

**VCORP SUBMISSION IN RESPONSE TO
STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS,
HOUSE OF REPRESENTATIVES, PARLIAMENT OF AUSTRALIA
INQUIRY INTO ASPECTS OF AUSTRALIAN COLLECTIVE WORKERS
COMPENSATION SCHEMES (20 June 2002)**

Introduction

The Victorian Council of Occupational Rehabilitation Providers (VCORP) represents the occupational rehabilitation (OR) industry in Victoria and was originally established in 1986.

In this submission, VCORP will comment on the arrangements, efficiency and effectiveness of OR service delivery in Victoria, and will also make recommendations regarding strategies for enhancing return to work outcomes and reducing scheme liabilities.

It is not VCORP's intention to comment on the existence, detection or management of fraudulent workers compensation claims in Victoria except to state that the early and effective use of OR to return claimants to work minimizes the likelihood of a fraudulent claim (with its attendant ongoing costs) being made. This submission responds exclusively to the third of the three published terms of reference, dealing with:

"The factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits."

In particular, this submission responds to the second part of that reference, as underlined above.

Industry Safety

Safety performance varies across industries and reflects a range of factors generic to each industry as well as reflecting broader cultural and behavioural factors.

Injury profiles vary between industries according to factors such as:

- degree of inherent risk;
- extent of reliance on physical labor;
- extent of reliance on repetitive or monotonous activity;
- degree of control workers exert over their work;
- degree of satisfaction workers derive from their work
- commitment by the employer to safe work practices
- suitability of the work environment to the type of work performed.

Some low-risk industries generate significant claims, e.g. organisations providing public services, and clerical/administrative environments involving high levels of stress relating to public contact, as well as tensions relating to workplace change.

Management culture and competence play a significant role in determining the rates of injury, workplace disruption, and claims cost and level of premium.

The significant trend towards more contractor, subcontractor and casual employment relationships seems to have resulted in a reduction in duty of care by employers towards their employees/workers.

Workplace change such as downsizing and the consequent increased levels of uncertainty and anxiety for both management and employees tends to increase the frequency of workers compensation claims. Workers who have carried injuries or had concessions made in their present workplace make claims fearing they will not be able to obtain or sustain a job in a new and possibly less forgiving environment.

The factors outlined above which contribute to higher or lower levels of workplace injury, also directly impact on the effectiveness of OR. Workplaces that place a high emphasis on care for employee health and safety correlate highly with a management culture that accepts responsibility for employee rehabilitation. Such workplaces participate positively, creatively and constructively in return-to-work programs and achieve higher return-to-work rates and lower associated costs. Workplaces with low commitment on these measures achieve poorer outcomes.

Current Effectiveness of Rehabilitation

Measurement of the impact of OR on return to work rates and its cost effectiveness in Victoria is difficult to determine, as data has not been collected consistently. Inclusion and exclusion of a range of different costs make comparisons between time periods or with other jurisdictions invalid. Rehabilitation Providers function in a highly prescribed and controlled system frequently having little input into the services that are actually offered to try to bring about the return to work goal.

Access to OR is restricted and controlled by agents and employers. This creates difficulties with the timing of the lodgement of claims, particularly the delay in referral for specific OR services. Recommendations made by the OR provider, which would bring about improvement in the workers status, are frequently disallowed or not followed up.

Lack of measurement is a serious issue, which undermines the decision-making of all participants in the management of the rehabilitation system. VCORP strongly supports the national association of Rehabilitation Providers (ARPA) in the establishment of a national database, designed to capture objective outcome measures from all OR providers in Australia. We estimate that it will be at least a year or more before a useful picture will emerge from the collection of this data.

Adequacy, Appropriateness and Practicability of Rehabilitation Programs

In Victoria the provision of rehabilitation services is supported by sections of the legislation, referring to employer obligations and other commitments (eg. appointing a rehabilitation/return to work coordinator, obligations to provide return to work opportunities and so on). We believe that the practical application of the legislation falls well short of the original intent.

Referral to OR Services

In practice the most effective OR programs that achieve the best results are those operated within larger employer organisations and workplaces. Such large employers are commonly self-insurers. These employers have experience that demonstrates the cost-effectiveness of high levels of commitment to effective rehabilitation, including early intervention strategies. Such employers closely manage the rehabilitation (restoration and return to work) of their injured employees, using internal or external rehabilitation resources or a combination of the two. The improvement in productivity supported by effective OR provision encourages many forward thinking employers to extend OR services to employees with non-work related illnesses or injuries. This is particularly the case in large and government employers.

Most small or medium sized employers have very limited experience, knowledge or resources to devote to the rehabilitation and return to work of their injured employees. Without effective access to rehabilitation professionals, the likelihood and timing of return to work often reflects the quality of the relationship between the employer and their employee, rather than being determined by their legal obligations, the severity of the injury, and the available work duties. Small employers also often do not consider the financial and social implications of not facilitating the workers return to work.

