

## LEADERSHIP AND POLICYMAKERS: REGULATORS AND INSURERS

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In this section, the importance of regulators and insurers is explored in relation to scheme culture, behaviours, and influence on workers and other scheme participants. The importance of scheme culture to cooperation and collaboration, and the opportunities for scheme leaders to improve recovery and RTW is discussed, including:

- The role regulators and insurers play in setting the tone and attitude of work injury schemes.
- Avenues of influence for regulators, from enforcement to encouragement.
- Variation in regulators' approaches.
- The need for regulators to develop the skills and knowledge of scheme participants.
- How regulators can remove barriers and increase cooperation, via:
  - enhancements to scheme culture,
  - RTW expertise at senior levels,
  - open and transparent reporting; and
  - fostering non-adversarial approaches.

The 'action areas' draw from the section's content or new material to propose important areas for improvement. The 'key elements for better outcomes' outline fundamental components for evidence-informed schemes.

### Background

Work injury schemes are influenced by government legislation, the policies and systems developed and implemented by regulators and insurers, as well as the culture and the way scheme participants interact.

Legislative approaches such as access to benefits, wage replacement step-downs and duration of benefits affect RTW rates. However, the evidence indicates their influence is mixed and that legislative approaches can be crude tools with unintended consequences.<sup>108-111</sup>

Both regulators and insurers, particularly monopoly statutory government insurers, are scheme leaders. Scheme leaders influence the culture, attitudes and behaviour of work injury schemes via their approach, communication style and suite of responses.

Regulators also set the tone via their approach to enforcement. Insurer policies on case management and their interaction with scheme participants influence scheme culture.

There is significant variation in regulators and insurers' approaches. Some regulators are at the forefront of evidence-informed approaches, leading approaches to improve culture, collaboration and scheme transparency. Other regulators have more of a focus on direct approaches. Some regulators and insurers have a well-coordinated approach to engagement and collaboration, while others focus on finances at the expense of worker care.<sup>23</sup>

In Aotearoa New Zealand, the accident compensation scheme has long been well regarded. In 2010 a series of reforms was introduced to manage increasing claims liabilities, and some consider there has been a reduction in case management and overall performance of the system. In response to the mooted changes, the ACC Futures Coalition was established, comprised of health providers, lawyers, community organisations, ACC consumers, academics and unions, to campaign for maintenance and improvements of the ACC.<sup>112</sup>

## The role of the regulator and its approach to regulation

The regulator can promote positive influence on management of cases and dismantle unnecessary barriers to recovery using legislation, standards, culture, scheme oversight and delivery, and dispute systems. Regulators are also well placed to exert influence within various stakeholder domains (e.g. healthcare, the workplace), raising awareness of psychosocial risks and incentivising appropriate management.

The workers' compensation regulator is the organisation appointed by the government to regulate the work injury insurance scheme. The regulator is charged with ensuring the scheme runs smoothly, in line with legislative objectives. These objectives generally include maintaining the financial health of the scheme, whilst providing injured workers with fair compensation.

Traditionally, in work health and safety, two broad types of regulation are recognised:

- **Proscriptive strategies** of regulation that emphasise rules and transgressions and forbid rule violation. This approach has a focus on rule compliance.
- **Prescriptive strategies** that encourage achievement of goals. Prescriptive strategies encompass mechanisms to encourage those being regulated to go beyond compliance with rules to satisfy regulation requirements.

The responsive regulation model has largely replaced these traditional models.<sup>113</sup>

Responsive regulation is flexible in its approach, depending on the behaviour of those being regulated. It may involve escalating rules-based compliance at times or a focus on fostering positive behaviours.

The responsive regulation model argues that regulators are more likely to succeed when they respond to the context, conduct and culture of those being regulated. The model suggests regulators should begin with encouragement and collaborative mechanisms that operate with respectful (and cheaper) options. Evidence indicates that most people and organisations respond well to a respectful and supportive approach, and that punitive mechanisms should be reserved for the minority of cases where persuasion fails.<sup>114</sup>

No matter the regulatory tools, the following principles underpin effective regulation.<sup>115</sup>

- **Evidence-informed.** The regulator makes assessments and acts based on objective evidence.
- **Independent.** The community has trust and confidence that the regulator is able to be effective. This means clear independence from those that are being regulated, such as the insurer.
- **Purpose driven.** Regulators set the tone and culture of the scheme, so it's important that there is clarity of purpose and a strong sense of values.
- **Authoritative.** To be effective, a regulator needs to be able to do the right thing (i.e. have appropriate powers), as well as be trusted to do the right thing (i.e. be transparent and open to scrutiny).
- **Expert.** The organisation requires appropriate expertise and capabilities. Specialist expertise in claims and work or personal injury schemes is needed at senior levels. Moreover, regulators must have their ears to the ground to understand what occurs daily in the real world, as opposed to simply reading high-level reports.
- **Consultative and communicative.** The regulator understands the perspectives of those who are affected by the regulator's decisions, which requires effective stakeholder engagement. Stakeholder engagement occurs in the setting of partnership with scheme participants and an open flow of dialogue.
- **Trusted and transparent.** Fair application of the rules and fostering appropriate behaviour increases trust amongst stakeholders. Transparency is an important principle and fosters trust.
- **Do no harm (in a complex system).** Good intentions have, at times, had unintended consequences. In such a context, transparent monitoring of changes to systems and processes is essential.

