

# Insights for success in work injury insurance

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*A personal view of key principles and lessons for successfully managing and regulating a work injury insurance jurisdiction*

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## Overview

This paper is intended for regulators and insurers of work injury insurance schemes (though most of the lessons do apply to both CTP and Life Time Care and Support schemes) and is based on my experience as a National General Manager for private sector work injury insurers, as Chairman of the NSW WorkCover Authority (as it was known at the time) but specifically is based on my experience as CEO of ReturnToWorkSA (formerly WorkCoverSA) during my tenure (Dec 2012 – Dec 2016).

The South Australian work injury insurance market had suffered for many years – its employers have paid high insurance premiums and people injured at work have experienced poor service and even poorer health and return to work outcomes – without any signs of improvement.

In 2013, this changed. Strategies, some of which had elements from past ideas, were implemented and slowly began to improve service, return to work outcomes and reduce the overall cost of the scheme. Whilst cost and outcomes were improving, the culture of the worker's rehabilitation and compensation scheme, coupled with its legislative framework, was never going to achieve the Government's objectives.

A new legislative framework (Return to Work scheme) commenced on 1 July 2015. The Return to Work scheme has two core principles essential to its enduring success:

1. Better health and return to work outcomes for people injured at work
2. Affordable insurance costs for employers.

This paper is focused on identifying the key principles that I believe are essential in ensuring the long-term success of the Return to Work scheme (and could be considered for other work injury insurance schemes).

The cornerstone to all of the principles discussed in this document is:

**When considering whether a scheme can afford either a reduction in premium and/or an increase in benefits then for that scheme to remain sustainable and fully funded in the long term you CANNOT fund either premium reductions and/or benefit increases out of a surplus. Benefit increases and/or premium reductions should only be considered if there is a positive gap between the average premium rate (APR) and the breakeven premium rate (BEP) and you are confident that gap is sustainable.**

Ignore this at your peril.

## Overarching principles – only for the brave

These are the four overarching principles that matter the most – and are probably the hardest to do. For everyone who still has years of work before they can retire, who needs to continue to be employed or would quite like to remain working these may seem like crazy principles.

However, without these principles, you will not learn, improve or deliver real and sustainable change. So, be brave and read on.

### PRINCIPLE 1 – ADMIT YOUR FAULTS

Nothing works quicker to stop the blame game than if you just admit that it isn't working.

When the Minister for Industrial Relations stated that "...the system is bugged..." in 2013, it fundamentally changed the debate in South Australia. Even though different parties had different views on what the problems were, all parties could agree that there were problems that needed to be fixed.

As Chief Executive Officer, I together with a new executive team then built on this statement in two ways.

Firstly, we supported the Minister's view that the current scheme had material problems that could not be fixed with band-aide solutions. The scheme could not be renovated it needed to be demolished and rebuilt.

Secondly, and in some ways most importantly, we then took responsibility for the problems. As the regulator and insurer for the scheme, we acknowledged that the scheme had been managed poorly.

Taking responsibility is an important step when stakeholders have lost confidence.

Of course, it was much easier for me to take responsibility on behalf of the then WorkCoverSA as I was a recent appointment and had strong views about the problems in the South Australian scheme that needed to be fixed.

Admitting mistakes and taking responsibility when you are the incumbent Executive is much riskier, as the debate could move to demanding a resignation. This risk can be mitigated in two important ways.

The first is to have a practical plan to start solving the issues or problems. This cannot be a plan to simply start consulting to then identify solutions. The plan must have real actions, real

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deliverables and clear timeframes. But even with this, it is unlikely that your risk exposure will be substantially reduced.

Your first step must be supported by a second step – which is successful delivery. Deliver against your plan and demonstrate that the desired outcomes are achieved.

If there has been a significant loss of confidence, stakeholders will only change their mind if they see demonstrable change. And even then, it is likely to be a reluctant change over time. Stakeholders will only trust in what you do not what you say and sustainable trust will be achieved through results that improve the scheme.

In South Australia, the work injury insurance culture was focused on the entitlement that people injured at work had to what was effectively a pension scheme. The legislation and this culture encouraged people to stay off work for long periods – rather than providing good practical support to recover and return to work. Health research tells us that long periods off work negatively affect a person's long-term health and well-being<sup>1</sup>.

Admitting the problem and starting the process for legislative change was not enough to change people's minds about work injury insurance in South Australia. What has made the difference, along with legislative reform, was the change that was made with service reform. Significant and visible changes were made in the interactions between WorkCoverSA, claims agents, claims managers, workers, employers and health providers.

An important lesson here is that the service reform started before the *Return to Work Act 2014* commenced. This was done for three deliberate reasons.

The first reason is that the scheme was 'buggered' and getting worse. So, strategies needed to be put in place immediately to halt further deterioration.

The second reason was to demonstrate real service changes that would benefit workers could occur. Without this, stakeholders remained cynical that nothing would change for workers – apart from the potential for a loss in entitlements.

And the third reason. This was to ensure that when the Return to Work scheme commenced, the service reform was working. It took almost 18 months for the service reform to be implemented across the scheme. It was important to start the new scheme as it was meant to be delivered – better health outcomes for workers at an affordable cost for employers.

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<sup>1</sup> Realising the health benefits of work, The Australasian Faculty of Occupational and Environmental Medicine, October 2011.

## OVERARCHING PRINCIPLES – ONLY FOR THE BRAVE

So, the first principle is to admit your faults. Without this, you run the risk of remaining in the blame cycle and have minimal options for moving forward.

