



AUSTRALIAN PHYSIOTHERAPY ASSOCIATION

APA SUBMISSION TO THE INQUIRY INTO AMENDMENTS TO THE SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2006

Presented to the Senate Employment, Workplace Relations and Education
Committee

Prepared by the

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INTRODUCTION

This submission provides comment on the provisions of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 (the Bill) which, among other matters, amends the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act).

In this submission the APA welcomes those sections of the Bill that align the SRC Act with similar legislation in other jurisdictions.

The APA would suggest that the proposed legislation could be improved by:

- not defining 'reasonable administrative action' so broadly; and
- developing stronger rights and appeals processes to protect the interests of patients and the clinical independence of health professionals.

The APA would be pleased to provide additional information on any aspect of this submission and meet with the Senate Committee to explain its perspective in detail.

RECOMMENDATIONS

The Federal Government should:

- at minimum, amend the proposed definition of 'reasonable administrative action' (in Section 5A(2)) to exclude 'informal' disciplinary action and counselling and limit this definition to the written policies and procedures of an organisation within a context of reasonable human resource management policy; and
- develop stronger rights and appeals processes to protect the interests of patients, and the clinical independence of health professionals, particularly those affected by rehabilitation programs run by corporations who self-insure under this scheme.

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NATIONALLY CONSISTENT LEGISLATION

The APA supports the development and implementation of nationally consistent occupational health and safety legislation that safeguards the interests of health consumers and advances the common good (APA 2001, 2004 and 2005).

The APA welcomes elements of the proposed legislative change – such as the changes to the definition of ‘disease’ and ‘injury’ – that improve the alignment of the SRC Act with similar State and Territory legislation. Thus:

- ‘disease’ is redefined to require ‘a significant degree’ of contribution from employment (section 5B of the Bill) instead of just a ‘material degree’ of contribution from employment (Section 4 of the current SRC Act); and
- ‘injury’ is redefined to broaden the exclusion from a ‘reasonable disciplinary action’ (section 4 of the current SRC Act) to a ‘reasonable administrative action’ (section 5A of the Bill).

Both changes appear broadly consistent with most other Australian jurisdictions (House of Representatives 2006), although the APA has reservations about the excessively broad definition of ‘reasonable administrative action’ in Section 5A(2) of the Bill and the potential barrier this may pose to the interests of potential health consumers.

It would be preferable for the word ‘informal’ to be removed from the definition of ‘reasonable administrative action’ and for this definition to be aligned with the *written* policies of an employer organisation. Ideally the definition should require that such written policies accord with best practice human resource management policy.

The APA has no major issues with the proposals for the exclusion of journeys and recesses from this scheme, as recommended by the Productivity Commission (2004). Nonetheless the APA would urge that commencement of this provision be delayed until any gaps in insurance coverage arising from jurisdictional differences are resolved. For example the Productivity Commission (2004) noted, ‘Each jurisdiction operates a no-fault compensation scheme, but there are jurisdictional differences between their various elements, relating to ...access and coverage, involving definitions of employee and work-relatedness, the inclusion of journeys to and from work, and recess breaks.’ The NRMA, for example, may have issues in picking up the liability in the ACT.

Recommendation

The Federal Government should, at minimum, amend the proposed definition of ‘reasonable administrative action’ (in Section 5A(2)) to exclude ‘informal’ disciplinary action and counselling and limit this definition to the written policies and procedures of an organisation within a context of reasonable human resource management policy.

PROTECTIONS REQUIRED WHEN SELF INSURERS RUN REHABILITATION PROGRAMS

The APA advocates for equitable access to physiotherapy and optimal health care for all Australians, contends that clinical independence must not be corrupted by pressure being applied by large health purchasers or providers, and that price caps that interfere with clinical decision-making or limit the quality of patient care are unacceptable (APA 2000, 2004 and 2005).

A proposed amendment to Section 37 of the SRC Act, appears to permit a corporation who self-insures under this scheme to provide and operate its own vocational rehabilitation program (House of Representatives 2006). The legislation is defined such that a 'rehabilitation program' includes 'physiotherapy'.