## How can regulators influence work injury schemes constructively?

Various responses from the regulator, from enforcement to encouragement, influence how work injury schemes operate.

## Compliance and enforcement

Compliance activities range from ensuring employers pay their premiums and appoint a RTW coordinator (in relevant jurisdictions); to overseeing payments to service providers; to investigating potential fraud (by workers, employers or service providers).

Dealing with abuses of the scheme, small or large, is important to maintain confidence in the system. Abuses undermine the trust of all scheme participants. Transparency on how problems will be identified and solved raises awareness and acts as a deterrent.

The regulator can and should use a suite of tools to understand and monitor the scheme. Early identification of inappropriate behaviour enables the regulator to deal with the problem in a timely manner. Scheme monitoring for inappropriate behaviour can involve:

- Examining the number and type of complaints.
- Encouraging open feedback from scheme participants.
- Tracking the number and nature of disputes.
- Maintaining a ‘whistle-blower’ hotline to support reporting of scheme abuses, such as unethical case management practices.<sup>10</sup>
- Audits, such as case management file audits.

Concerns have been expressed about a blurring of roles, where the regulator and insurer are housed in one organisation.<sup>23,116</sup> ‘Regulatory capture’ describes the difficulties of overseeing an industry where the regulator is too close to the body it is regulating. This may occur through asymmetry of information, pressure to support the approach of the entity being regulated, or when the regulator’s connections lead them to be more sympathetic to those with whom they are in regular contact.<sup>117</sup> These issues have led to concerns about insurers and regulators being part of the one organisation.

Failure to deal with abuses of the scheme has a significant effect, and trust in the system is diminished when inappropriate practices persist. For example, in one major jurisdiction there have been calls for wholesale change in the state’s scheme, noting repeated failures of the regulator to rein in claims practices that were considered unethical.<sup>10</sup> Further, inappropriate practices compromise staff tasked with enacting those practices. When staff are under pressure to achieve short-term goals (e.g. when case managers have KPIs that stipulate a certain number of certification ‘upgrades’ per month), they are less likely to provide holistic care to workers at a time of need. Workers may then become demoralised and demotivated, and a negative cycle ensues.

## Encouragement

The more substantive problem impeding improved RTW is the difficulty of implementing evidence-informed policy. Approaches that foster proactive management, good behaviours, fairness and trust are important.

The regulator can improve culture, workforce skills and scheme interactions through persuasion, incentivisation, education, evaluation, performance monitoring, information provision and encouraging good behaviour. These approaches will be more effective if there is trust in the regulator, and this is more likely when scheme leaders act responsibly and promote scheme objectives and scheme values.

Some regulators have proactively developed and adopted mechanisms designed to foster positive behaviours, exceeding minimal compliance. Examples include:

**Stated expectations of customer service and conduct.** Some regulators have published explicit statements of principles and expectations of standards of service.<sup>17,18</sup> The principles set expectations for insurers, in particular being fair and acting with respect, being reasonable, efficient and proactive, responsive, transparent and accountable. In its 2019 annual report, the ACC stated that everything it does as an organisation aims to support the Aotearoa New Zealand way of life for all citizens and visitors.<sup>50</sup>

**Declaration of the regulator's operating principles.** The regulator declares the principles underpinning its approach.<sup>118</sup>

**Measurements of claimants' experience.** Information about lead indicators (e.g. early contact, interaction with the insurer) provides opportunities for improvement.

**Explicit focus on engagement.** The regulator has an explicitly stated stakeholder strategy.<sup>119</sup> In Queensland Australia, where stakeholder engagement is largely managed by the insurer rather than the regulator, the model includes extensive outreach.<sup>120</sup> Each team leader at the insurer manages one or more relationships. The relationship may be with a large employer association, a union, a health association, legal firm, or specific individuals, such as a neurosurgeon who frequently operates on injured workers. Staff are taught how to develop and maintain relationships. There may be an initial in-person meeting and then regular or intermittent contact. Contact may be face-to-face, by phone or email.

**Skill development and coming together.** Regular conferences are arranged in some jurisdictions, imparting knowledge and bringing scheme participants together.<sup>121,122</sup> In one Australian jurisdiction the regulator provides free education sessions for workers,<sup>123</sup> as well as quarterly forums for injury managers working for private insurers.

