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Report by Mark Stoker 2003 Churchill Fellow

Best Practice v Injured Workers
Return to Work Programs
and the methods used for the detection of fraud within the injured workers industry

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25th August, 2004

Signed ___________________________ Date ___________________________
SUMMARY

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Objective

Best Practice return to work programs for injured workers and fraud detection within the injured workers industry.

Fellowship Highlights

1. Meeting in New York with respected injured workers advocates;

2. Participated in USA injured workers representatives annual teleconference;

3. Attended Hospitable Employees Union Injured Workers Seminar / Workshop Vancouver B.C.;

4. Attended Nevada Attorney for injured workers interview Carson City Nevada (USA);

5. Two day workshop Occupational Rehabilitation Muang District Bankok Thailand;

6. Meeting in Stuttgart, Germany with Steel Industry Consultative Committee, Injured Employees Sub-Committee representatives.
FORWARD

In my employment capacity as the Assistant Secretary of the Newcastle, Central Coast and Northern Regions Branch of The Australian Workers Union, and a former Chairperson of a Injured Workers Advocacy Group, I am called on to help injured workers on a daily basis with the problems arising from work related injuries. This is not an enjoyable task, but, it has given me a matchless understanding of the many, many barriers which injured employees can sometimes face following a work related injury.

- A disturbing number of people will lose their employment as a result of such an injury and will have to overcome many difficulties to return to employment, if at all
- Further is the unfair innuendo of being a “compo bludger” by the very people paid to assist them with their medical and social rehabilitation
- It must be remembered that work is a fundamental dimension of our human existence and to be denied employment, for any reason, is unacceptable
- There is no emerging strategy to combat the total extent of fraud within the Workers Compensation system and the perception that all fraud is caused by injured workers
- It was reasonable to assume injured workers programs and fraud detection depended on commitments by governments through the legislation and the standard and quality of representation in forming the legislation
- The purpose of this report was to get a feeling of the passion and commitment by the stakeholders in promoting and supporting return to work programs and the cultural change needed to combat the loss of important funding through fraud

In compiling this report I would like to thank the following dedicated injured workers advocates and company representatives.

Mary Jeffords
Injured Workers of New York

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New York Committee
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Burnaby B.C.

Udo Metzner
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Bung – Orn
Health and Rehabilitation Centre,
Bankok, Thailand

Nattikarn / Charmniop
Bankok Phuket Hospitable
Occupational Rehabilitation Team
Muang District, Thailand

Jim Jamieson
Finning Mill Timber Products, Finning B.C.
## Injured Workers Return to Work Program

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Injured Workers Return to Work Programs have significantly improved since the upheaval of the NSW Workers Compensation Act in 1987. Prior to 1987 workers compensation and associated programs were underwritten by the insurance industry. The culture created a need to resolve claims in a cost effective way within an environment of unlimited common law access, the culture also created a “keep the injury its worth more money”. It was common practice also to dispute claims, such disputes would drag out the claim often for years.

The resolution of work related injuries became a game of chess played for a purse by the combatants at a pace outside the comprehension of the injured worker. After 1987 the NSW government undertook the role of underwriting the injured employees, or so it appeared at the time. The insurance industry which had taken a beating during the 80’s was given the role of managing the workers compensation system including return to work programs.

In the early 1990’s there was a view nothing much had changed. There was still no emphasis or urgency placed on return to work with no real requirements for accredited personnel to drive the return to work programs.

“If a loss of income is the end result of a work related injury the journey for the employee and their family becomes a ride on the merry go round from hell”.

Up to 1997 the statistics from the Workcover annual report placed the number of medically terminated employees at an average of 7500 per year. NSW Workcover have driven a number of enquiries that have resulted in significant changes in direction the industry places on return to work programs.

After injury care no longer is seen as a market transaction but an important responsibility that has been defined in the legislation. Current return to work and injury management stakeholders are funded from the employers contributions who, by the NSW Legislation, have become equal partners of the Workcover debt. There is no clear understanding from the injured workers industry on how the debt would be distributed amongst the employers if, for example, companies were to ask to offset this debt against their assets.

