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RACP Submission

NSW Government consultation – Independent Review of Insurance and Care NSW (icare)

October 2020

About The Royal Australasian College of Physicians (RACP)

The RACP trains, educates and advocates on behalf of over 18,000 physicians and 8,500 trainee physicians, across Australia and New Zealand. The RACP represents a broad range of medical specialties including general medicine, paediatrics and child health, cardiology, respiratory medicine, neurology, oncology, public health medicine, infectious diseases medicine, occupational and environmental medicine, palliative medicine, sexual health medicine, rehabilitation medicine, geriatric medicine, and addiction medicine. Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients.

About the Australasian Faculty of Occupational and Environmental Medicine

The Australasian Faculty of Occupational and Environmental Medicine (AFOEM) of the Royal Australasian College of Physicians is the peak medical body for occupational and environmental physicians, comprising over 500 medical specialists in Australia and New Zealand.

The AFOEM specialist training programme is centred on combining high level clinical expertise with a strong work focus to develop specialist knowledge and skills in preventing and managing ill-health, injury and disability in workers; promoting safe and healthy workplaces; and reducing the impact of environmental hazards on the community.

Occupational and environmental physicians are specialist physicians with clinical skills and knowledge applicable to the worker, employers, organisations and government bodies.

Occupational and environmental physicians provide independent, evidence-based knowledge using a worksite specific approach. They have expertise in the early identification and health risk assessment of workplace hazards. Through the design and application of heath surveillance and monitoring programs occupational and environmental physicians can provide tailored advice and management for the individual worker and organisation to prevent and address identified work related health issues.

Occupational and environmental physicians work effectively and productively in multidisciplinary teams consisting of a broad range of stakeholders that includes, the worker, treating practitioners, allied health professionals, health and safety personnel, employers, unions, insurers, organisations and government regulatory authorities.

About the Australasian Faculty of Rehabilitation Medicine

The Australasian Faculty of Rehabilitation Medicine (AFRM) of the Royal Australasian College of Physicians is the peak medical body for rehabilitation medicine physicians, comprising over 800 medical specialists in Australia and New Zealand. AFRM provides training and continuing education for rehabilitation medicine Fellows and trainees throughout all stages of their career.

The AFRM's focus on interdisciplinary training and teamwork makes the rehabilitation medicine physician the best qualified specialist to lead teams of allied health staff, nurses and other medical practitioners (specialists or general practitioners) in providing coordinated, patient-focused, individualised programs of goal-directed rehabilitative care in order to optimise the health and well-being of those with short-term or long-term disability.

Rehabilitation medicine is a diverse specialty whose members are trained to facilitate the best possible recovery of function over the full range of medical and surgical conditions seen in contemporary practice.

Rehabilitation medicine physicians are trained and experienced to manage all patient types who experience disability due to illness or injury affecting all body systems. They are experts in the assessment, treatment and management of people with permanent disability as a result of injury or illness. Also, they are trained in injury prevention, conditioning, fitness and wellness.

Rehabilitation medicine physicians engage in the delivery of a variety of health services to provide a holistic approach, have experience in integrated care with primary care physicians and training in leading interdisciplinary teams.

RACP submission

Thank you for the opportunity to provide input to inform the Independent Review of Insurance and Care NSW (icare), the workers' compensation scheme and the five-year statutory review of the *State Insurance and Care Governance Act 2015* (SIGG Act).

This submission has been led by the RACP's Australasian Faculty of Occupational and Environmental Medicine (AFOEM) in consultation with the Australasian Faculty of Rehabilitation Medicine (AFRM) and the New South Wales Regional Committee.

We would welcome the opportunity to meet with you to discuss the issues outlined in this submission in more detail. For further information or to arrange a meeting, please contact Ms Claire Celia, Senior Policy & Advocacy Officer, via Policy@racp.edu.au.