This may mean that an employer could determine that an employee attend the workplace to undertake a vocational rehabilitation program designed by the employer and staffed by health professionals contracted to the employer. The APA has concerns with this scenario. Our experience suggests that employers are sometimes less interested in quality outcomes for patients and more interested in cost reduction.

Comcare has minimal powers to ensure that patient's rights are protected, except to remove the licence to the corporation, which is an option they may reticent to utilise.

If the proposed legislative amendment in Section 37 goes ahead employees will require stronger rights and appeals processes, particularly those employees in corporations who self-insure under this scheme and operate their own vocational rehabilitation programs. Mechanisms will also be needed to protect the clinical independence of health professionals.

Recommendation

The Federal Government should develop stronger rights and appeals processes to protect the interests of patients and the clinical independence of health professionals, particularly those affected by rehabilitation programs run by corporations who self-insure under this scheme.

ABOUT THE APA

The Australian Physiotherapy Association (APA) is the voice of the physiotherapy profession in Australia and leads the profession internationally. Physiotherapists must be fully qualified and eligible for registration with the Physiotherapists' Registration Board in their respective state or territory to be eligible for full APA membership. Australia has approximately 11 300 registered practising physiotherapists. The APA has more than 11 000 non-student members. The APA national office is located in Melbourne, with branch offices in every state and territory. Further information on the APA is available at www.physiotherapy.asn.au.

APA VISION

All Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing.

APA POLICY CONTEXT

The following extracts from key APA policies may assist in contextualising the views of the APA regarding occupational health, safety, compensation and rehabilitation issues.

The APA Platform states:

- The APA supports the development and implementation of nationally consistent occupational health and safety legislation.
- The APA contends that physiotherapists play an important role in workplace health and safety.
- The APA contends that the health system and the health of Australians will be vastly improved by increased access to rehabilitation services.
- The APA contends that physiotherapy services are an essential element of services funded by compensable bodies.
- The APA supports no fault motor vehicle and workplace accident compensation systems.
- The APA opposes private or government monopoly of healthcare or health purchasing.
- The APA contends that clinical independence must not be corrupted by pressure being applied by large health purchasers or providers.

- Payment for physiotherapy services should reflect the true cost, variety and complexity of these services.
- Market price is the most appropriate indicator of the relative value of physiotherapy services in the private sector (APA 2004).

The APA Position Statement on Health Funding Provider Agreements includes:

- Price caps that interfere with the clinical decision making of a physiotherapist or limit the quality of patient care are unacceptable.
- Physiotherapy is a core health service and health funds should offer fund members reasonable rebates for standard as well as special or complex physiotherapy services such as two-area treatment, neurological treatment, lymphoedema and continence management (APA 2000).

The APA Position Statement on Compensable Bodies Fee Schedules includes:

- The APA will aim to move discussions seeking to trade off fee increases for patient profiles or clinical pathways to ones where measurable outcomes become the focus.
- The APA does not support inappropriate servicing of patients. Each case needs to be evaluated on its merits.
- The APA will work co-operatively with compensable bodies to achieve early referral to physiotherapy as this is recognised as a strong indicator for low cost and high outcome (APA 2001a).

The APA Position Statement on Independent Clinical Review includes:

- The APA endorses the concept of Independent Clinical Review as an adjunctive process to assist with optimal patient management.
- The APA contends that Independent Clinical review of physiotherapy management is most appropriately undertaken by suitably qualified, experienced physiotherapists.
- The APA supports the identification and compilation of a list of appropriate members who are willing to perform Independent Clinical Review. Those wishing to initiate an Independent Clinical Review (e.g. the treating physiotherapist, referrers or third party payers) may choose from this list (2005b).

REFERENCES

Australian Physiotherapy Association (2005b): Independent Clinical Review. Position Statement.

Australian Physiotherapy Association (2004): *APA Platform*.

Australian Physiotherapy Association (2001a): Compensable Bodies Fee Schedules. Position Statement.

Australian Physiotherapy Association (2000): Health Fund Provider Agreements. Position Statement.

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Productivity Commission (2004): National Workers' Compensation and Occupational Health and Safety Frameworks: xxxi and 187. <http://www.pc.gov.au/inquiry/workerscomp/finalreport/workerscomp.pdf> [Accessed January 17, 2006]