**Transparent sharing of scheme data.** Sharing of scheme data helps participants to understand how the system is tracking and fosters transparency.<sup>124</sup>

**Active versus passive regulation.** Active regulation means actively reviewing practices, such as case or claims management. An active regulator seeks to actively monitor scheme practices, attends to issues early, and has a suite of measures to monitor performance. These may include complaints, timeliness of activities, such as decision-making, documentation, surveys of workers and employers, monitoring of the type and rates of disputes and audits of case management files.

## Varied regulation performance

Trust and cooperation underpin effective RTW systems, whilst prescriptive approaches produce less success.<sup>125</sup> Regulators set the tone. Is the regulator focused on supporting stakeholders and scheme participants, or is the approach more of a command-and-control endeavour? Is the regulator actively promoting the education and upskilling of the workforce involved in RTW?

There has been little research into the role of regulators within work injury systems. Views of stakeholder and regulator activities suggest substantial variation across jurisdictions, with more negative views about prescriptive approaches that do not foster collaboration. Deakin University researchers surveyed scheme participants in various Australian jurisdictions and issued a report in 2014.<sup>126</sup> They noted that participants expressed varying degrees of frustration about schemes' responsiveness to their concerns. They noted some jurisdictions' statutory authorities were felt to give lip service only to consultation with stakeholders. In two jurisdictions, participants reported that they were listened to more seriously and that regulators had made advances in respecting the input of scheme participants. However, in other jurisdictions, scheme participants said the focus was on managing them rather than engaging them, and that their feedback was unwelcome.

In reports published in 2016 and 2019,<sup>10,23</sup> an Ombudsman's review of one large Australian scheme concluded there had been insufficient oversight of compliance by the regulator regarding claims agents' decision-making, and that the work injury scheme had focused on financial outcomes at the expense of worker welfare.<sup>10</sup> The report indicated whole-scale change was needed because claims agents were not being held accountable for unsustainable decisions.

Work injury schemes have been beset by stubborn problems for decades. These challenges are vexing to those involved in patient care. The disconnect between healthcare and rehabilitation in its intimate real-world setting and the distilled information delivered in the boardroom or policy discussions seem important barriers to policymaking.

## The insurer as a scheme leader

Insurers influence schemes through their policies, practices and attitudes. The organisational arrangements of insurers vary across Australia and Aotearoa New Zealand.

- In some jurisdictions, the regulator and the insurer are one organisation (Victoria, South Australia and Aotearoa New Zealand).
- In some jurisdictions, injury insurance is run by a government statutory body (Aotearoa New Zealand, Victoria, New South Wales, Queensland, South Australia and Comcare). Each insurer sets its own policies, implemented through systems, education, internal management and external consultation in some cases.
- Some insurers outsource claims management to third-party claims agents (New South Wales, Victoria, South Australia). However, policy is generally developed by the insurer with the expectation that claims agents will implement it.
- Self-insurers are licensed to manage their organisation's work injury scheme. These licences are authorised and supervised by the jurisdiction's regulator. In Aotearoa New Zealand, major employers can opt out of the ACC-administered scheme under the accredited employer scheme. They are obliged to use a third-party administrator for claims management services.
- Unlike its Australian equivalents, Aotearoa New Zealand's ACC covers work injuries, and those that occur outside work, such as at home, in motor vehicle accidents or when playing sport. It also covers children and overseas visitors.
- Private insurers operate in Western Australia, Tasmania and the Northern Territory.

Large statutory insurers (Victoria, New South Wales, Queensland, South Australia) influence scheme culture through their approach to case management and/or through their approach to third-party claims agents contracted to undertake insurance case management. There is substantial variation in insurer approaches to leading evidence-informed schemes and practices. The systems, style of management (control versus partnership), financial arrangements and standard setting have a material impact on how the scheme operates and how claims are managed.

Private insurers influence the businesses they insure, and the workers employed by those businesses. Some private insurers have developed excellent tools to support early effective case management, such as technology-based triage that includes psychosocial questions and pre-approval of some limited services.<sup>127</sup>

Without specialist expertise in RTW within senior management and the boards of insurers, these entities are less likely to set policies in line with evidence-informed practices. For example, a proposal to use an automated triage system for case management underpinned by an algorithm based on claims administrative data alone, as introduced by iCare, would

likely raise red flags for a RTW specialist. The failure of just such an automated triage system in one Australian jurisdiction highlights the need for the adoption and implementation of evidence-informed systems.<sup>11</sup>

The role of the insurer in the important area of insurance case management is covered in the case management section of this paper.

## Importance of scheme culture

A positive culture inhibits poor conduct, whilst a lax culture can allow poor conduct to occur and proliferate.<sup>128</sup> In some settings, poor conduct may even be rewarded. An effective regulator takes measures to counteract poor conduct.

The following comments from the a recent Ombudsman's report<sup>23</sup> highlight the poor treatment of claimants that can result from the quest for financial rewards.