Of course, this principle carries its own risks which need to be considered and managed.

Mistakes and problems will continue to arise. Work injury insurance is a dynamic market. Strategies that do not work need to be acknowledged, analysed and revised or new strategies put into place.

### PRINCIPLE 2 – LEAD THE CHANGE, NOT THE COMMITTEE

Work injury insurance has the potential to be controversial and confrontational. Many policies that are put in place are perceived as a benefit to either workers or employers and a cost to the other.

If you need to lead fundamental change, creating a committee to agree the steps associated with the change or make the decisions on the implementation is more likely to result in less change occurring. Vested interests impose views that can compromise the objectives of the project or initiative to protect their own power base or financial security. The safest option for a committee is almost always to do as little as possible. There is rarely a lot of common ground once all vested interests are accommodated. When fundamental change is required, this is not acceptable. Principle 2 is about taking the lead, considering relevant views and associated risks and then, making the decisions at Executive level. Without strong leadership, change is unlikely to be successful.

A good example of this in the South Australian context is the vocational rehabilitation industry. WorkCoverSA has worked on various elements of vocational rehabilitation for 2 decades. Various reviews have been done and different strategies implemented over that time.

By 2012, the then WorkCoverSA found itself with:

- increasing vocational rehabilitation expenditure year by year (3 times proportional cost of other jurisdictions)
- deteriorating return to work rates
- blurred lines between vocational rehabilitation and claims management
- a low percentage of specialised health practitioners providing vocational rehabilitation services.

A comprehensive strategy was developed in 2012-13 by the then WorkCoverSA. Whilst the issues and concerns were heard and considered, the strategy was not developed by committee. The strategy was developed by WorkCoverSA, and then revised only if the strategy needed adjustment

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to achieve the desired objectives. Service providers and some others objected to the strategy and were concerned about the impact for people injured at work. The management team was convinced that the strategy would result in earlier improved services and remove the tendency for people to develop a long-term dependency on rehabilitation.

The strategy has delivered:

- an improvement in return to work outcomes
- specialised job placement services
- robust comparative data regarding provider performance that can be used for referrals.

**And you need to be very clear about who the stakeholders are.**

The South Australian work injury insurance scheme was established for workers and employers – not for providers, not for lawyers, not for claims agents, and not for anyone else who thinks they have an interest. **The stakeholders are employers and workers.**

So, lead the change, not the committee. Listen to views, understand their interest in the matter, consider the risks – and then make the decision and lead the change. Consensus never leads to best practice only compromise or said another way “the minimal level of acceptable performance not best practice”.

### PRINCIPLE 3 – HELP THE GOVERNMENT TO SUCCEED, BUT WITHOUT COMPROMISING ON FRANK AND FEARLESS ADVICE

This is another tricky principle. Governments will always have many people lobbying for change – change that suits individual interests. Governments will always be looking for ways to improve the economy, improve the living circumstances for individuals within the community, and ultimately remain in Government.

As a work injury insurance regulator or insurer within a statutory context, an underlining responsibility is to support the Government to balance the needs of workers and employers in the best way to meet over-arching objectives. In South Australia’s case, this is health outcomes at an affordable cost.

Put bluntly, a key responsibility is to help the Government succeed in achieving this.

A great example is the support that the then WorkCoverSA, as it was known at the time, provided to the Government throughout the process of defining the Return to Work scheme.

WorkCoverSA’s responsibility was fourfold:

1. Understand the Government’s objectives.

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2. Support the Government in identifying solutions that will deliver on the objectives.
3. Support the Government in responding to concerns or issues raised – holding fast to the Government’s key objectives.
4. Provide frank and fearless advice throughout.

The Government made the decisions. WorkCoverSA helped the Government to understand what the options might be and the implications (health and cost).

The fourth item (frank and fearless advice) is an important one. Just agreeing to whatever is proposed is much more likely to generate unintended consequences than considered decisions.

But, frank and fearless advice is not an excuse to prevent or limit change.

If frank and fearless advice is used in this way, it is a barrier to solving problems rather than being useful.

So, finding solutions is a much better approach than just finding objections.

Otherwise, frank and fearless advice becomes an irritant that is not listened to.

### PRINCIPLE 4 – IF YOU HOLD THE LIABILITY, THEN YOU HOLD THE RISK

Like it or not – that is the reality. You can engage claim agents to do your claims management, you can engage lawyers to provide advice and you can sit in an office and never have to deal with an actual work injury.

But do not fool yourself.

The buck will always stop with the person, or organisation, that holds the liability.

ReturnToWorkSA pays the bills – it pays for the income support, the medical expenses and the legal costs when there is a dispute.

So, if you are paying the bills – and the bills go up, if things go poorly – then your job is to do whatever you can to make sure things go well.

The lessons in this document are all about how to be in control of your work injury insurance market – make good decisions and act appropriately when something needs improving or changing.



## Lessons to do with insurance activities

### LESSON 1 – APPLY THE LAW, NOT WHAT YOU WOULD LIKE THE LAW TO BE

The South Australian legislative system is clear:

- The South Australian Parliament sets the laws and parameters relevant to behavior and activities in the State, subject to any over-riding authority from national laws or the Constitution
- Subject to the provisions within those laws, the South Australian court and tribunal system presides over disputes regarding South Australian laws, with a final avenue to the Australian court system, where authorised
- The public sector (statutory bodies and government agencies) provide services in accordance with South Australian laws and government policy
- Individual organisations and the public are required to comply with relevant laws when required.

