Submission to the independent review of the administration and operation of the Return to Work Act 2014, by the Australian Society of Orthopaedic Surgeons, SA branch. Dr Roger Paterson, Chairman

Mobile managers

ASOS SA congratulates Return to Work SA for providing mobile managers who are able to attend mini-case conferences at times immediately adjacent to patients' consultations with their treating doctors. These face to face meetings have been very beneficial to all concerned in clarifying the nature of the problem being treated, the genuine and constructive attitudes from all concerned towards achieving a favourable and timely outcome, and a more supportive atmosphere assisting the patient's overall recovery.

Recommendation: That this initiative be maintained and broadened with a view to facilitating faster and better informed approvals for treatment/surgery, and to obviate many of the possible reasons for disputes.

Dispute resolution

The number of disputes may have decreased, and maybe even the average time to resolution of a dispute may have decreased, but it has been particularly frustrating that many disputes have been over questions of interpretation of the new act. Advice has been received that until there has been a sufficient experience of case law in interpreting the act, there may still be delays in provision of treatment pending resolution of such disputes. It seems that this situation is now working itself out. However, in the event that there is a dispute as to entitlement under the act, or appropriateness of recommended treatment, workers are suffering through lack of provision of treatment for fear that proceeding to recommended treatment under their own insurance, or at their own cost, might jeopardise their entitlements in the event of an eventually favourable outcome from the dispute resolution process. Furthermore, if a worker ends up suffering a sub-optimal outcome as result of delay in provision of recommended treatment, it seems that those who made the initial adverse decision regarding refusal of approval for treatment, cannot be held accountable. On the other hand, if a worker is provided access to treatment pending dispute resolution, repayment of benefits received by the worker is likely to result in a relatively trivial cost to the scheme.

Recommendation: That when treatment has been recommended, but approval has been withheld, protocols be established to enable a favourable outcome of treatment for the worker regardless of the outcome of the dispute resolution process. This might include both of the following options: 1. Provisional approval of ongoing entitlements to treatment and wage support pending dispute resolution on the basis that all benefits must be repaid in the event that the resolution is not in favour of the worker. 2. A process be put in place whereby a worker can access recommended treatment at their own cost or through their own insurance, such that the worker does not suffer any loss of entitlements in the event of dispute resolution in

their favour. Alternatively, in the event that the worker is deemed to have suffered unduly, and that refusal of approval of treatment is subsequently judged to have been unreasonable, the worker should have access to greater entitlements, or even redress at common law.

Delay in provision of treatment due to dispute

Not uncommonly, approval for surgery or other treatment may be withheld pending resolution of a dispute, which may be over whether the injury is compensable, or whether the treatment proposed is appropriate. It would be an artificial denial of time-limited benefits if this meant, for example, that the worker lost wage support during the recovery time, if the period of delay in approval and subsequent postponement of treatment is what led to that situation. To be fair, in the event of any dispute which is resolved in favour of the worker, the period of delay till provision of the recommended treatment should be added to the overall period of both entitlement to wage support, and the entitlement to further medical treatment.

Recommendation: That workers' entitlements in this scenario be clarified.

Provision of completion of treatment program beyond entitlement period

It is not clear whether a worker is entitled to any wage support in the period of recovery from surgery (for example), when the surgery is undertaken less than 3 months before the end of the 2 year wage support entitlement period. Given that a worker is entitled to up to 3 months of wage support following approved surgery undertaken after that 2 year period, it follows that a minimum of 3 months wage support post-operatively should also be provided in the event that the end of the 2 year period falls within the 3 month period of recovery from surgery.

Recommendation: That workers' entitlements in this scenario be clarified.

Reskilling

Reskilling is a critical and most valuable component of the services offered under the new act. It is particularly relevant given the number of unskilled and trades workers who become unfit for the physical demands of their previous employment due wholly or in part as a result of a work-related injury. Most of those workers needing reskilling can be identified, on medical advice, relatively early in the period of management of their injury. Sometimes the advice may be conditional, but in circumstances when return to the previous employment is significantly in doubt, those workers, who are usually undergoing a relatively prolonged recovery, would also greatly benefit from the therapeutic aspect of a reskilling program. Accordingly, it is recommended that any worker who has become fit for sedentary duties, or such duties as may be required for the appropriate field of reskilling, but for whom it is medically anticipated that the period required to attain fitness to commence a graduated return to the same employment as before, would exceed 3 months, be offered some sort of reskilling or up-skilling. This would not only obviate undue delay in commencing such reskilling in the event that return to the original employment proved not to be possible, but also provide work-related activity and a

boost to morale during the otherwise often depressing period when recovery from injury may result in a prolonged period off work.