*[The insurers] are driven by the [financial rewards] that [WorkSafe] pays ... There is no regard for the injured worker ... [they are] just a number. ...The injured worker is almost the forgotten person. It should be about them, it shouldn't be about ... how the executives get paid their bonuses, how the agents get paid their bonuses. That shouldn't be the driver of the behaviour but that is what has been happening for a number of years.*

*The below listed claims may impact the 52wk ... [financial reward and penalty measure]. Before you process any payment for these claims between now and 01.07.2015, can you please speak to me first. If we can hold off until this date we can positively effect [sic] this measure.*

Influencing culture in a complex scheme requires leadership, purpose and clarity of vision.

## Legislation

Many aspects of work injury legislation affect RTW. Two stand out as important.

### **Claim lodgement with direct personal connection**

The time for reporting and claim lodgement can be shortened using systems that make claim lodgement simple and flexible.<sup>73</sup> This may involve online reporting and/or reporting claims by phone.

Early contact allows timely assessment and management of psychosocial risk. The advantage of telephone reporting is the opportunity to communicate with the worker from the outset, helping identify barriers to recovery and RTW in a timely way. Workers with



psychological injuries are particularly likely to worry about making a compensation claim and having a poor outcome.<sup>129</sup>

### **Resolving disputes**

Adversarial processes and benefit delays are associated with poorer outcomes.<sup>77</sup> Timely resolution of disputes, claims and benefit determinations is preferable, particularly those not dependent on 'proving disability'.

In 2011, the Productivity Commission's review of Disability Care and Support explored the impact of adversarial fault-based systems on injury-related symptoms, health and quality of life.<sup>130</sup> The limitations of available research were acknowledged, though the report authors considered that fault-based systems are more closely linked to poorer health than no-fault systems. No study found that common law processes have more desirable health outcomes than the alternatives.

Potential contributors to adverse outcomes include:

- Litigation processes that are often protracted and stressful.
- Immersion in a complex and adversarial system can be demoralising for some and become a preoccupation for others.
- Workers developing a continued and repeated focus on symptoms and limitations.
- The size of the award being dependent on the severity, which may interfere with rehabilitation and recovery.
- The need to attend multiple medico-legal appointments, and cope with the variety of opinions expressed.
- The duration of the process.
- Bureaucratic complexity.

The Productivity Commission's report discusses two potential results if/when symptoms are exaggerated:

*These findings point to two separate processes that may be at work. On the one hand, people may embellish their symptoms to get bigger payouts, leading to insurance premiums that are inefficiently high even if such exaggeration does not actually affect real health outcomes. On the other hand, exaggeration may have the dual impact of leading to higher payouts while actually degrading health outcomes given the sickness orientation of the injured party. Distinguishing the two is hard, though both lead to undesirable outcomes.*

Further research into the impact of common law on workers would be helpful to assess the benefits and downsides of settlement options that can take years and can contribute to further distress and disability rather than recovery and return to normal life.

## Action areas

In this section, a number of important areas for improvement are identified.

### A scheme culture that promotes recovery and RTW

The regulator can set a RTW-enhancing tone for the scheme as a whole, articulating, modelling, incentivising and at times enforcing appropriate attitudes and activities. Identification and communication of scheme values that respond to the evidence around the biopsychosocial determinants of health is important.

Relevant values include fairness, timeliness, trust and reciprocity, personalised and respectful communication, and empowerment of stakeholders in the context of clear standards (as opposed to either lax or overly prescriptive approaches).

#### Monitoring culture

Noting that RTW is more likely when the ‘whole team is onside’,<sup>125</sup> developing a culture of collaboration is vital. Collaboration is more likely to occur when stakeholders and scheme participants feel they are heard, and their needs are being addressed.

Regulators may find it useful to seek regular feedback on scheme culture, for example, via an independently conducted annual survey of stakeholders and scheme participants, measuring levels of perceived collaboration, engagement and trust.<sup>50</sup> Problems identified should be dealt with quickly, within a context of open and honest feedback and a cycle of improvement. Regular communication with stakeholders should be maintained.

Strong relationships with key players develop when there is open and honest feedback and a cycle of improvement. People and groups are less likely to feel disenfranchised when there is regular communication. If they feel listened to, the trust that develops leads to greater collaboration. Dealing with small and large problems early helps deepen that trust. Scheme culture is then examined, and measures are put in place to reduce barriers to cooperation.

### Embed the concept of ‘do no harm’ into work injury schemes

Workers who experience a work injury can suffer further harm through the myriad of claims procedures, medico-legal investigations, dispute processes and surveillance that can hinder recovery, with consequences for the worker, their employer and the scheme.<sup>131</sup>

Prevention of further harm to the worker is an important principle. Workers’ compensation legislation generally includes statements that outline its objectives:

- Make provision for compensation for injured workers.

- Promote rehabilitation of workers.
- Promote safety measures.
- Hear and determine disputes in a fair, just, economical, informal and quick manner.

Guthrie and Monterosso (respectively, professor and lecturer in law at Curtin University) recommend that the concept 'above all, do no harm' is embedded into the objectives of the workers' compensation legislation. They consider this aids interpretation of the entire scheme.<sup>131</sup> It can be applied specifically in respect of two existing purposes: rehabilitation and dispute resolution.