Introduction

On 4 August 2020, the New South Wales Government announced the launch of an independent review of Insurance and Care NSW (icare), the workers' compensation scheme and the five-year statutory review of the *State Insurance and Care Governance Act 2015* (SIGG Act) headed by retired Supreme Court Judge, the Hon Robert McDougall QC.

The matters in scope for this Independent Review are[1]:

- A comprehensive organisational review of icare, including issues raised in the media and in Parliament
- The structure and sustainability of the nominal insurer's and treasury managed fund workers' compensation schemes
- The statutory review required by section 32 of the SICG Act

This Independent Review follows the 2019 Compliance and Performance Review of the Nominal Insurer (NI) ('the Dore Review') commissioned in February 2019 by the Chief Executive of the NSW State Insurance Regulatory Authority (SIRA) to assess the reasons for the deterioration of icare's performance. The Dore Review highlighted return to work (RTW) as the primary goal of icare.

The Dore Review's report released in December 2019[2] outlined that the 2019 icare return to work rate (i.e. the rate that measures the percentage of injured workers who report having returned to work at any time) had deteriorated to 84 per cent from 93 per cent in 2018 and 96 per cent in 2016.[3] The report also highlighted "delays in processing, treatment approvals and absence of case management skills, all of which are crucial for early intervention and appropriate treatment" and a "passive approach to injury management and RTW strategies".[4]

One of the Dore Review's thirteen findings (Finding 11) stressed that "icare should ensure its agreements and service providers give adequate weighting to the primary goal of RTW".

Focus of our submission and recommendations to improve the health outcomes of injured workers

Improving the workers compensation system to deliver healthy and safe workplaces and workers requires investment in the claims management workforce and systems of work through early reporting, early identification of barriers to recovery and return to work that we know can help people at a time of need, and improve return to work outcomes and in turn reduce costs in the long term.

[1] NSW Government, Have Your Say webpage: https://www.haveyoursay.nsw.gov.au/icare-workers-comp-review?tool=news_feed#tool_tab [last accessed 07/10/2020]
[2] Janet Dore, Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme for the State Insurance Regulatory Authority (NSW). December 2019, p.34
[3] Janet Dore, Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme for the State Insurance Regulatory Authority (NSW). December 2019, p.34
[4] Janet Dore, Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme for the State Insurance Regulatory Authority (NSW). December 2019, p.67

The health and welfare of NSW workers is central to the objectives set out in the *Workplace Injury Management and Workers Compensation Act 1998*[5] (the WIM Act) which established the NSW workers' compensation scheme. The objectives are listed as follows in the Act:

(a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
(b) to provide -:
    - prompt treatment of injuries, and
    - effective and proactive management of injuries, and
    - necessary medical and vocational rehabilitation following injuries,

    in order to assist injured workers and to promote their return to work as soon as possible,
(c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
(d) to be fair, affordable, and financially viable,
(e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
(f) to deliver the above objectives efficiently and effectively.

Whilst we are aware of issues raised in the media and in Parliament about icare's management, culture and governance practices, as health professionals, it is not within our remit or expertise to comment on these issues.

As physicians, our duty of care is primarily to our patients and therefore our submission seeks to inform this Independent Review by focusing on how the New South Wales' workers' compensation system can produce better health outcomes for workers injured at work.

Our submission makes the **following recommendations** to improve the NSW workers' compensation system to produce better outcomes for those injured at work:

- The NSW workers' compensation scheme needs to adopt principles of good regulation to improve the health outcomes of injured workers. This means the scheme needs to include a clear expectation of customer service and conduct, clear operating principles, an explicit focus on engagement and measurement of claimants' experience as well skills development and management of abuses within the scheme to maintain confidence.
- The health of workers needs to be put at the centre of the NSW workers' compensation scheme – this includes adopting evidence-based treatment and care and emphasising prevention of injury
- Complex claims management needs to be evidence-based
- The expertise of specialist physicians needs to be utilised and integrated at senior levels of the scheme to assist in promoting best practice worker-centric claims processing, development and sustainment of an appropriate organisational culture contributing to evidence-based claims policies and management, training of staff, identification of opportunities for prevention of injury and promotion of the health benefits of good work both within the regulator and within employers.
- Greater emphasis needs to be put on injury prevention which presents valuable opportunities to reduce workers' compensation costs from the onset for all scheme participants and society more broadly.
- Early timely and proactive claims management can help prevent many cases from becoming complex claims.
- Early identification and intervention are key to managing psychosocial barriers to recovery and return to work