This may have an impact in future funding of programs associated with the injured workers industry.
INJURED WORKERS RETURN TO WORK PROGRAMS

1. The Challenge of Finding Selected Duties
Most companies world wide have in place steps designed at preventing work injuries through occupational health and safety programs brought about by legislation and the need to reduce exposure to litigation. Organisations researched felt the programs introduced to prevent injuries gave the employee participants a feeling of being a part of a group that is interested in their welfare, these employees had less problems in participating in return to work programs.

2. Support and Commitment
Successful return to work programs must have the support of very senior management. It was a common view amongst employees that communications was the area causing most concern in delivering effective motivation for the recipient to make the program top priority.

“An elite sportsperson can contract the same injury as a worker but return to their jobs three to five times faster”
Injured Workers advocate

Often the person selected to manage the return to work program has other employment responsibilities which traditionally is seen as the top priority consuming most of their time and effort. The level of detail required to assist return to work programs often became a diversion from their main tasks.

“If management is honest with themselves and they want a successful outcome in all their return to work programs, the program co-ordinators must never give the participant an indication they are not the number one priority and it is more important to find a way to reduce the cost associated with return to work programs”
Union Official

Employers that placed occupational health and safety amongst their top priorities were more likely to have a return to work program that fitted into health / safety activities designed to prevent musculoskeletal problems, the urgency given to the prevention of manual handling injuries readily transferred to return to work programs and the level of awareness of injury
prevention helped employees understand the physical requirements of the return to work program.

3. Return to Work Program Budget
The dollars required to fund return to work programs in the companies looked at, were not shown within forward budgets and often the hidden costs are associated with modified work stations, budgets administered by personnel departments were seen as not as effective as budgets administered within production departments, smaller companies had a more central budget, but quite often no money was allocated for return to work programs.

4. The People – Attitude, Perception, Behaviours
A successful outcome of return to work programs depends on the attitude of the provider and recipient.

For the co-ordinator, communication is the most important part of their management as they have the de-facto responsibility of the financial, domestic and emotional problems associated with the injury and the time off work.

The injured workers motivation to get back to work at full pre injury duties requires commitment and communication. Individual personalities also play a role. Poor attitudes can be managed with external assistance if required. The centre of all effective return to work programs is the need to have the injured party returned to work as soon as possible, in line with the medical advice and in a structured way.

The early support contact with injured employees is seen as the most important phase of any return to work program.

“We don’t wait for insurance agencies to contact us, we get a plan in place, and then call them to say what we’re doing”
– Occ/Health Nurse

With various parties involved in the injured workers industry, insurance companies, management, the injured worker, occupational health professionals, family doctor, any gaps in the line of communication and delays in processing the claim could very well lead to other types of disability. eg: psychological, chronic pain.
No group is excluded from a breakdown in communications however their was a perception the family doctors unfamiliarity with the work required to be carried out was a significant barrier to the process, it would be useful for companies who do not have occupational health doctors and nurses to make a video of the work required to be performed by the return to work participant. The other area of concern was other employees who have resolved the team can only function if all members are 100% fit, forcing the return to work program to be outside the department involving meaningless tasks.

5. Minimising Costs
As the employer carries the costs associated with injured workers R.T.W programs, management of those costs is extremely important as the current (FUND) factor or future cost associated with a claim has the potential to bankrupt companies. The Canadian model and the South Australian Workers Compensation System has provisions for company’s claims coordinators to authorised payment of accounts. These systems are licensed by Workcover and subject to injury management, safety and claims audits. Companies applying are usually of a medium size as to absorb the cost of the self managed infrastructure. Company claims coordinators perform the same function as the insurance company’s claims management. In effect the company would have total hands on and be in a much better position to control their costs.

The company’s claims co-ordinator can access external rehabilitation if required. It was felt by self managing the claim, the parties will establish better communications, the ability to resolve issues on the spot and return the injured worker to full pre injury duties sooner. The current practice of insurance companies owning rehabilitation companies no doubt could be seen as a conflict of interests. The question of best rehabilitation practice has become an important issue in return to work programs.

6. NSW Workcover reports in the year 2001/2002 – Estimated Return to Work

<table>
<thead>
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<th>Estimated</th>
<th>Self insurers return to work average for employees off work over five days</th>
<th>2.8 weeks lost</th>
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<td>Return to Work</td>
<td>Insurance company managed funds return to work average over five days</td>
<td>9.7 weeks lost</td>
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<td>Self insurers return to work</td>
<td>72% better</td>
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<th>Self Management of Funds in Return to Work Programs</th>
<th>Estimated</th>
<th>Between 2.8 and 9.7 weeks</th>
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Self managed funds have the potential to fit in between the current return to work statistics and make good practical and economical sense. As the fund manager would in effect control the total cost of the return to work program with a speedy successful return to work significantly reducing the costs but more importantly eliminating the (f) future costs.