## Raising awareness of what works

### Engaging government

Workers' compensation is social insurance. It is therefore important that relevant Government Ministers and departments understand what helps and what harms those in the community who have experienced work injury. A clear understanding of the business and scheme benefits of preventing and managing psychosocial risks is also important.

### Sharing stakeholder expertise

Stakeholder-to-stakeholder education is another promising possibility. For example, well-informed insurers with expertise in RTW could educate employers about best practice injury management. This could occur via advice or provision of resources. Service delivery could be online, over the phone or in person. Such approaches may be particularly beneficial for smaller employers with little experience of claims management.

## Modelling positive approaches

Ideally, RTW-enhancing values will drive the behaviour of the regulator and insurer as well as scheme participants. There are many opportunities to improve outcomes and lead by example.

### *RTW expertise at the top*

Regulators and insurers' boards and senior management teams would benefit from expertise in RTW, ideally at the most senior or second most senior level. Medical consultants have invited senior managers to spend time in medical consultations to help them understand the real-life impacts schemes have on people (N. Ford, personal communication, July 2021).<sup>132</sup> A similar approach in healthcare governance has found benefits from senior managers being immersed for a day in the 'real world' of patient care.<sup>133</sup> Any similar initiatives in the context of workplace injury management and workers' compensation would require permission from claimants.

### ***Consultation and collaboration***

Although regulators and large insurers engage stakeholders in every jurisdiction, there is room for improvement in some jurisdictions. Clearly articulated stakeholder engagement strategies are one promising option.

An effective stakeholder engagement strategy might include:

- Educational events to upskill those involved in the scheme.
- Networking opportunities to foster connections.
- Biannual survey of stakeholders, seeking their views on scheme culture.
- Consultation with scheme participants, particularly around the introduction of new policies.

Involving the community in the strategic intent of policymakers is important. For example, in Aotearoa New Zealand, the ACC Futures Coalition<sup>112</sup> considers there is a case for substantial reform of the ACC, and has called for a wider examination of the scheme's operation.<sup>134</sup>

### ***Safeguard trust and fairness***

Abuses of the scheme will occur from time-to-time, such as inappropriate behaviours from insurers, employers, employees and service providers. Schemes need systems in place for these to be promptly identified and resolved to safeguard stakeholder trust in the integrity of the scheme. The regulator needs to have sufficient authority over the insurer and scheme participants to be effective.

### ***Proactively address psychosocial issues***

There are many opportunities for regulators to directly address the psychosocial determinants of health and recovery. One option worth exploring is the development of digital resources to prevent and manage psychosocial risks. Smartphone applications would provide access to most people and would allow electronic completion of screening questionnaires and sharing of results. Such initiatives would help raise awareness of the psychosocial determinants of health, as well as assist in managing individual risk.

## **Transparent monitoring of scheme performance**

If improvements to scheme operation are to have their intended effect, they must be underpinned by an accurate, widely shared understanding of scheme performance. The development of quality standards and rich methodology to monitor progress towards those standards would be useful in this regard.

Monitoring options could include:

- **Surveys to monitor scheme performance.** Customer satisfaction can be useful to measure but a more in-depth approach is preferred, using feedback from the RTW Survey<sup>51</sup> and measuring known psychosocial influences on RTW such as perceived fairness.
- **Regular quality auditing of case files.** This would require evaluating a set of case files for markers of good case management, including risk identification, quality of communication, delays, approaches to influence the employer, frequency of delays and unnecessary disputes, and whether the case manager is acting in line with the values of the scheme.
- **Recording staff turnover rates.** Within both claims management organisations and scheme providers, such as rehabilitation professionals.
- **Reports of both lead** (e.g. employer response to injury, early contact with worker, time to claim lodgement) **and lag indicators** (RTW rates). Measures of health outcomes, as well as RTW outcomes, will assist in scheme monitoring and improvements.
- **Separate reporting in the RTW Survey.** Those who have been involved in the scheme for more than three months, and those with complex cases (approximately 20% of cases overall).
- **Regular reporting on the level of complaints.**

Scheme participants need clear feedback about the state of the scheme, including outcome data (e.g. RTW rates, with a clear description of how they are determined) and psychosocial influences on RTW gleaned from the case file audits (e.g. levels of perceived justice, dispute levels). Safe Work Australia has partnered with the Insurance Work and Health Group at Monash University to develop a scorecard that assesses RTW performance, including lead and lag indicators.<sup>135</sup> This will enable meaningful comparison over time and between jurisdictions.

## **Simpler, speedier systems for claim lodgement with direct personal connection**

Reporting and claim lodgement can be shortened with systems that make claim lodgement simple via online and/or telephone reporting.<sup>73</sup> This also facilitates rapport with the injured worker, and allows early assessment and management of psychosocial risk.

## Researching and implementing better dispute resolution with less legal involvement

It is well recognised that adversarial attitudes and disputes significantly reduce the likelihood of RTW. Many workers who seek legal advice do so because they feel the scheme has treated them poorly.