The NSW workers' compensation scheme needs to adopt principles of good regulation to improve the health outcomes of injured workers

A range of responses from the regulator, from encouragement to enforcement, influence how work injury schemes operate and impact on the health outcomes of injured workers, their families, and the community.

[5] Available online: https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1998-086#sec.3 [last accessed 08/10/2020)

Regulators and policymakers set the tone and standards for the schemes and can positively influence the health outcomes for scheme participants by:

- Supporting scheme participants to be actively engaged in the shared goal of worker well-being and return to work (RTW).
- Working to facilitate and enhance positive collaboration between scheme participants.
- Establishing a clear purpose for the scheme and a strong sense of values underpinned by cooperation.
- Communication must be consultative, open, non-judgemental, and transparent, such that scheme participants consider their feedback and input will be listened to. Formal and informal feedback from workers and scheme participants about how the scheme is operating needs to be encouraged.
- Fairly applying the rules of the scheme
- Promptly identifying and resolving abuses of the scheme, whether by workers, employers, service providers, claims agents or insurers to safeguard stakeholder trust in the integrity of the scheme.

In addition, effectively applying the following standards of good regulation within the NSW workers' compensation scheme will contribute to improving the health outcomes of injured workers:

- **Stated expectations of customer service and conduct:** Two interstate work injury scheme regulators have published explicit statements of principles and expectations of standards of service.[1,2] The principles outlined set expectations for insurers, in particular being fair, acting with respect, maintaining privacy and confidentiality, being reasonable, efficient and proactive, responsive, transparent and accountable.
- **Declaration of the regulator's operating principles:** The regulator declares the principles underpinning their approach.[3]
- **Measurements of claimants' experience:** Information about lead indicators (e.g. early contact, quality of interaction with the insurer or claims agent) provide opportunities for improvement.
- **An explicit focus on engagement:** The regulator has an explicitly stated stakeholder strategy.[4] In one jurisdiction, where stakeholder engagement is largely managed by the insurer rather than the regulator, the model includes extensive outreach.[5] Each team leader at the insurer manages one or more relationships. The relationship may be with a large employer association, a health association, legal firms, a union or specific individuals, such as a neurosurgeon who regularly operates on injured workers. Staff are taught how to develop and maintain relationships. There may be an initial in-person meeting and then regular or intermittent contact. Contact may be face to face, by phone or email.
- **Skill development and communities of practice:** Regular conferences are arranged in some jurisdictions, imparting knowledge and bringing scheme participants together.[6,7] In one jurisdiction the regulator provides free education sessions for workers[8] as well as quarterly forums for injury managers working for private insurers.
- **Transparent sharing of scheme data:** Sharing of scheme results helps participants to understand how the system is tracking and fosters transparency.[9]
- **Active versus passive regulation:** Active regulation means actively reviewing practices, such as case or claims management. An active regulator seeks to actively monitor scheme practices, attends to issues early, and has a suite of measures that monitors performance. These may include complaints, timeliness of activities such as decision-making, documentation, surveys of workers and employers, monitoring of the type and rates of disputes, and audits of case management files.
- **Culture:** A positive culture inhibits poor conduct and a lax culture can allow poor conduct to occur and proliferate.[10] In some settings poor conduct may even be rewarded. A good regulator takes measures to counteract poor conduct. Influencing culture in a complex scheme requires leadership, purpose and clarity of vision.
- **Dealing with abuses of the scheme, small or large to maintain confidence in the system**. Abuses undermine trust of all scheme participants. Transparency about how problems will be identified and addressed raises awareness as a deterrent. Failure to deal with abuses of the scheme has an outsized effect. Trust in the system is diminished when inappropriate practices persist. Further, inappropriate practices compromise staff tasked with enacting the practices. Staff responding to short-term approaches are less likely to provide holistic care to workers at a time of need, workers become demoralised and demotivated, and a negative cycle ensues.