7. Soft Tissue Post Injury Return to Work
A number of provinces in Canada has spent considerable effort into researching immediate intervention, which traditionally was injury diagnosis, pain relief, bed rest and prompt physiotherapy/exercise. These may not be as effective in the early stage as education (injury analysis) and conservative use of over the counter pain killers and pain management strategies with a program to continue as much as possible with usual home and work activities, this would only be possible following a detailed medical examination that would rule out fractures, infections and previously undetected conditions like cancer etc. The Canadian study was a follow up on a number of Canadian medical association journal contributions. There are divided opinions and much medical debate as to the merit of physio/rehabilitation best practices for injured workers return to work as soft tissue injuries are almost totally reliant on the injured workers analysis and commitment. The Canadian study suggested a more traditional approach of intensive physiotherapy after the first four weeks of the injured workers program. The study concluded regardless of the kind of treatment it must be intensive so the injured worker can return to work as soon as practical.

8. Failed Return to Work Programs
Re-employment obligations have been legislated by a number of countries to ensure the injured employee is given every opportunity to continue their employment. In Canada, a number of the provinces have in place legislation that in effect gives an injured worker a legal right to continue their employment up to two years after the termination of employment. This provision further ensures injured workers will not be disadvantaged or unfairly penalised if the employer has a sub standard program in place or the injury takes a significant time to return the worker to suitable or pre injury duties.

In 1997 the Ontario Workplace Safety and Insurance Act administered by the Workplace Safety Insurance Board (W.S.I.B.) Section 41 has such provisions which communicated to all employees of companies who meet the guidelines.

If you have twenty or more workers on the date your worker is injured, and the worker has been employed for at least one year, you must re-employ your workers until the earliest of:
- two years after the date of the worker’s injury
• one year after the worker is medically able to perform the essential duties of his or her pre-injury employment
• the worker’s 65th birthday

If your worker is capable of performing suitable work, you must offer the first suitable job that becomes available.

Once your worker is capable of returning to his or her pre-injury job, you must offer that job, or an alternative job that is comparable in nature.

If you terminate a worker’s employment within six months of re-employment after a workplace injury, you must prove that the termination was not related to the injury. (Section 41)

9. Re-Employment

This legislation has been used effectively when put into workplace agreements during the collective bargaining process, in particular where the employers and employee representatives have in place workplace committees that insures this provision become a part of the communication of entitlements and security of employment to all workers.

New South Wales Workcover has similar legislation in place of which the majority of both blue and white collar workers have no knowledge of. It would be an advantage to all employees to have this final safety net written into all New South Wales awards and enterprise agreements as one of the terms and conditions of employment. The current barriers against employment by a different employer, following a serious injury is the employers liability should there be a re-occurrence of the injury through aggravation, the majority of companies contacted have in place stringent pre-employment checks focused on fitness and health.

Employees terminated through injury have poor future prospects and these opportunities have been further eroded through the globalisation of the casual workforce, in particularly labour hire companies who uniformly have unwritten policies that prevent applicants who have had previously been off work for a period of time with an injury from gaining employment. It therefore is important an injured worker is given every opportunity to remain within the workplace where the injury occurred.
10. Recommendations

1. Of the countries visited health professionals and injured workers representatives in Vancouver, Canada have completed the best research and return to work models in place, it would be useful to follow up a number of programs over a cross section of Canadian industry both large and small companies.

2. The communication required to run successful return to work programs with clear roles and responsibilities defined and the appropriate education of each persons role became as important as the program itself each person having a defined role and must be accountable for failure.

3. Return to work recipients must be re-educated as to the importance of committing to return to pre injury duties and encouraged to be proactive.

4. Small companies should produce a tasks video that would give treating doctors and opportunity to better understand the working conditions.

5. As with injured sports people injured workers should have immediate access to specialist in their field of injury.

6. The state government set up a central unit that would deal specifically with complaints arising from return to work programs with a long term view of introductory legislation to hold accountable areas of failure.