Most schemes provide alternative dispute resolution mechanisms for resolving disputes. These include varying mechanisms for mediation and agreed settlements. Fostering non-adversarial claim settlement approaches is recommended.

Systems that take a cooperative approach and focus on early support of the individual and avoidance of disputes lessen the risk of common law claims. Alternatives to common law should be considered. For example, lump sum payments in one jurisdiction<sup>136</sup> (for non-economic loss) are based on the level of impairment but also factor in economic loss. In Aotearoa New Zealand, a formal review hearing can be requested for adverse decisions.<sup>76</sup>

Claims settlement can occur in varying ways. Evaluation of best claim settlement practices is needed. If common law is used as a method for resolving matters, research on how to limit the adverse consequences may assist in shaping processes that do not prolong disability but promote recovery and RTW outcomes.

## Monitoring and enforcement

Ideally, regulators will monitor insurer and self-insurer compliance against performance indicators through audits, assessments, reviews and/or investigations. The results should trigger proportionate responses to non-compliance and may also be fed back to stakeholders to ensure transparency and accountability.

Monitoring should cover:

- Number of complaints.
- Number of improvement notices.
- Timely and appropriate resolutions.
- Case file audits.
- Outcomes of surveys of workers and employers.

## A long-term research agenda

### *Program evaluation*

As outlined in this paper, a substantial number of factors contribute to RTW and work disability. The challenge is how to put that evidence into practice. Implementation is challenging, and unintended consequences a real concern. A key need is to take current understandings and implement them in the real world.

Program evaluation examines the actual implementation and impacts of an initiative to assess whether the planned effects, costs and benefits were achieved. Program evaluation can identify what has worked, what problems arose, and any unintended consequences. The evaluation may assess cost-effectiveness. These are important lessons, particularly in an environment where policymakers may replicate initiatives that seem to have been effective in other jurisdictions.<sup>137</sup>

For example, ReturnToWorkSA introduced the mobile case manager model in 2015. The mobile case manager seeks to meet with workers, employers and service providers face-to-face and in workplaces. The mobile case manager is also able to make timely decisions, coordinating and enabling access to services for workers. They are generally more experienced and have lower caseloads than other case managers. While information about the employment conditions of mobile case managers is not publicly available, it is our understanding that they are paid a higher salary than other case managers and are expected to have greater skills and experience. The approach has been considered successful in supporting RTW, and WorkSafe Victoria has adopted the model.

An evaluation of the approach would aim to assess whether the program was appropriate, effective and efficient, and which components contributed to success or require improvement. Is the model successful because of the face-to-face communication, the level of expertise of mobile case managers, and/or their ability to make timely decisions? Would the same success be expected if all case managers were similarly skilled and remunerated? Understanding effective and ineffective components also supports adoption in a different environment, using local evidence and knowledge to maximise the benefits in a jurisdiction featuring different contexts, attitudes and practices.

Co-design of programs is a developing field involving end users in program design, intervention and evaluation. The co-design approach is considered to be a promising way to improve innovation in service delivery.<sup>138</sup> Important elements of co-design include design practice, collaborative working, creating an environment for innovation, team skills and attitudes, and transfer of knowledge.<sup>139</sup> However, several elements require attention for the process to be effective: involving diverse participants, dealing with extra complexity, enabling equal inclusive involvement, and managing power relations and expectations.<sup>140</sup> Considering

the impact of schemes on worker outcomes, end user input has significant potential to streamline systems.

Process evaluation, a component of program evaluation, can accompany controlled trials<sup>137</sup> to enable a better understanding of the components that contribute to any success. Understanding decision-making factors among scheme participants can also assist.<sup>137</sup>

A program evaluation policy may assist in this approach becoming more routine. The development of program evaluation skills, expertise and budgeting will promote consistency in program evaluation.

### ***Behavioural intervention research***

Behavioural interventions involve changes to the way communications and decisions are framed and conveyed to have impact on behaviour. Several Australian governments have dedicated behavioural economics units.<sup>141-143</sup>

Simplifying and streamlining communication can be a cost-effective approach that aids workers and insurers. Behavioural insights applied to arranging IMEs has shown promise in improving the experience of the injured worker and securing cost savings.<sup>144</sup>

A trial in NSW involved a range of interventions:

- Documenting redesign involving clearer language and reducing the number of letters and requests for information.
- Empowering communication to increase the workers' feeling of ownership of the RTW process and removing messages that reinforce the 'injured condition'.
- Encouraging the workers to make personal commitments based on average injury times.
- Setting expectations and mutual obligations with the worker.
- Sending work and health plans to the workers early.
- Ensuring plans are personalised and have an RTW focus.

The combined result of these interventions was that RTW occurred earlier and RTW rates increased.<sup>30</sup>

There are many such opportunities for improvement, which stakeholders currently discuss and apply in an ad hoc fashion. A central coordinating body could work with jurisdictions to identify best practice options and implementation approaches.



