \$8000 payment for workers with 20% disability available for education and training only after 78 weeks, there is no incentive to be able to return to work earlier and disadvantages those who do.

Essentially the questions for public comment are to determine strategies on how to make the system less susceptible to abuse by the worker, prospective employer or fund manager.

With respect to the specific questions posed:

#### Question 1

Limiting the class of assistance:

As stated above, assistance in return to work by providing education or training has always been available. This document presents it as a new bonus – but is it really? The amount of \$1000 may cover training for 3 months in a basic course. Is this sufficient? Other classes of assistance in my opinion would need to be shown to be directly related to obtaining and remaining in employment.

#### Question 2

It would seem most equitable when the assistance has significant relevance to gaining employment and not for social support or benefit. This principle should be applied rather than a prescriptive inexhaustible list of items.

#### Question 3

Another question is whether \$1000 is a one-off payment. Given previous incentives provided by WorkCover for injured workers to obtain new employment, one might presume that \$1000 is the total that any one injured worker could receive for one claim. What support is there in the future for a genuine worker who has sought and obtained work but is dismissed within a short period of time and has to resume looking for work?

What if the injured worker has more than one claim either consecutively or sequentially? Is there an entitlement of \$1000 for each claim? There is a business/social expectation that the \$1000 will be well utilised solely for the purpose of employment in the initial period and one would expect the injured worker will remain in that work for a reasonable period of time:

whether to allocate 3 or 6 months is open for debate. If paid too early there is less incentive to remain at the job. One must also consider that if the injured workers and the service providers (be it vocational or medical / allied health) people must be paid in a timely manner. The legislation is too open ended in regard to when injured workers, treatment and rehabilitation providers are paid. Those bearing the onus to pay are often 'forgetting' to pay or providing unreasonable reasons for delaying payments to all parties, losing documentation and needing multiple reminders to make the payments. These payments cannot wait months or years as seems to be current practice. There is no respectful thought given to the individuals who have mortgages, family expenses or businesses to run and have been providing ongoing services. This must be legally addressed as the current situation leads to desperate situations for many. Delays whether it be reimbursements, payment for services or decisions in treatment does not lead to business efficiency but rather the converse and only serves to increase the ire amongst all parties.

#### Question 4

Short-term employment conveys the possibility of abuse. Short-term needs to be defined – is it a week, a month or a year? Self-employment lends itself to greater flexibility for the injured worker and perhaps this area of employment requires greater focus and guidelines. However, to avoid potential abuse, the viability of self-employment and short-term employment needs to be well-justified.

#### Question 5

Training in leisure and well-being nor pre-vocational training lacks substance and is open to abuse. Education and training needs to be recognised by industry or conducted by registered training organisations through approved programs. There has to be a job at the end to be able to justify the expenditure.

It has been previously seen through WorkTrials, that some employers have abused the opportunity presented by the injured worker. In such cases, the injured worker is perceived as free labour for 3 months. This needs to be avoided at all costs even if it is repackaged as on-the-job-training.

#### Question 6

Training should be provided by provided by a registered RTO.

#### Question 7

The circumstances provided in the explanation in which an employer should not have to pay is reasonable. However, clarification is required as to which employer is being referred to. One might say it is obviously the employer responsible for the injury who has to pay. However, it is usually the new employer that would be providing the training on the job.

#### Question 8

Having more than one system creates confusion. However, the existing programmes are preferred because they are fairer and address specific needs without limiting what can be done by applying a cap or ceiling to expenditure. Workcover should publicly present the statistics as to what education and training has been successful and what has been subject to abuse.

#### Question 9

Why are these considerations and only presented now? They should have been requirements and part of the system since 1987. There is a great inefficiency in the administrative system of workers compensation. Minimising delays and creating disputes have been highly prevalent in this system for years. I have come across many unfortunate injured workers who absolutely struggle with their medical predicament and are faced by an opaque system and seem to be more readily denied the assistance needed. Not only do they have to contend with pain and disability, they have to put up with the added stress of inconsistent financial and medical support along with often a case manager who lacks efficiency, experience, knowledge and empathy and one who changes every three weeks or three months. The case managers also have to deal with many cases and often complex ones, thereby placing them in very challenging situations.

There is a minority of the injured worker population who may have been previously injured and no longer need the system or perhaps were not as badly disabled as reported, but nevertheless remain in the system. They make it difficult for the struggling genuine injured worker, as it leads to the prevailing attitude within the insurance system that **all** injured workers and other parties such as health providers are out to abuse the system. Another prevailing attitude of the insurer is to delay investigation, treatment or other management and either it will no longer be appropriate, amenable or result in reduced success than if carried out earlier. There appears to be the hope that the injured worker will give up sooner rather than later because it is all too much to contend with.

Insurers must have shorter time limits for making decision and where a decision can be made earlier the case manager should not have to extend the delay until the final minute, currently at 21 days at the minimum and which is often extended.

It should be the insurer or the rehabilitation provider who has to verify costs of education and training, and not the injured worker. If as suggested in the document, the injured worker would be required to verify costs, it is essentially doing the work of the case manager. Injured workers often do not have access to the actual costs or there may be hidden costs. This is an administrative function that needs to be borne by the case manager or rehabilitation provider.

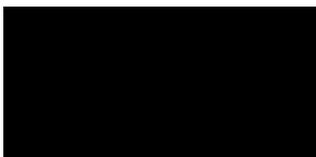
#### Question 10

There are other compelling issues that need to be addressed and open for public debate and public accountability. They include but are not limited to:

1. Given that the workers' compensation premium payments made to the state has amounted to approximately 2.2 billion dollars in one year, and it has been reported that the yearly administrative cost amounts to one billion dollars – effectively the more than the total cost for wages and medical expenses combined – what can justify such expenditure on administration alone?
2. In the light of the severe policy requirements following the Workers Compensation Amendment Act 2012, there has been an avalanche of case closures for injured workers who are very much in need of medical and vocational support. They do their very best to remain or reenter into the workforce and have done everything requested of them by the policies and legislation, yet have their claims closed without consideration to the medical treatment and other strategies that enables them to remain in the workforce. On the other hand, there are those who do not require medical support, avoid vocational support, yet remain in the system on full benefits allowable by the legislation. This system has to be modified to deal with such inequity.
3. There appears to be little support for small businesses to employ injured workers through fear of being subject to a claim that was not theirs to begin with. There is a lack of clarity as to onus of a new employer who employs an injured worker in good faith. It is not surprising then that employers are reluctant to employ injured workers who declare their situations upfront.

The current system is filled with acrimony and suspicion, which does not help a system that has spiralling costs. There is no one answer that will fix such a system. Care, accountability, respect and complete transparency are the innovations that are needed.

Yours sincerely,



**DR CLAIRE HOLLO.**