Recommendation: Reskilling be expanded to be made available to workers undergoing prolonged periods of recovery, whether or not they may become fit for their previous employment.

Assessment as seriously injured

Currently, it seems that there is a loophole whereby a worker who is assessed as suffering 30% or greater whole person impairment can still not receive the entitlements associated with that degree of disability, on the basis that some previous claim for a lesser degree of disability has been settled. A worker who is seriously disabled as a result of more than one claim over time must surely be granted the same entitlements as one who is seriously disabled arising from a single injury. It is a double standard to set aside previous legal agreements under the new act when convenient, and try escape responsibility by citing previous agreements in other cases when it advantages the insurer.

Recommendation: That workers' entitlements in this scenario be clarified.

Confrontational communication re termination of entitlements

Many workers are still undergoing treatment, are not able to return to work, and have not reached maximum recovery, when they receive a letter advising that the date of termination of their wage support is imminent. The wording of such a letter is prejudicial if it does not include advice regarding entitlements going forward, and in particular, that if the worker may be found to be suffering 30% or more residual disability, the worker has an entitlement to an interim assessment of disability, to determine whether ongoing wage support would be available, pending maximum medical improvement.

Recommendation: That in all cases where a worker has not commenced a return to work program, advice be sought from the treating doctor/specialist as to whether the worker may be suffering greater than 30% overall disability, and that when that is so, an independent interim assessment be obtained before any entitlements are terminated, and before advising the worker that entitlements are about to cease.

Remuneration for medical and surgical services: fees, consumables

It self-evident to the medical profession at least, that management of patients with injures which are covered by third party insurers is substantially more demanding than patients covered under their own insurance or those who are self insured. Currently, remuneration is inflexible as it is gazette, and the rate is based on average fees charged for non-compensable patients. This is in large part why so many excellent doctors and specialists refuse to treat compensable patients. Something as simple as requiring a copy of the letter to the referring doctor a part of a more highly remunerated service would probably save money in obtaining

reports. In any case, the overall cost to RTW SA for an increase in doctors' fees would be a minor expense compared to all the administrative costs incurred, which to a large extent are perceived by workers and their doctors as excessively intrusive.

In addition, not all consumables used in the treatment of compensable patients are paid for. A particular example of this is when an injection is given by a doctor, for which there is no prescribed fee. Nevertheless, materials including syringes, needles, antiseptics, dressings, local anaesthetic, and cortico-steroids are provided by the practitioner, and should be rebateable. All such requests are currently refused. Medicare is reinstating an item number for injections as the consequence of removing that number has been a huge increase in costs as doctors then referred those patients for ultrasound guided injections.

Recommendation: In the interests of timely access to any doctor or specialist of the patient's choice, remuneration be increased to AMA recommended rates, or at least to the top end of fees normally charged to privately insured patients. In addition, all consumables should be paid for.

Entitlement to joint replacement surgery

It is self-evident, at least to the medical community, that access to surgery for pre-existing arthritis is too easy under the current scheme, and is costing the scheme an inordinate degree of money. Currently, a worker becomes entitled to joint replacement surgery if it is deemed that they have injured a joint that objectively has previously been affected by osteoarthritis, and if it is deemed that the effects of such aggravation have not ceased following all appropriate less invasive treatment options. Currently, "aggravation" may simply include an ongoing increase in subjective symptoms without any objective evidence of worsening of the severity of osteoarthritis in the period following the injury. This is far too low a hurdle. While medical practitioners will always be advocates for their patients, it is also recognised that any insurance scheme should be equitable and sustainable.

Recommendation: That the criteria for acceptance of liability for the cost of joint replacement surgery, subsequent (often prolonged) rehabilitation, and any adverse outcomes associated with such surgery, be reviewed and tightened.

Secondary disability

It has only very recently that I happened to be made aware that workers suffering a temporary or permanent aggravation of a pre-existing condition, of which they may or may not have been aware, impact as much on an employer's premiums as if they had suffered a new injury. This is a detrimental and regressive change from the previous legislation. It amounts to cost shifting to the employers on a question of philosophy of whether pre-existing conditions should be covered and to what extent (see above). More importantly, it means that employers now have a serious disincentive to take on anyone with any pre-existing condition. In particular, it must be all but impossible to find employment for workers who need to change employer due to

residual disability from a previous compensable injury. This is a perverse and undesirable outcome.

Recommendation

That employers not be penalized for aggravation of a worker's pre-existing conditions relating to the workplace, or working conditions, unless there has been a significant injury which might have equally disabled a worker without such a pre-existing condition.