When laws exist, they are expected to be followed as passed by Parliament. The South Australian legislative framework does not allow the public sector to decide what laws to follow or what laws to adjust in order to be in accordance with their own views.

Now, this lesson will always be a challenging one for three reasons.

The first reason is that any law is just a series of words which can be potentially interpreted in different ways. This lesson is not about saying that if a public sector agency is not following the interpretation of other parties, then they should change their view. A public sector agency can, as all parties can, take the law and interpret it.

The second reason deals with what is left out of laws. Parliament makes specific decisions on what is legislated in society. If an activity is not governed by a piece of legislation, then a public sector agency can, and in many ways should, make its own policy decisions. This should always be done in the context of the Objects of the relevant legislation.

The Parliament does not govern every aspect of life. Parliament identifies what it believes it is important to govern and then agrees legislation on those items.

The third reason can be a much more difficult challenge. Sometimes legislation establishes tough requirements that challenge a person's moral principles. Work injury insurance operates in an insurance environment, but has social responsibilities. As a result, those social priorities may appear to be in conflict with the requirements of legislation.

# LESSONS TO DO WITH INSURANCE ACTIVITIES

## LESSON 2 – DELIVER RISK BASED PERSONALISED ACTIVE CLAIMS MANAGEMENT

Whilst it is still early days, South Australia is seeing a revolution. A revolution in insurance services.

Typical of most worker's compensation jurisdictions, the South Australian market was characterised by:

- transaction focused claims management
- communication by letter, phone or email
- minimal or no face to face contact
- standardised processes for each claim
- action taken in response (not proactively).

Although other jurisdictions have fared better than South Australia under this model, there is no shining example of exemplary service and claims performance that can be cited across Australia.

When the new management team started with the then WorkCoverSA at the beginning of 2013, they came with a broad understanding of the issues (some having been involved in South Australia in the past and observed the issues over many years). They came intending to see if they could implement a service model that would revolutionise work injury insurance.

The service model is deceptively simple. Recognise that the people that are injured at work are individual human beings, will each have different circumstances to consider in regard to their work injury, their previous health, their potential and actual recovery and opportunities to return to work with their pre-injury or other employer.

Of course, not everyone will be a complex case. 75%<sup>2</sup> of people injured at work remain at or return to work within 4 weeks and 83%<sup>3</sup> within 3 months. For these people, the most important thing that ReturnToWorkSA can do is to get out of the way.

In a risk based environment, these are low risk claims – the person injured at work will recover quickly, may not take time off work or return to work quickly. In these cases, the work injury can become a distant memory.

For these people, ReturnToWorkSA is looking to streamline services – making it easier for people to access the services they require (whether it is just medical services, or medical and some income support). One of the initiatives that has been implemented was focused on the claim form.

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<sup>2</sup> ReturnToWorkSA data at 30 September 2016

<sup>3</sup> ReturnToWorkSA data at 30 September 2016

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We removed the need for a lengthy paper form and moved to phone reporting that is focused on getting the claims management process started.

Other initiatives to improve access to information and contacts will continue to be looked at to identify what can be delivered.

So, this is one part of risk based claims management. And every jurisdiction can claim initiatives to improve processes for low risk claims. This is not surprising and this is not the revolution.

The revolution is what is happening with higher risk claims.

And the answer to that is mobile claims management and customised services.

A face to face mobile claims management service has been implemented for every (yes, every) claim that is likely to require support to return to work.

This is no cookie cutter approach.

Every person who is still off work after 10 days and likely to require return to work services is contacted. This contact will be by phone or face to face. The information gained during this contact will be used to assess what model of service is appropriate:

- intensive mobile claims management services are required straight away
- a lighter touch of mobile claims management is required as the employer has a return to work coordinator who has good relations with staff and is handling the claim effectively
- minimum mobile claims management involvement is required as the recovery, due to the nature of the injury, will take longer but the return to work is expected to be straight forward.

The mobile claims management approach itself is about:

- building an effective relationship with the person injured at work and relevant people relating to that person (eg, employer, providers, doctor and family where relevant, etc)
- helping the person injured at work to manage their own recovery and return to work
- bringing the relevant people together to ensure recovery and return to work plans are implemented
- working with the person injured at work to review and make changes along the recovery and return to work journey – so that the return to work outcome for that person is optimised
- managing and authorising claim expenses with first-hand knowledge.

The early return to work mobile claims consultant program aimed at providing face to face services to small employers commenced in 2013. This was one of a number of scheme initiatives that commenced in that year.

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The value of the small business initiative was quickly identified and a broader strategy of implementation was developed. This essentially was the start of the mobile claims management approach now in place – an approach that has achieved significant improvements in return to work outcomes.

It took 18 months for the initiative to be fully implemented – and still needs monitoring, review and improvement.

This initiative required intensive training for claims managers. It also requires claims managers with the right skills to build the sort of relationship that is needed to ensure the person injured at work remains in charge and gets the support they need.

Behaviour based training was started in 2014 and continues even now, with mentoring and reviewing of experiences out on the road. And probably will never stop.

The approach to training was hands-on at the start – with the General Manager Insurance, Rob Cordiner initially personally providing the training to claims managers.

Video based clips of scenarios have been developed to support training programs and integrated into a learning management system. These clips provide insight into real life situations and discuss response strategies.

This recognises that how a mobile claims manager responds each day to each person can significantly influence a person's recovery and return to work.

The old way – effectively passive claims management – is much more likely to result in an adversarial relationship developing. An adversarial relationship is unlikely to have a positive impact on recovery or return to work.