- **Using a suite of tools to understand and monitor the scheme**. Early identification of inappropriate behaviour enables the regulator to deal with the problem early. Scheme monitoring tools can include:
    - **Surveys to monitor scheme performance.** Customer satisfaction can be useful to measure but a more in-depth approach is preferred, using feedback from the RTW Survey[11] and measuring known psychosocial influences on RTW, such as perceived fairness. Safe Work Australia has partnered with the Insurance Work and Health Group at Monash University to develop a scorecard that assesses RTW performance, including lead and lag indicators.[12] This dataset will enable meaningful comparison over time and between jurisdictions. Lead indicators are important to help drive changes in the quality of claims management. We recommend WorkSafe adopts use of this approach to use of data.[6]
    - **Regular quality auditing of case files**. This would require evaluating a set of case files for markers of good case management, including risk identification, quality of communication, delays, approaches to influence the employer, frequency of delays and unnecessary disputes, and whether the case manager is acting in line with the values of the scheme.
    - **Surveys to assess staff engagement and training needs** as well-trained, engaged case managers benefit the scheme[13,14]
    - **Staff turnover rates** within both claims management organisations and scheme providers, such as rehabilitation professionals
    - **Separate reporting in the RTW Survey on those who have been involved in the scheme for more than three months,** and those with complex cases (approximately 20% of cases overall)
    - **Regular reporting on the level of complaints**

The health of workers needs to be put at the centre of the NSW workers' compensation scheme

To achieve this, it is essential that the NSW scheme focuses on providing treatment and care informed by the following evidence-based principles:

- Evidence-based treatment. Workers have access to appropriate, timely, high quality care. Workers have reliable information about the pros and cons of treatment options. Self-management is fostered. Workers are encouraged to take primary responsibility for their health.
- Healthcare practitioners routinely seeking to identify psychosocial barriers to return to work, particularly before interventions and in situations where there is delayed return to work.
- Treating practitioners having a range of providers they can refer to for management of identified psychosocial barriers to working.
- Treating practitioners having sufficient time to focus on advice and explanation. Treating GPs may coordinate all of a worker's needs in the context of work incapacity or adopt a medical management role with another health provider or case manager coordinating RTW.
- Treating GPs have access to occupational medicine, rehabilitation medicine and other specialist support to assist with the more complex cases.
- Considering patients' cultural factors and belief systems
- Positive and supportive communication between stakeholders (i.e. injured workers, regulator, case manager) with a focus on early resolution of issues, learning from mistakes/disputes, and provider training to understand what the stakeholders require
- Integrated approach for better recovery and less emphasis on the adversarial nature of the process

In addition to adopting treatment and care informed by these evidence-based principles, the NSW scheme needs to place more emphasis on the **prevention of injury**. Injury prevention is an area which presents valuable opportunities to reduce workers' compensation costs from the onset for all scheme participants and society more broadly. Injury prevention is also listed as the first objective of the WIM Act: "to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury." [7]

[6] SafeWork Australia's Measurement Framework can be found here: https://www.safeworkaustralia.gov.au/doc/measurement-framework-national-return-work-strategy-2020-2030 [last accessed 28/09/2020]
[7] Available online: https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1998-086#sec.3 [last accessed 08/10/2020)

One facet of injury prevention includes identifying employers or workplaces with numerous, complex or serious issues. icare could use data to identify these employers and workplaces in an industry to target specialised occupational workplace visits which are a necessary part of decision making in the compensation system.