## ***Implementation research***

Implementation research is the study of methods to promote the systematic uptake of evidence-based practices into routine practice and to improve the quality and effectiveness of healthcare and the way systems operate.<sup>145</sup> Some examples follow.

### ***The WISE study in New South Wales, Australia***<sup>146</sup>

Earlier observational research revealed the short-form Orebro musculoskeletal pain questionnaire was a good predictor of work disability.<sup>49</sup> Those over the cut-off score of 50/100 on the questionnaire had three times the duration of time off work of those who scored below the cut-off.

The WISE implementation study set up a system to provide extra support to those identified as at high risk of work disability. Through access to a psychologist, extra RTW coordinator support, and early injury management consultant recommendations, extra support was provided to workers at high risk, resulting in notable improvements in their RTW timeframes.

The intervention required the involvement of people in varied roles: case managers, workplaces, health providers, hospital administrators and NSW Health. Training of case managers, RTW coordinators and psychologists was part of the intervention, and follow-up reminders and training was needed at times.

The study took years to complete, with an initial study set-up phase, implementation and two years of follow-up to evaluate the program's outcomes. However, the benefits are commensurate with the time and effort involved. The system of care has been shown to be effective and substantially advanced our knowledge of what can be achieved and how.

### ***Back pain public health campaign***

In 1997, a major public health campaign was run in Victoria to change common misconceptions about back pain. The previous efforts of the Victorian WorkCover Authority (now WorkSafe Victoria) to educate GPs had proved ineffective; costs from back pain claims had tripled over the preceding 10 years.

The campaign consisted of television advertising aimed at the public and healthcare providers; it delivered clear messages about the strength of the spine and the importance of returning to normal functioning. Messages were delivered by well-known sportspeople, television personalities and well-regarded healthcare practitioners.

An evaluation of the initiative found that population beliefs and fears about back pain improved,<sup>147</sup> as had GPs' attitudes to treatment and certification,<sup>148</sup> and there was a reduction in the number of back pain claims and days lost from work, with associated significant cost savings.<sup>147</sup> Follow-up studies showed sustained benefits at five years.

### ***Value of implementation studies***

Both studies detailed above provided insights that other policymakers and practitioners could use. The back pain campaign led to similar, though scaled down, campaigns in the United Kingdom, Canada and the Netherlands. The WISE study model of early intervention is now being implemented at Australia Post.

There are many facets of work injury care that can be improved but have not yet been tackled. For example, we've understood for many years that workplace communication has a large impact on whether a worker returns to work. Yet, only 59% of workers report their employer contacted them following their physical injury, and 39% for a psychological injury.<sup>19</sup> What strategies are effective in improving an employer's response to injuries? How can we implement what we know about the influence of the employer in aiding recovery and RTW?

Examples of potential targets for implementation studies are given below.

#### **Via the workplace**

- Studies of training supervisors: does training supervisors in how to deal with work injuries improve their knowledge, behaviours and RTW outcomes? If so, what are the most cost-effective methods of skilling supervisors? Are the needs different for small, medium and large employers?
- What are the most effective ways to inform and influence finance and senior leaders about work injury management at the workplace?

#### **For case management**

- What training is needed for effective case management? What team structures provide the best support? What methods work best for case managers to identify psychosocial barriers and provide support?
- Are mobile case managers more effective than traditional case managers? If so, is the difference the face-to-face contact, lower caseload, greater level of experience, or a combination of these factors?

#### **For treatment providers**

- What shifts treating medical practitioners' certification practices and behaviours? A Cochrane review of interventions to deal with over-testing and prescribing (such as inappropriate opioid prescription) indicated feedback letters to high prescribers can increase desired practice by about 4%.<sup>149</sup> Can similar approaches reduce the level of unfit certification?

These questions are faced by policymakers across Australia and Aotearoa New Zealand. It is likely that what works in one jurisdiction will be applicable in others. Ideally, a program of

implementation studies would be developed nationally, and various jurisdictions would complete and share relevant studies. A central pool of information, including program elements and results, could be shared locally and internationally.

### ***Conducting implementation studies***

As noted above, implementation studies can be complex to set up, take years to complete, and involve many diverse participants. Because implementation research is developed in real-world situations, the fundamental research questions best come from those working in the real world, such as policymakers. Involving those who implement assists the identification, design and conduct phases of research. Other elements of implementation research include:

- Fostering collaborative ties between key stakeholders involved in policy generation, program management and research.
- Integrating research into policy and program decision-making from the outset.
- Viewing evaluation as an integrated and standard component of programs.
- Addressing the ‘why’ and ‘how’ of implementation effectiveness, to understand the pathways that influence outcomes. Qualitative research embedded in implementation studies can be useful for this.
- Inviting those involved to reflect on their practices and experiences, which can contribute to improvements.