So, this lesson is about introducing a revolutionary way of doing business in work injury insurance. Risk based active claims management is easy to say – but difficult to implement.

You need to be prepared to devote the resources (sending claims managers out on the road costs a lot more than sitting behind a desk – you need more people and more support resources).

You need to be prepared to select the right people (not everyone is suited to this behavior based approach).

You need to be prepared to provide the training (you need to help claims managers develop and refine their soft skills).

You need to be prepared to invest in ongoing monitoring, review and support to help claims managers continue to improve.

## LESSONS TO DO WITH INSURANCE ACTIVITIES

Don't let this lesson pass you by – this might be the one that could make the most difference.

### LESSON 3 – DOCTORS HELP – SO WORK WITH THEM, NOT AGAINST THEM

Doctors have a key role in recovery and return to work process for people injured at work.

Working effectively with treating practitioners will deliver better recovery and return to work processes.

In a passive, reactive worker's compensation scheme, doctors can feel like the only person who is on the worker's side. That the scheme is not interested in helping the worker get better – it is just interested in removing the person from income and medical support.

This does not produce productive results for anyone – doctors are reluctant to clear workers for work until fully recovered, workers become suspicious when the claims manager persist trying to persuade the doctor to provide clearance, claims managers get frustrated as they believe appropriate return to work may be beneficial for the worker as part of their recovery process.

And often, these conflicts adversely affect the ongoing relationship – compounding any problems regarding recovery and return to work.

There are five elements that are important to working effectively with doctors:

1. help doctors to understand the work injury scheme and their important role in it – doctors only get involved in a fraction of the scheme and it can seem like an unfeeling bureaucracy to them. Initiatives to address this have included the establishment of a medical liaison service, face to face support to GP clinics and online education for GPs
2. engage with the doctor and the worker together wherever possible – face to face case conferences are essential to establishing the right relationship. One that is timely, more personable and focused on the worker
3. help the doctor to think about what the worker can do, not just what restrictions are required – again face to face case conferences are a better way to have these conversations
4. personalise communications about the work injury and worker – doctors want to know that you know the worker, the specific injuries and can talk to or make requests of the doctor that are specific to the worker, not generic or standard letters that has a standard set of medical questions to ask
5. provide supports to the doctor to help them treat and manage the worker's recovery – ReturnToWorkSA has made second opinion medicine available to help doctors obtain second opinions about relevant issues for their own use during the treatment for a work injury.

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A recent example of how well a personalised approach can work is a physiotherapist who received a request to answer some specific medical questions about a person injured at work. The letter was concise, all the questions were completely relevant to the worker and the work injury, and the letter had a clear purpose.

The physiotherapist read the letter and felt inclined to answer the questions and provide a response in a timely manner.

This response was in contrast to their previous reactions on receiving similar letters. The difference was the tone and content of the letter. The provider felt like the claims manager knew the worker and was asking for information to progress the recovery and return to work of that particular person.

A positive and timely response was provided.

This lesson is in the insurance section of this paper, but also applies to the regulatory section.

Working with doctors to find the best solutions regarding recovery and return to work will produce far better results than treating the service purely as a medical service to be paid for.

### LESSON 4 – DON'T LET REDEMPTIONS BECOME YOUR RETURN TO WORK STRATEGY

When redemptions were introduced into South Australian worker's compensation in 1995, there was a healthy dose of concern about the risk of developing a lump sum culture. So, in the early days, redemptions were used sparingly and with close scrutiny. Every actuarial valuation analysed return to work outcomes and the redemption activity to see whether there was any hint of a lump sum culture – people waiting to get a redemption payment rather than actively participate in an effective return to work process.

Each actuarial valuation said, 'no sign yet'.

And so, complacency set in.

The outstanding claims liability was creeping up and a solution was needed. So a need for an improvement in the funding ratio with complacency around redemptions made redemptions the solution.

Redemptions started to ramp up and delivered a wonderful funding ratio improvement (which of course is the hallmark of redemption activity, as long as you redeem below the actuarial value of the relevant claims).

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And then came the fire sales. A burst of redemption activity before a valuation saved many annual results. But this came at a price. That price was return to work (or lack of it).

And make no mistake. Claim agents love redemptions as well. It is much easier to negotiate a redemption over, say 6 weeks, than undertake the hard slog of supporting the worker in achieving a meaningful return to work outcome.

South Australia found itself with a lump sum culture. Whilst it appeared to be sudden and out of the blue, it was anything but. The signs were there:

- redemptions became an accepted and regular part of the claims management tool bag
- redemptions became the accepted (and reasonably certain) way to 'save' the funding ratio
- workers came to accept redemptions as the best way to end the claim – to the extent that anything but a redemption was seen to be denying worker benefits
- worker representatives actively driving the demand for redemptions
- fewer and fewer return to work outcomes for claims greater than 1 year.

In 2008, the South Australian Government passed legislation to restrict the use of redemptions, but not prevent.

There was a transition period in 2008 and 2009 for redemptions (this is code for another fire sale) after which the then WorkCoverSA Board took a policy decision to cease almost all redemptions. This was a tough decision.

In 2009 redemptions virtually ceased for premium paying employers.

Return to work outcomes did not magically improve. In fact, return to work outcomes did not show any significant signs of improvement until active management of the scheme and service reforms commenced under the new management team in 2013. That means it took from 2009 to 2014 (5 years) before any real improvements in return to work were observed – and then only after a radical change in strategy.