7. Workcover to set up a committee to investigate the employer managed R.T.W Programs operating in South Australia and Canada.

8. New South Wales Labor Council and employer organisations seek agreement that re-employment becomes an award provision and written into enterprise agreements.
# FRAUD DETECTION

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FRAUD DETECTION

Looking at different fraud detection methods used by authorities in the USA, Canada and Germany and comparing those methods with Australian efforts there appears to be equal commitment by the regulations to eliminate the fraud component of their workers compensation systems. Australia has various W.C systems in place in relation to each state. In 2000, NSW Workcover introduced harsher penalties for fraud with the focus on non compliance of the provisions of the Act. Underpayments of premiums by employers were identified as the major fraud component and in 2002 Workcover undertook a report that would make recommendations to the legislation to beef up the requirements. The report published on Workcover's website (www.workcover.nsw.gov.au) saw a broader interpretation apply to premiums. Further in NSW Workcover published an 1800 number to encourage the reporting of fraud. However it remains the view of the industry stakeholders’ fraud is not really a crime but a way of life and mismanagement of the workers compensation provisions is a mistake. The end result has been a cost to the system of tens of millions of dollars.

To combat fraud changes to the culture has been dealt with particularly in the USA where a number of states have tackled fraud head on, firstly by legislation and resources, then by attacking the culture in so as fraud is a crime and criminals need to be prosecuted.

In particularly Texas (USA) where in 1989 the Texas Workers Compensation Commission established a compliance and practices division to identify and investigate worker compensation fraud. Until 1996 fraud was handled as criminal cases and prosecuted by the District Attorney who had the responsibility to prosecute all criminal cases. In 1996 the Compliance and Practices Division undertook their own prosecutions. In 1997 the Texas Workers Compensation Commission established provisions that led to funds being directly aimed at fraud prosecution. These funds were sourced from a Maintenance Tax levied on premiums.

The Texas Workers Compensation Commission insurance fund anti fraud unit has 21 full time investigators in three units:

   (A) Injured worker benefits fraud
   (B) Health care/attorney fraud
   (C) Employer premium fraud
The anti fraud units use several tools to identify fraud.

1. Fraud abuse management computer system
2. Dedicated 1800 phone lines
3. Posters, key chains, pens, mugs, etc to encourage reporting suspected fraud
4. Review of employers’ compliance with workers compensation premiums and payroll tax.

1. Texas Workers Compensation Commission Fraud Referral Statistics

The following tables present general statistics of fraud cases handled by the Texas Workers Compensation Commission. These statistics include both criminal and administrative fraud cases.

The most common type of fraud referred to the Texas Workers Compensation Commission is injured worker benefit fraud. However, the number of injured worker benefit fraud and employer premium fraud referrals has decreased since 1992, while referrals involving health care provider fraud are on the rise (see Table 1).

| Table 1 |
| Number of Fraud Cases Referred to the TWCC for Investigation 1992-1996 |
|----------------|------|------|------|------|------|
| Insurance carrier fraud | 20   | 22   | 12   | 20   | 10   |
| Injured worker benefit fraud | 564  | 608  | 586  | 434  | 863  |
| Employer premium fraud | 149  | 161  | 70   | 55   | 75   |
| Health care provider fund | 44   | 71   | 94   | 62   | 145  |
| Attorney fraud | 60   | 30   | 22   | 5    | 17   |
| Other fraud | 18   | 34   | 113  | 161  | 130  |

| Table 2 |
| Fraud Investigation Completed |
|----------------|------|------|------|------|------|
| Insurance carrier fraud | 21   | 15   | 13   | 13   | 23   |
| Injured worker benefit fraud | 475  | 640  | 508  | 527  | 539  |
| Employer premium fraud | 93   | 124  | 130  | 58   | 110  |
| Health care provider fraud | 15   | 78   | 47   | 68   | 115  |
| Attorney fraud | 22   | 59   | 16   | 11   | 21   |
| Other fraud | 17   | 26   | 75   | 133  | 117  |

| Table 3 |
| Total Fraud Cases Investigated |
|------|------|------|------|------|------|--------|
| Total | 642  | 941  | 789  | 800  | 925  | 391    |

* Total cases referred 2004

The graph shows in 1992 the major offensive made more people aware workers compensation was not a “soft” or victimless crime but a serious crime.
In 1992 at the start of the major offensive against workers compensation benefit fraud the total prosecutions resulting in only 8 convictions but the investigation of 642 stakeholders was the start of the cultural change.