The most significant determinant of rehabilitation outcomes is the timeliness of referral for OR services. It is a maxim of the OR industry that early referral results in the optimum rehabilitation outcome at the lowest cost. Delayed referral leads to the development of other complicating factors reducing the potential for return to work and requiring more extended (and therefore costly) interventions, and higher claim costs.

A common consequence of delayed referral is that the injured worker is not only unable to return to gainful employment, but he/she eventually becomes a burden on the federal welfare system. Achieving early referral and streaming injured workers into appropriate occupational rehabilitation services is the biggest challenge confronting OR within most current Australian workers compensation schemes.

Insurers

Insurers play a critical role in steering the referral of injured workers into the occupational rehabilitation process and its ongoing management and funding. This role is most critical in regard to small to medium-sized workplaces, where employers

are less likely to be well practiced at this role. Insurers have more recently begun to employ OR expertise to assist their claims managers in making appropriate decisions in this regard. This trend has not yet had a significant effect on improving the use of rehabilitation services.

Employers

Just as early referral is critical for effective rehabilitation outcomes, early reporting of injuries and claims to insurers by employers has an enormous impact on claims costs as the insurer can't intervene to assist the employer to manage the claim appropriately if they are not aware of it.

In Victoria the claims excess, which includes employer responsibility for the first 10 days of incapacity, mitigates against early reporting of claims.

There are many reasons for the non or late reporting of claims by employers – in some cases, employers fear that reporting the claim will lead to premium increases, while other cases are caused by ignorance on the part of employers who are inexperienced with the system, and unclear about their responsibilities.

Doctors

The role of the medical practitioner in regard to the injured worker is to provide diagnosis and medical treatment. Only a small percentage of general practitioners and specialists have embraced the use of OR services as a routine option within the larger injury management picture. Even with the facilitation and urging of The Victorian WorkCover Authority, treating doctors still rarely seek out communication with workplace representatives to facilitate return to work planning.

Treating doctors have repeatedly demonstrated that they do not have the time, the inclination or the expertise to deal with injury management outside their treatment facilities, and particularly not in the workplace. When employers seek out information from the treating Doctors, many find it difficult to obtain the guidance they require to plan return to work.

Frequently the involvement of an OR professional is required to bring together the medical information with the workplace knowledge and negotiate with all parties to implement an agreed and workable solution.

Bureaucratic Control

The Victorian WorkCover Authority has invested significant effort in measures to control OR service provision, in an effort to ensure consistency of outcome. Such controls have included accreditation procedures, specifying OR provider competencies and standards, fee setting and operational controls.

These controls have:

- increased OR costs through adding to the bureaucratic processes that OR providers have to comply with

- reduced creativity and innovation
- limited service provision, leaving it short of that required to achieve the agreed goal
- enabled agents to request and receive inappropriate services
- reduced the timeliness and effectiveness of OR.

There appears to be minimal benefit derived from such controls. In fact, there is evidence to support the view that excellent results can be achieved through a less bureaucratic approach, such as exists in the Comcare and Tasmanian schemes. These two schemes have the highest return to work rates (Return to Work Monitor 2000/2001), and minimal controls over professional practice.

Legal Aspects

The underlying adversarial attitude of the Victorian WorkCover scheme clearly works against focusing the motivation and commitment of the key participants on the earliest possible return to work of the injured worker. In Victoria it seems that the initial focus of most agents and employers is still to deny the claim. OR referral and return to work planning is delayed while the issues of liability are debated and investigated.

The process of the claim being denied and the investigation that follows results in further damage to the relationship between the worker and their workplace, and immediately forces the worker and his/her treating health professionals into justifying disability and encourages employers' negative attitudes towards their employees.

In most cases, disputed claims are subsequently accepted. In the meantime, the injured worker has often received no payment during the intervening period, and often has not had the medical and OR investigations or interventions they would have had if the claim had been accepted. He/she also feels that their employer does not believe them, their relationship with their peer group may have been damaged by innuendo, or simply by absence from the workplace. In short the confidence of the worker in their employer's willingness to help them has been seriously undermined.

The Victorian legislation allows insurers to utilize OR services on a "without prejudice basis" during the dispute period – unfortunately, this is almost never used.

Self insurers have long understood the benefits of providing early intervention OR assistance for return to work regardless of liability. It is ironic that in the general scheme, where employers generally have **less** skills to facilitate return to work, they continue to alienate workers rather than assist them in this crucial period.

When assistance is skillfully applied, with the right services provided in a timely way, the resolution of the issue of liability in the claimants favor is not detrimental, as ongoing costs are likely to be limited.

Redeployment

Many injured workers cannot return to their original jobs because they have ongoing disability related to their injury or because their original workplace is unable to accommodate their changed work capacity. Such injured workers usually retain significant employability but are faced with a reluctant employment market which takes a negative view of the risk of employing them while they remain on workers compensation and with a disability. Intensive redeployment efforts can be successful, however many injured workers need very skilled OR assistance to maintain the search for new work.