There are four important elements underlying this lesson:

1. You probably won't notice the negative impact of redemptions until it is too late.
2. Redemptions give you a short term shot of relief, but at the expense of long term pain.
3. A redemption culture will take years to recover from.
4. Do not think you are infallible – that you will succeed where others have failed.

So, think hard before you start.

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And before you draw the conclusion that redemptions should be avoided like the plague. That does not have to be the case.

But you do have to use redemptions carefully.

ReturnToWorkSA offered redemptions to people injured under the old worker's compensation scheme. For some claims, the service reform and new scheme had come too late. The best option for them was to exit by their own decision.

For the Return to Work scheme, redemptions will not be considered, except in exceptional circumstances. Achieving a meaningful return to work remains the prime objective of all activities under the new scheme.

The risks outlined in this lesson remain and have been carefully considered. Time will tell whether the right decision was made.

### LESSON 5 – ACTIVELY MANAGE YOUR CLAIMS AGENTS

If the claims agents only do the claims management and do not hold the claims liability, then the insurer retains the risk.

As principle 4 referred to earlier in this document, the insurer might not have the pain of actually undertaking claims management but they have the pain of everything else.

Do not be fooled into thinking that a cleverly worded contract will ensure great services are being delivered and great return to work outcomes achieved.

South Australia has been a prime example of the impact of passively managed claims agents. In simple terms, poor service, poor outcomes and a short term focus.

If you do not know what you want to do and why, then you can manage the claims agent until the end of the next decade without any positive return.

But, once you do know, then you need to roll your sleeves up and help the claims agent change their performance, help them to behave differently – be supportive and firm about what you want changed.

Outsource claims management by all means but, to steal a phrase from a well known colleague in work injury insurance, NEVER outsource your 'brain'.

When the new management team commenced with WorkCoverSA, there was a culture of inaction. Yes, WorkCoverSA analysed claims performance. Yes, WorkCoverSA identified what they thought



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the problems were. Yes, they discussed the issues with the claims agent. Yes, they made changes to contractual incentives to drive change.

Did enough change happen?

No.

The way you work with your contractors is at least as important as knowing what you want them to do. We changed the way WorkCoverSA worked with the claims agent and introduced an important change to South Australia – service reform in work injury insurance. The key elements to this were:

- be clear about what needs to change
- be united in what needs to change
- don't let distractions get in the way
- actively monitor, manage and drive performance
- be prepared to use the contract to get change
- provide help or support.

The last dot point (help or support) is an important element. When you want to change habits, you need to help people to understand what needs to change. Both myself as CEO and Rob Cordiner (General Manager Insurance) devoted enormous resources – both ours and our staff time – in:

- articulating the vision
- realigning the agent contract
- training and mentoring staff (with agents and internally at WorkCoverSA)
- retaining focus and commitment to the changes.

There is an old adage – what gets measured gets done. This lesson is very much like that. By actively managing the claims agent to achieve service reform, a very clear message was sent. Service reform was important and agents faced a clear choice - get on board or start looking for another contract.

### LESSON 6 – DON'T LET INFORMATION TECHNOLOGY (IT) RUN YOUR BUSINESS

Information Technology (IT) plays an essential part in modern business and today's society. There are enormous opportunities – but with those opportunities, often comes enormous complexity and risk.

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The complexity associated with IT can mean that there is a great deal of reliance on people with IT expertise to support business decision-making.

This lesson is about making sure that IT expertise is used to **support** business decision-making, **not override or control** the business.

The then WorkCoverSA was an organisation that:

- had a wealth of data, but did not use it to its fullest extent
- had significant service challenges to overcome, but was not using IT in a significant way to improve services
- was super-protective of its information assets and information infrastructure.

IT's only job is to support the business it operates in. This includes:

- giving the business options about how to solve its business problems
- helping the business properly understand the costs and risks they face across the business (depending on the options they choose)
- provide the best possible level of service to implement and then maintain the IT assets the business has chosen.

IT's job is not to make the business choice and it is not to get in the way of business choices.

This lesson is a bit like principle 3 (support the government but provide frank and fearless advice), but at a smaller scale. Not all advice is listened to and sometimes poor decisions are made.

However, that is the business's mistake to make – not IT to refuse.

The management team experienced many barriers when implementing the strategies they thought most important to improve service and performance. Barriers about IT infrastructure policy, IT priorities, software choices and project costs. These barriers took considerable time and effort to identify, understand, amend or remove where necessary.

Effort that was potentially unnecessary.

So this lesson is about ensuring that IT plays its role in an appropriate way. IT is not in charge - it does not run the business, it merely supports it. Today IT is a now a valuable support tool to the business.

If you have ever found yourself with software that appears to meet very few business needs (but works great in the current IT infrastructure), this maybe you.

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## LESSON 7 – DATA IS EVERYTHING – BASE DECISIONS AND INTERVENTIONS ON EVIDENCE

This lesson is for the regulator as well as the insurer. For the regulator to understand what is going on and where the issues are – it is then better placed to support the Government of the day. For the insurer in terms of managing its business from a risk perspective.

The then WorkCoverSA had a wealth of data about work injury insurance in South Australia.

But it did not effectively use that data to inform its strategies.

The new management team brought a depth of experience in insurance and regulatory activities directly relevant to work injury insurance. This meant they had real life experience of insurance companies and regulators using data to better understand their market, pick their priorities, implement, then analyse and monitor with an aim to further improvements.

And they took it further than an insurance company ever could – because they had a whole scheme's worth of data at hand.

So, with that, they set about analysing what they could, setting priorities and implementing change.