From 1992 to 1996 2,689 injured workers were investigated by the prosecution unit resulting in 114 convictions. The estimated fraud component within the units referred for prosecution.

**Estimated Recovery 1992 – 1996**

<table>
<thead>
<tr>
<th></th>
<th>Employer Premium Fraud</th>
<th>Injured Worker Fraud</th>
<th>Health Care Provider Fraud</th>
<th>Attorney Fraud</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer Premium Fraud</td>
<td>3.152 million</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injured Worker Fraud</td>
<td>888 444</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health Care Provider Fraud</td>
<td>1.809 million</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney Fraud</td>
<td>784 700</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Other USA states have similar specific fraud detection units and statistics show a significant reduction in cases from the initial offensive

<table>
<thead>
<tr>
<th>Year</th>
<th>New York</th>
<th>New Jersey</th>
<th>California</th>
<th>Mississippi</th>
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<tbody>
<tr>
<td>2000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraud Referrals</td>
<td>862</td>
<td>1 270</td>
<td>2 765</td>
<td>120</td>
</tr>
<tr>
<td>Prosecutions</td>
<td>503</td>
<td>482</td>
<td>360</td>
<td>38</td>
</tr>
<tr>
<td>Investigators</td>
<td>66</td>
<td>57</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Convictions</td>
<td>318</td>
<td>78</td>
<td>270</td>
<td>18</td>
</tr>
</tbody>
</table>

2. Basic Types of Fraud

Workers claiming benefits their not entitled to

- Doctors, physio and rehabilitation providers submitting false accounts and payment for referrals of injured workers
- Companies not paying correct premiums

Injured workers industry stakeholders surveyed raised issues of potential fraud in relationship some doctors have with the insurance companies and the relationship some doctors have with attorneys, as the prognosis on the same injury within the same period of time is often very different.

“I saw the specialist for the insurance company in February 2002 and took all x-rays and previous medical reports, I took the same x-rays and reports to a specialist referred by my attorney in March 2002 the difference in opinions was staggering”

*Injured worker*

Company’s avoiding premiums -

“Our workers compensation costs is $450,000 we have to work at full production for ten months before we make a profit, we have no alternative but to transfer two thirds of our current workforce to a labour hire company”
Injured Workers Fraud –

“We had evidence the manager was stealing, among a number of other serious allegations, she was suspended and asked to attend a meeting with the directors. She went to her doctor and produced a Workcover certificate for stress and unfit for work for three months. The insurance company authorised the claim against our advice, the cost of the claim was over $12,000 which was added to our premiums the following year”

Manager, Training Company

3. Extent of Fraud within the System

No clear picture emerged as to be able to identify fraud in a black and white category. In the USA fraud detection was in response to a commonly held view all fraud is perpetrated by workers and as workers compensation costs increased, employer premiums became a significant cost to business, aggressive anti fraud campaigns that partly rely on third party reporting and government audits as detection methods uncovered much higher levels of fraud within the health care provider and company premium section and methods of detection and instruments used for prosecution differ as to the level of resources provided.

The success of the detection and prosecution of fraud depends on a high profile awareness campaign and many believe for each prosecution many more go undetected so the cost is not only to the employers through the workers compensation premiums but also the employees who have lost a significant percentage of their income through restrictions imposed by the various states to reign in costs.

Table 3 indicates the level of fraud has declined and workers compensation benefits are expected to improve, particularly in the area of the statutory payment. The total amount of fraud cases in 2004 (391) is expected to decline. Further, once again the importance of 1992 to 1996 saw 4,097 investigations so the message was consistent and the culture changed.
4. Recommendations

1. High profile fraud awareness campaign targeting all the players involved in the injured workers industry, fraud warnings printed on all workers compensation claims forms, Workcover medical reports, rehabilitation programs;

2. Public education program to highlight the cost of fraud to stakeholders;

3. The State Government set up a dedicated department dealing specifically with workers compensation fraud cases, fully resourced and independent. The departments name should be forceful, eg. Workers Compensation Fraud Prosecution Unit;

4. Introduction of legislation requiring all suspected workers compensation fraud to be reported to the dedicated department with a zero tolerance constitution;

5. Publication of all convicted fraud perpetrators throughout the industry.