The scheme also needs to support employers to improve the health outcomes of all their employees through good work. AFOEM defines **good work** as work that "is engaging, fair, respectful and balances job demands, autonomy and job security. Good work accepts the importance of culture and traditional beliefs. It is characterised by safe and healthy work practices and it strikes a balance between the interests of individuals, employers and society. It requires effective change management, clear and realistic performance indicators, matches the work to the individual and uses transparent productivity metrics."[15]

We know that workplaces that embrace the health benefits of good work[16] have lower compensation claims and better return to work rates which positively impact on employer satisfaction with workers compensation insurance costs.

The management of complex claims needs to be evidence-based

The current approach to claims management should be improved. We suggest appropriately trained and experienced claims managers are dedicated to manage complex claims.

Procedurally fair and proactive claims management that puts the injured workers at its heart is key to improving return to work rates and the health outcomes of injured workers.

The following are features of evidence-based claims management:

- **Accurate risk identification and intervention:** Best practice case management prioritises accurate early identification of the needs and risks of workers, targeting care accordingly and evaluating the results. [17]
- **Timeliness of claims determinations, wage replacement payments and treatment:** Delays are linked to prolonged disability, worse RTW outcomes, the development of secondary injuries and strong feelings of injustice in workers.[18,19,20,21]
- **Responsive monitoring:** Effective case management systems track worker progress, monitor biopsychosocial influences and proactively trigger intervention as required.[22,23,24]
- **Guidance and support for workers and treatment providers:** Difficulties understanding the requirements of the claims' process cause stress, undermine recovery and may lead to a more adversarial mindset.[25,26] Active guidance from a trusted case manager is preferred,[27] and high-quality online information can reduce feelings of injustice too.[28] Treating practitioners – especially those who irregularly manage workers' compensation claims – may also benefit from education and case manager guidance in terms of roles, responsibilities and administrative requirements.[29,30,31,32]
- **Regular, effective communication:** Poor communications practices are linked to negative recovery and RTW outcomes,[6,13,31,32] whilst case management initiatives that include empathetic, supportive, informative and individualised communication substantially reduce the number of days of compensation paid, total claim costs, total medical costs and the amount paid in weekly benefits.[33,34]
- **Minimal paperwork and other bureaucratic demands for case managers and other scheme participants:** Arduous and repetitive administrative requirements leave little time for proactive case management initiatives. Administrative demands also damage workers' mental health and recovery prospects and lead to less cooperation between insurers and healthcare professionals.[35,36,37,38] Treating practitioners say that more paperwork leaves less time for therapeutic work, and reduces their willingness to treat compensable patients.[39],[40]
- **Fair and transparent disputes, reviews and investigations:** Adversarial contexts result in poorer health outcomes for injured workers, lower rates of RTW and more negative emotions for stakeholders.[41,42,43] While independent medical examiners (IMEs) can provide a useful "fresh look" at a challenging case, they are frequently a source of tension, distrust and conflict in the RTW process,[44, 45, 46] and may delay recovery.[47,48,49,50] Some investigative processes cause stress and humiliation for injured workers, compromising recovery.[51,52] Fair and transparent processes, with open sharing of information between stakeholders, are likely to build trust and safeguard engagement.[53]
- **Cooperation/capacity for multidisciplinary action:** Best outcomes are achieved via multidisciplinary interventions.[54] Promotion of cooperation amongst stakeholders is an important part

of case management.[48,55] This may include the provision of resources to enable key stakeholders to participate (e.g. payment for treating practitioners).

The expertise of specialist physicians needs to be appropriately utilised within the NSW workers' compensation scheme

Specialist physicians have a key role to play in early identification of cases at risk of delayed return to work and in providing assessment and advice on management of cases. Complex cases need to be identified early post-injury to be effectively managed. Early identification reduces long-term costs both in terms of financial costs for the system but also psychosocial costs for the workers and their families.

In addition to early identification, complex cases need to be appropriately case managed to give those workers the best opportunity to return to appropriate and suitable work in a timely manner. This requires access to appropriate support including assistance with both social and mental health needs as well as early referral to specialist physicians for at risk cases and realistic retraining if it is not possible for the injured worker to return to his/her previous work.