That was the first step – and one example is how it resulted in changes to WorkCoverSA's approach to the management of psychiatric injuries – with the result of improving decision times and return to work outcomes.

It also resulted in the development of the mobile claims management concept – again resulting in improved decision making and return to work outcomes.

But it did not stop there. The next step in ensuring data was at the core of all our strategies was to identify the current roadblocks and destroy them.

The data was there - WorkCoverSA even had excellent technical skills in using the data, but had poor access to the data and generally poor tools for analysis and presentation of data. The other key flaw in the past approach was the lack of ability of anyone else in the business, except for technical experts, to access and analyse the data.

That has now changed.

Some exceptional tools are now in place to improve access by business users. The tools are much easier to use than what was available in the past and they produce great looking material and importantly valuable information!

The people in charge of analysing the data now have 3 key priorities:

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- create a single source of truth
- do the analysis that they are charged with
- set up tools for business users to access. This has two forms (1) access to tightly defined data and graphs with some ability for filtering and manipulation and (2) access to tools where the user can dynamically create own graphs and data tables, accessing all key fields from the database.

This has been exciting stuff. But isn't easy to set up. You need to be disciplined about establishing strict data governance rules, clear data definitions and strict processes for changing data fields, as well as having the right tools that suit your business.

So, a key lesson is to create a single source of truth and to use your data to understand the business to drive performance. If you do not have the skills to understand where your gaps are – then expert consultants can really help to define your path to better analysis, use of and improvement in business outcomes.

### LESSON 8 – DON'T LET PREMIUMS BE A QUIET ACHIEVER

Premiums play an important role – they give you the mechanism to set the risk at industry level and if you have your approach right, personalise the risk at the individual employer level when needed.

The role of premiums is not always used effectively in work injury insurance especially in government underwritten monopoly schemes. Unlike other insurance products, there is often little focus on premiums – the majority of the focus is on the claims and the people injured at work. And whilst this focus is absolutely critical, it should not be done at the expense of the role that premiums can play.

South Australia has been an extremely good collector of premiums. A collector of premiums that it knew about.

The gap that has become evident in recent years is the lack of focus on premium that we did not know about. A series of events led us to look closely at the labour hire industry and we discovered many examples of employers not registering and not declaring their levels of remuneration.

This 'accident' made us realise that we were missing an opportunity to ensure we collect all of the required premium in the State. This 'accident' changed our approach to premium collection – focusing part of our analytical resources on actively identifying under-declaration or non-declaration by industries or employers.

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Getting your premium collection right is an easy way to improve the affordability of work injury insurance across the State.

Getting your premium collection right also helps you to better understand your risk. The economy here and in other jurisdictions is changing. It is important to pay attention to this and think about how the risk profile of work injury insurance is changing as a result.

A good example of this is aged care and, in particular, home based care. There is an increasing trend towards home based care across Australia. This means more individuals visiting people at their homes, more individuals undertaking manual handling tasks in home environments, and more individuals exposed to the risk of difficult situations in a one on one environment.

So, increased risk in a potentially uncontrolled environment (the home).

The role of premiums is important. So, don't just let premiums be a quiet achiever – use it to your advantage.

It is important to understand that despite being a government monopoly underwriter there is still a need to consider the risk being insured and behave the way a true insurance underwriter would. This is a new approach at RTWSA but one that is having a pronounced impact on risk performance, pricing and increased premium collection.

### LESSON 9 – SIMPLIFY YOUR PREMIUM STRUCTURE SO EMPLOYERS GET THE MESSAGE YOU ARE TRYING TO SEND

With only 5,500 of 50,000 employer customers being able to access a “no claim” bonus or receive a financial reward for good injury management under the old premium model, many South Australian employers were paying high premiums with little perceived benefit.

The premium system needs to be accessible and understandable by the paying customer – employers.

In 2013, the South Australian premium system was complex:

- no financial incentive for small employers (the vast majority of our employer customers)
- a complex premium system for medium to large employers – a system that made it all too hard for employers to recognise the financial impact for them if they prevented work injuries and participated in return to work.

A government statutory compulsory monopoly insurer needs to “bend over backwards” to create a fair premium system that provides its employer customers with:

- predictability

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- simplicity
- reward for good risk management and return to work
- financial punishment for poor risk management and return to work
- limited volatility from year to year.

A revised, simpler premium system was implemented with the Return to Work scheme – one that provided clear messages, focused on what the employer can influence and was accessible for all employers.

## Lessons to do with regulatory activities

### LESSON 10 – YOU CAN'T HIDE BEHIND THE RULES

When the new management team arrived, the regulatory function, on the surface, worked smoothly. The rules were clear and, apart from the odd exception, everyone worked within them.

The rules were arrived at through consultation and many of them were black and white – with no allowance of discretion or thought. The rules required, even demanded, mindless application.

Just as the management team has introduced active management of the insurance functions, they have also introduced a risk based approach to regulation.

Whilst most of the rules remain, and they remain clear, they are administered in the context of the legislation rather than as an end in itself.

The Natural Consequence Model, which governed the regulation of self-insured employers since 2005, is no longer in place. It was replaced by a more flexible approach that is focused on outcomes rather than process.

'Thinking' needs to have a critical role in modern day regulation. Regulation needs to be focused on what is important and what needs to change. Compliance for compliance sake can sometimes achieve the opposite.

Many people will want black and white rules with no discretion – until they observe a case that should be dealt with differently. It can also be perceived as easier for the Regulator to hide behind the rules. If there is a rule with no discretion, they cannot be put under pressure to consider alternatives or justify a decision.