There remains a conflict within the scheme where the stated goal is to return people to work, but frequently the goal of the agent is to return the worker to “worker status”. OR Providers are under significant pressure to assess claimants as having work capacity. This assessment then does not necessarily lead to redeployment assistance rather termination strategies by the agent if the claimant has been in receipt of payments for longer than 104 weeks.

Unfortunately in many cases the claimant has not been offered OR assistance until the 104 week date is approaching.

Rehabilitation

The role of the OR service provider is vital in the workers compensation injury management process. By its very nature the injury management process in this environment requires impartial, professional expertise which is able to help injured workers navigate the maze of legal, medical, personal adjustment and occupational challenges and guide them back to meaningful employment as soon as possible following injury. No other party involved in workers compensation schemes has this capacity. All other parties tend to have a narrower focus, according to their specific expertise or their role within the schemes.

OR has been a secondary consideration in the Victorian system and employed when efforts to dispute or terminate the claim have failed. This is the wrong way around. Without doubt, it is the goal of all participants to see the injured worker return to work as soon as possible. Therefore it is imperative that OR and return to work be seen as the primary intervention strategy, and the key claims management tool rather than a soft option after termination has failed. The benefits of OR are generally accepted in terms of both economic and social justice arguments. Many large employers, and most particularly self-insured employers, operate now on the basis that they accept these arguments and are committed to their OR programs because of the potential negative impact on their premiums if early return to work is not achieved.

Recommendations for Improvement

1. The removal of existing systemic barriers to the early referral of injured workers to appropriate professional rehabilitation services. This will maximize the effectiveness of efforts to get injured workers back to work as soon as possible and minimize the loss (in both human and financial terms) to injured workers and employers. To achieve additional effectiveness in early referral VCORP recommends the use of advertising to alert employers to the OR expertise available to assist them.
2. VCORP recommend the change of focus for claims reporting from only the employer (who has the least incentive to report for fear of insurance penalties) to a shared responsibility. The best system for this could be explored, for example a carbon copy of the workers claim form be folded and mailed reply paid to the WorkCover Authority notifying them of the lodgement, or a tear off portion of the first WorkCover medical certificate to send reply paid to the Authority.
3. VCORP is absolutely committed to the principle that the most effective OR is and should remain workplace based. This process involves seeking the return of the injured worker to the workplace on a return to work program based on suitable duties as soon as is practicable following injury, and the use of case conferencing to ensure all parties are in agreement with the appropriate course of action to achieve return to work.
4. VCORP welcomes the management role of the relevant state and territory workers compensation authorities. However, it recommends that performance standards be outcome driven rather than process (i.e., input) driven.
5. To this end, VCORP recommends increased emphasis on national data gathering and statistical analysis in order to measure the effectiveness of OR. Such analysis should be structured in order to focus on realistic and meaningful comparisons of OR services and outcomes between state and territory jurisdictions. This data would also reassure insurers and employers regarding the cost effectiveness and positive outcomes of OR intervention.
6. VCORP supports the continuing emphasis on educating employers, and facilitating their assumption of responsibility for the injury management of their own employees. Employers must be the first line of detection of the need for injury management. However, to achieve this, employers require input from the treating Doctor and this communication process must be fostered.
7. However, VCORP acknowledges that this will take longer to achieve amongst smaller employers and as a consequence, VCORP supports the role of insurers at the claims management level to be the second line of detection for the early referral of injured workers to OR services.
8. Many injured workers are unable to return to their former employment because of factors associated with the extent of their disability or restricted opportunities

for work in their original workplace. Such injured workers would benefit enormously, as would insurers, employers and the community, if a national employment incentive scheme could be implemented. Such a scheme would facilitate the redeployment of workers with a disability (and a continuing claim liability) to a new workplace, while offering some form of time limited premium protection as an incentive for the new employer. Examples of current incentive schemes are RISE (SA), WISE (Vic), JobCover (NSW) and the Alternative Employer Incentive Scheme (NT).

9. Maintaining a capacity to settle claims is an important option that must remain available to insurers and injured workers in those instances where no positive OR outcome is realistic. Mandatory ongoing requirements to participate in rehabilitation where there is no achievable goal is demeaning of those workers deemed to be permanently disabled, and is wasteful of resources.
10. Insurers should be encouraged to increase their in-house OR expertise in order to better manage injury claims, refer to OR services earlier and more appropriately and be better able to communicate effectively with OR service providers.
11. VCORP acknowledges its responsibility to continue working to improve the competence and expertise of its members and to improve the self-regulation processes within the OR industry.

This submission has been prepared for the exclusive use of the House of Representatives Standing Committee on Employment and Workplace Relations' Inquiry into Aspects of Australian Workers Compensation. It has been prepared by the Executive of the Victorian Council of Occupational Rehabilitation Providers.

Signed on behalf of the VCORP Executive

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President
VCORP