Specialist physicians such as occupational and environmental physicians, rehabilitation medicine physicians, and other specialists have a key role to play in managing complex cases. They should be consulted early to co-ordinate and manage complex cases.

Early referral to occupational and environmental physicians is essential when psychosocial and workplace-related barriers are identified as having the potential to impact an injured worker's progress and their prospect of returning to sustainable and meaningful work. Early referrals to rehabilitation medicine physicians for complex cases and ordinary post-operative rehabilitation are likely to speed up recovery and increase the likelihood of return to work.

It is essential that the NSW workers' compensation system makes better use of the expertise of specialist physicians to assist in the effective management of complex cases. This will assist in promoting best practice worker-centric claims processing, development and sustainment of an appropriate organisational culture, contributing to evidence-based claims policies and management, training of staff, identification of opportunities for prevention of injury and promotion of the health benefits of good work both within the regulator and within employers.

Early intervention is key to managing psychosocial barriers to recovery and return to work

The severity of a person's injury or health condition influences their recovery and return to work. However, the impact is relatively modest and the evidence shows that common psychological and social (i.e. psychosocial) factors that arise from the individual (e.g. beliefs about pain and illness, past history of childhood experiences, low motivation to return to work), from the workplace (e.g. unsupportive supervisors and co-workers, low job satisfaction), from the compensation system (e.g. delays, disputes and claim investigations) [56] and from treatment providers (e.g. non-evidence based treatment, setting up unrealistic expectations, not referring on appropriately, not understanding RTW possibilities) have a strong influence on return to work and return to work outcomes.

Studies have shown that workers classified as high risk due to negative psychosocial factors can have over three times the days off work than those classified as low-risk[57] and that the more psychosocial risk factors are present, the more likely recovery will be delayed.[58]

An analysis of the Australian data from the 2013 and 2014 National RTW Survey demonstrates the real-world impact of psychosocial factors on RTW outcomes in Australia. While the workplace's attitude has the greater impact, when interactions with the claims manager and the system in general were positive, the worker was 25% more likely to have returned to work with a physical injury and 13% more likely for a psychological claim.

Workers' compensation systems are hardest on those with mental health claims. An analysis of the Australian data of the RTW Survey of 2013–14 shows that workers with a psychological claim were less than half as likely as workers with a physical claim to report helpful approaches from their employer and the scheme

The biopsychosocial approach to injury and illness recognises that the course and outcome of any health problem is influenced by biological (medical), psychological and social factors.[59] Unhelpful psychosocial responses can trigger biological processes that increase pain, distress and disability.[60,61]

The breadth and depth of evidence indicates there is a significant opportunity to reduce key barriers to return to work, improve worker satisfaction with the work injury system, reduce unnecessary suffering, reduce complexity, enhance return to work results and reduce costs.

We recommend the NSW workers' compensation system introduces early screening and management systems that are best practice to enhance worker well-being and return to work. Important factors that can positively reduce time off work and costs to the system include:

- Early screening for psychological risk factors and identification of early warning signs for workers who may be at risk of delayed return to work
- Early extra support put in place when risk factors identified (e.g. referral to an occupational physician for assistance with complex health and work factors, consultation with a psychologist; work capacity assessed by a skilled medical professional, communication between employee and GP as needed, workplace support)
- Prompt access to treatment
- Support for treating doctors including training, education, timely feedback and helpful learning opportunities
- Establishment of trusting, supportive relationship between stakeholders
- Regular follow-up with individual workers and their supervisors
- Early referral for specialist support with complex issues
- Early approaches to identify psychosocial barriers to work, such as fostering self-management, coordination of care and promotion of best practice.

Thank you again for this opportunity to inform this Independent Review of Insurance and Care NSW (icare), the workers' compensation scheme and the five-year statutory review of the *State Insurance and Care Governance Act 2015* (SIGG Act). For further information about this submission or to arrange a meeting, please contact Ms Claire Celia, Senior Policy & Advocacy Officer, via Policy@racp.edu.au.

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