The bottom line is that the ReturnToWorkSA is charged with administering the *Return to Work Act 2014*, including the areas of discretion that the legislation permits. Discretion is there because 'one size almost never fits all'.

Discretion must be used appropriately, in the context of the legislation, and considering the risks.

So, don't hide behind the rules.

### LESSON 11 – DO NOT UNDERESTIMATE THE IMPORTANCE OF CULTURE

Culture means everything and affects everything.

The culture of the South Australian workers rehabilitation and compensation scheme was focused on entitlements, disputation and passive claims management. People felt entitled to stay

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on the scheme forever and felt they were denied their rights when attempts were made to move them off the scheme.

This culture was reinforced by the passive reactive service that was provided. A person who has received a poor service, has not had the support required to make a meaningful return to work – will feel they should get more.

The legislative changes implemented in 2008 should have worked. It limited the use of redemptions, introduced work capacity reviews and removed income maintenance support during dispute (with some flexibility to reinstate for a limited period).

The 2008 legislative amendments did not work, in a large part, due to culture.

Culture encouraged redemptions to be delayed in implementation – allowing more people to access redemptions during the transition period.

Culture meant that work capacity reviews were not implemented strictly in accordance with the legislation by those who thought it to be too harsh and unfair.

Culture accepted that most claims would be disputed, so tempered claims management decisions based on assumptions regarding likely disputation outcomes.

This sounds scary perhaps – but culture will always find a way. People, through the culture they experience and perhaps even support, will do everything to maintain that culture.

And sometimes will even do everything to maintain a culture that they do not support (sometimes unknowingly).

A good example of this is the service reform that has been progressively implemented since 2013.

The service culture is about supporting people injured at work to recover and return to work as quickly (and safely) as possible.

The service culture does not support an adversarial relationship. The only way to effectively support a person in work injury insurance is to build a trusting relationship and work together with that person. To be able to talk to them, ask them about their health and the services they are receiving, and their ideas about future strategies.

So successfully implementing our service culture means a fundamental shift in trust. In the old culture, the trust relationship was between the worker and the worker's representative (lawyer or union in most cases) and sometimes the worker's doctor.



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In the new culture, the return to work culture, the focus of the trust relationship is between the worker, their doctor and their mobile claims manager. There shouldn't be a lot of space or need in that relationship for others – particularly if the focus of others is to look for reasons to dispute.

So even when all parties see positive outcomes arising from this change in culture – more positive workers, faster recovery and better return to work outcomes – sometimes there is still that distrust as to the intentions of the mobile claims manager.

That distrust could, even now, derail the objectives of the Return to Work scheme.

Changing a culture will take time. The first step was the start of the service reform. The second step was demonstrating success in the service reform.

The third step was to repeal the worker's compensation scheme and replace it with the Return to Work scheme.

All these steps have occurred – and occurred successfully.

The next steps are about:

- embedding the service reform and dispelling the distrust – demonstrating that workers will recover and return to work more successfully under the new scheme
- developing and implementing the next steps in service improvement – it will probably take about 5 years for the new culture to become a habit – so continuous improvement is essential to keep it strong.

So, whilst we have the start of a new culture – the old culture is there still lurking ready to re-emerge.

So, don't underestimate the power of a past culture re-emerging to derail your initiatives.

Be on guard.

### LESSON 12 – REVIEW AND CHANGE THE IMPORTANT THINGS AS YOU GO – DON'T WAIT TOO LONG

This is primarily about legislative change.

Legislative change is particularly an issue for Government and even more so if they hold the liability.

Why is there a focus on who holds the liability? That is because in a privately underwritten scheme, an insurer can vote with their feet. If the scheme becomes unviable, then they can refuse

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to offer insurance. This has happened in New South Wales in the area of home warranty insurance.

It would be impossible to imagine that the South Australian workers compensation market would have continued as it was with private insurers. The insurers would have either increased the average premium rate to over 3% or walked away. It was not a viable market.

But in Government hands, the average premium rate was set at 2.75% (even when the breakeven premium peaked at 3.34%), and the outstanding claims liability just kept increasing.

There are often good reasons from a political perspective to not make necessary changes:

- perceived improvements are just around the corner
- too close to an election
- changes not palatable to constituents
- changes not likely to be supported in Parliament
- one change (or a small number of changes) not worth the political cost
- opening a piece of legislation for one change carries the risk of other changes being proposed
- change not a priority.

Medical Panels are an example of this. The legislative amendments did not end up delivering on the Government's intentions regarding having definitive medical opinions being used in disputation. What continues to be considered best practice in medical opinions – having a panel of respected medical professionals considering a particular medical question and providing an agreed view – was completely rejected in the South Australian environment for all the wrong reasons. It is arguable that this unsatisfactory outcome was driven by those with vested interests in the continuation of high levels of disputation.

And, politically, it was not a solvable problem.

So, South Australia had a Medical Panel that was effectively not used as intended by Parliament. And then it was disbanded by the *Return to Work Act 2014* and replaced by Independent Medical Advisers.

Medical Panels is only one example. There were others and the number of changes needed became overwhelming. So, while one or two changes (or tweaks to the legislation) might have been doable, changing the whole scheme can be perceived as an impossible task.

This is very much the lesson for South Australia over the last 15 years. In the last 15 years, the *Workers Rehabilitation and Compensation Act 1986* was amended 11 times, with only 3 being

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considered material changes. Prior to that (1986 to 1999), there were 21 changes to the legislation.

What worked better?