Varied research designs and approaches can be used: pragmatic trials designed to evaluate effectiveness in real-world situations, pre-post studies that may not have a control group (e.g. another employer or jurisdiction), and effectiveness–implementation trials. Randomised controlled trials (RCTs) are very useful but may not be feasible at a program level.

Despite the importance of implementation research, it continues to be a neglected field of study, partly because of a lack of understanding about what it is and what it offers, and partly because of a lack of investment in implementation research activities. Billions of dollars are spent on work injury schemes, but very little on real-world studies of what is effective.

A long-term agenda that starts with defining relevant implementation research questions is needed. To develop this field of research, relevant skills, partnerships, budgets for implementation studies and national coordination are required.

## **Key elements for better outcomes**

This section outlines important elements for policymakers in operating an evidence-informed scheme.

## Worker-focused care

- ⇒ Scheme regulators are explicit about the expectations of customer service and conduct by insurers, such as acting with respect, and being fair, reasonable, efficient and proactive, responsive, transparent and accountable.
- ⇒ Measure and share claimants' experiences, including factors that influence recovery and RTW. These results form an important component of ongoing improvements.
- ⇒ Invest in resources that promote early intervention and early support for claimants and their workplaces, including empowering workers to be active participants in their recovery and RTW.
- ⇒ Implement a systematic approach to foster whole-of-scheme adoption of the biopsychosocial model of care, through stated expectations of insurers, education and skilling of the workforce, including healthcare and workplace rehabilitation providers.
- ⇒ Reduce friction points that contribute to scheme-induced psychosocial barriers, such as streamlining decisions about healthcare treatments, constructive communication and simplified written communication.
- ⇒ Identify inappropriate behaviour early: monitor the number and type of complaints, encourage feedback from scheme participants (including a whistle-blower hotline for reporting of scheme abuses, such as unethical case management practices and inappropriate provider behaviour), and conduct regular case management file audits.
- ⇒ Focus on staff development in case management; avoid short-term approaches such as KPIs.
- ⇒ Foster high-value healthcare for workers; consider payment and other incentive structures to encourage best practice healthcare.
- ⇒ Measure and focus on health outcomes.
- ⇒ Include 'do no harm' provisions in the objectives of workers' compensation legislation.

## Develop collaboration, cooperation and trust

- ⇒ Recognise that a positive culture inhibits poor conduct, and a lax culture allows poor conduct to occur and proliferate.
- ⇒ Scheme leaders conduct consultation and communication. Stakeholder engagement occurs in the setting of partnership with scheme participants and an open flow of dialogue.

- ⇒ Communicate scheme values that respond to the evidence around the psychosocial determinants of health: fairness, timeliness, trust and reciprocity, personalised and respectful communication, and empowerment of stakeholders.
- ⇒ Scheme leaders act as role models, declaring their own operating principles and focus.
- ⇒ Measure scheme culture and trust annually and use the results to improve.
- ⇒ Develop and declare the scheme's approach to engaging participants, with a declared stakeholder strategy that includes scheme meetings and conferences, shared learning opportunities, and regular meetings between the regulator and industry and professional associations.
- ⇒ Ensure schemes across Australia and Aotearoa New Zealand collaborate through sharing of research and resources, and encourage a similar approach between private and public insurers.
- ⇒ Develop, measure and share lead and lag indicators to foster continuous improvement in approaches that improve RTW rates.
- ⇒ Avoid unnecessary delays, particularly with initial claim notifications and unnecessary disputes.
- ⇒ Ensure fair application of the rules and transparency in communications.
- ⇒ Actively identify minor abuses of schemes and deal with them early.

## **Enhance skills and experience within work injury schemes**

- ⇒ Recognise that the skills and experience of those involved in the scheme have a major impact on RTW outcomes.
- ⇒ Develop resources to educate and inform key workplace staff on their roles in facilitating RTW, including RTW coordinators and line and senior managers.
- ⇒ Develop a suite of national resources for healthcare provider education, including undergraduate and postgraduate training for medical practitioners and allied health providers, with ongoing educational events to upskill those involved with the scheme.
- ⇒ Develop national standards, principles and training approaches for insurance case managers.
- ⇒ Have specialist expertise in RTW within the senior management of regulators and insurers.
- ⇒ Senior leaders and Board directors spend time at the coalface to understand the personal stories of workers.

## **Simplify and personalise**

- ⇒ Ensure claim lodgement is quick and simple to enable early intervention. Focus on claim lodgement options that allow for personal contact, triage and biopsychosocial assessment, and early responsive case management.
- ⇒ Favour dispute resolution mechanisms that minimise adversarial interactions and can be completed quickly. If common law is used, research and minimise the factors that increase disability and distress.

## **Continuous improvement and innovation**

- ⇒ Support innovation through funding incentives.
- ⇒ Create a long-term research agenda focusing on improvements in efficiency and effectiveness. Coordinate implementation research, program evaluation and behavioural intervention research through a central organisation to share learning.
- ⇒ Ensure the key elements of case management and collaboration are in place and foster a culture of ongoing improvement.