Constant and incremental tweaking to respond to market conditions? Or stable legislation with two really large scale changes (2008 and then the repeal of the Act)?

We don't know, because we cannot relive history.

The *Return to Work Act 2014* has a specific legislative review built into the legislation. In 2018, a review of the Act must occur.

This was done deliberately.

This was done to balance the need to consider necessary changes to the legislation with the risk that changes are made too quickly – before you really know what works and does not work.

This amendment effectively takes the concept of undertaking a review out of the arena of political considerations and priorities. The review must be done and the report must be laid before Parliament.

This assists to ensure that if there are changes that need to be made – they are considered by Parliament in an appropriate manner.

So, don't wait too long – poor habits may be established, the objects of the Act may not be achieved and the changes may build up and become insurmountable.

But also, don't move too quickly. Work injury insurance can sometimes take time before the real effect can be understood.

Three years feels pretty good at the moment, given the characteristics of the Return to Work scheme. Three years allows for the cessation of income support 2 years after date of first incapacity and allows for injury stabilisation for many work injuries.

### LESSON 13 – PARTNERSHIPS DO NOT WORK – EVERYONE NEEDS TO KNOW WHO IS IN CHARGE

WorkCoverSA played at having a partnership relationship twice since outsourcing claims management.

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First in 1995, with the very first claims management outsourcing contract. This came about from advice from the construction industry where they had implemented partnership agreements seemingly successfully.

And then it was tried again, many years later, in an attempt to improve the working relationship with the claims agents.

Both were a dismal failure.

Partnerships only work when both parties share the risk and return. The risk of the claims liability is enormous compared with the risk that agents face (in whether they get more or less revenue this year).

Claims agents will continue to focus on where they can achieve the optimal balance between their revenue and cost. They will worry about the next contract in the last 12 months of the contract – otherwise it will be about providing the best net return to themselves.

So, don't fool yourself – partnerships sound good, and seem to offer a way to hold hands and work constructively together – but they do not work in a claims management environment where the most significant risks are not shared.

The same principle needs to be applied in establishing regulatory frameworks for engaging service providers. Service providers do not carry the risk (they receive payment for services) and cannot reasonably expect to have a partnership relationship with the regulator and/or insurer.

### LESSON 14 – NEVER FORGET TO THINK ABOUT THE VESTED INTERESTS OF PEOPLE YOU ARE TALKING TO

Everyone has a vested interest– somewhere, somehow.

Never forget that.

- Regulator – the system keeps them in a job
- Insurer and claims agents – their profitability will always be a key consideration
- Doctors – they are focused on their individual patient as well as getting paid for the services they provide – they have to support their clinic, staff and family
- Lawyers – they get paid as well, particularly when there are disputes
- Unions - providing assistance maintains membership
- Employer associations – these services help to maintain membership.

You can't ignore what people say just because they have a vested interest – otherwise the only people you can listen to are the ones who have no idea how the system actually works.

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So, this lesson is not about ignoring people with a vested interest – it is about understanding what the vested interest is and finding the core issues that a regulator should properly respond to. Do not delegate your decisions to others – just like principle 2 – don't make your decisions by committee or consensus.

Never an easy task – particularly as most parties may not consider that their concerns are, in any way, related to a vested interest.

So, you have to tread carefully with this lesson. And remember, you probably have a vested interest too.

### LESSON 15 – DON'T LET POOR PERFORMANCE BECOME NORMAL

When the new management team joined the then WorkCoverSA, we were struck by the contrast between what we saw in the data (really poor results that were getting worse every valuation), what we heard from stakeholders (really unhappy about everything – often with reason) and the resignation of staff, agents and stakeholders about the inability to really change anything.

Poor performance became 'normal'. Every valuation that showed performance had further deteriorated was accepted, the report filed, and all of the budget targets adjusted. Life moved on with a new (and worse) benchmark upon which to judge performance.

As the new management team, we started by being overtly horrified by the performance and potential prospects for the scheme. This was an important first step.

In a climate of resignation, any real attempts to significantly improve performance were doomed to failure.

The new management team changed this. We galvanized energy to find the solutions for change. The solutions were there – even the people were there in many cases. What wasn't there was the realisation that we were in a crisis and needed to make and implement significant decisions - focused on change.

So, this lesson here is about complacency. Don't let poor performance become the new normal. Vision and strong leadership are essential.

### LESSON 16 – USE DISPUTATION AS YOUR FAILSAFE MECHANISM – NOT YOUR PERFORMANCE MANAGEMENT MECHANISM

Disputation is an important part of having a fair system in place – where decisions can be challenged and overturned if they do not comply with legislative requirements.

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The onus, however, is that compensating authorities comply with the governing legislation – they should not consider disputation as a ‘normal’ part of their business process.

There are many examples where disputation could have been averted. Communication, building an effective relationship and helping people to focus on recovery and return to work will often result in little or no disputation – because there is no need for it.

Whilst there are occasions when disputation is necessary and important – particularly if mistakes are made or when important parts of the law are being tested.

Disputation is not meant to be used in the majority of cases – it should be a fail-safe mechanism. It is the safeguard that the community has to ensure decision making is fair and consistent with legislative requirements. Nothing more and certainly nothing less.

The service reform has already gone a long way, and this will continue, to ensuring that decisions are properly considered, involve the person affected and are properly communicated.

Disputation will then take its rightful place as a failsafe mechanism.

If this does not occur, this is the fault of the Return to Work scheme, not workers or employers.

This is a great way to end – accept responsibility and make it work.