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044

6 July 2012

Our Ref. QLD Parliamentary Inquiry

Dear Finance and Administration Committee members

I am an experienced workers' compensation scheme designer engaged by Deakin University to conduct a national stakeholder engagement process in every capital city. The stakeholder engagement took place in Brisbane on 30 May through 1 June, 2011. A copy of the report is attached.

I have yet to complete the final national compendium of state reports but have assessed the national results and can make some conclusions with confidence. The stakeholders who attended our meetings were significantly more positive than those of any other state with respect to the perception of WorkCover being accessible for public input, interested in the opinions and options presented by stakeholders and responsive to the input that the authority received from the public. Western Australia was the other jurisdiction where stakeholders had significant positive comments about responsiveness of the statutory authority, but those comments were addressed to a particular initiative, where the comments about WorkCover Queensland surfaced with respect to several issues.

In addition, I can state with certainty that the actual participation in the stakeholder engagements by WorkCover was exemplary. Participants from WorkCover added immensely to the discussions and representatives appropriate to the subject matter attended each session. Only Comcare came close to this level of participation amongst all the statutory entities.

I am happy to answer any questions about the Summit Report for the Brisbane stakeholder engagement, or otherwise assist in any way that the Committee might find appropriate.

Thank you for your consideration.

Respectfully Submitted

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Deakin University Industry Engagement Centre for Personal Injury

Queensland Summit Conference

30 May – 1 June, 2011

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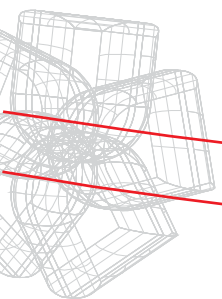
Scope and Intention

The stakeholder engagements represented by the Summit Conferences are unique in their scope and purpose. First, the mechanism by which stakeholders were engaged is unique. In many instances, stakeholder engagements occur on the basis of nomination by professional associations, and similar groups. The characteristics of such engagements include the possibility that nominated attendees will carry with them the political or economic agenda of the association or group they represent. Those agendas potentially interfere with the information exchange that is intended by these summit conferences. More importantly, engagement with the usual stakeholders will likely yield information of a similar nature to that which has previously been collected. To the extent this is true, different methods of selecting participants may allow fresh ideas and perspectives more opportunity to develop.

For the summit conferences an entirely different mechanism was utilised for the nomination of attendees. Known opinion leaders were approached and their opinions with regard to those people within the state who might be able to contribute to the process. In each case the statutory authority was among the opinion leaders that were approached. The facilitator met with these recommended opinion leaders and solicited their recommendations of valuable participants within their network. All levels of nominator were prompted with a check list of roles within the industry. From the nominations of the opinion leaders and their nominees, a substantial group of conference invitees was generated.

Discussions each started with the question: "What is success?" The responses and comments of the participants were recorded openly, with the invitation to participants that they actively check that their thoughts were being correctly recorded. The Report that follows is, first and foremost, and accurate reflection of what the participants said. There has been no attempt to edit out objective factual inaccuracies that may have been contained in the statements of participants. It has been said that "Perception is reality in the mind of the perceiver." We believe that it is important to capture and understand that "reality". Moreover, inaccurate perceptions are nothing more than opportunities for the statutory authorities or DeakinPrime to design and conduct educational programs to correct mis-impressions. Suppression of the perceptions of participants on the grounds of accuracy would sacrifice these valuable opportunities.

As a result, the report of the proceedings that follows is not intended as an objective assessment of any statutory scheme within the jurisdiction. While it may be true that the opinions expressed by stakeholders about the functioning of the system are necessary part of an objective assessment of systemic functioning, it is certainly not true that they are sufficient basis for the assessment of the functioning the system. These engagements were not commissioned by the statutory authorities and each statutory system in Australia periodically examines itself. It is not the intention of the Industry Engagement Centre for Personal Injury to attempt to replicate or supersede those efforts. Rather, it is our intention to provide new information than has been previously reported for the various purposes detailed below.



Throughout this process, stakeholders have also consistently expressed the belief that sharing these perspectives expectations and belief structures amongst themselves gives valuable understanding about the motivations, success criteria and value structure of others with whom they interact on a daily basis. Service providers similarly find the sharing of perspectives to provide valuable insight, enhancing communications that are necessary to obtain good results. Better communications encourage better information flow and information flow that is less influenced by communication failures. Better information flow amongst the people participating in the personal-injury systems is likely to result in better outcomes, particularly where it facilitates the sharing of resources and information critical to efficient job performance. Both stakeholders and service providers have expressed appreciation for the opportunity for cross-fertilisation of ideas amongst groups under circumstances that allowed them to both inform and hear the perspectives of others.

From the point of view of DeakinPrime this unique style of stakeholder consultation allows for freer identification of needs. Summit Conferences consistently disclosed that different stakeholders and service providers have different definitions of success with respect to the functioning of the statutory systems. These differing definitions of success often lead to different resource and educational needs amongst the various groups with respect to what they would require to obtain the proper support to maximize their performance. Thus the mechanisms for stakeholder engagement of directly contributed to the identification of educational needs across a variety of stakeholder and service provider groups and have created opportunities with respect to university research and direct consulting services that might not otherwise have been disclosed.

At the same time it should be recalled that the stakeholder engagement style does not produce an objectively accurate assessment of the statutory scheme. The narrative that follows will accurately report what participants have said in open and public session. The report makes no attempt to challenge or judge these perceptions of participants as such efforts are likely to discourage open and free communication. Moreover, the report that follows does not, by virtue the composition of participants, represent a "balanced' view of the system. Individuals self-selected for participation. There is no guarantee that "the right participants" representing the important power loci in the industry, attended these engagements. Rather, this engagement sought the input of participants who are well-regarded by their peers under circumstances designed to maximize the probability that the input would be new and provide information of the different sort that have previously been made available.

The report that follows is based on the belief that accurate, un-judgmental reporting of the stated perceptions of participants has value in and of itself. Proper reading of the report should not be regarded as criticism of any statutory or regulatory scheme, stakeholder, participant or official, but rather as identifying and creating opportunities for understanding viewpoints and perspectives that may have led to misunderstanding and miscommunication in the past. The intention of this report is not to criticize, but rather to report with integrity the perceptions of those who attended the Summits with the hope that it will create opportunities amongst the various stakeholders and service providers for increased communication and collaboration, sharing of resources and ideas, and better outcomes for the injured.

Executive summary

A "Summit Conference" was convened by the Deakin University Industry Engagement Centre for Personal Injury in Brisbane in 30 May – 1 June 2011. It should be noted that the initiative was not commissioned by any governmental entity. WorkCover Queensland assisted in identifying potential participants.

The purpose of the discussions was to break down the tendency of the various "stakeholders" in the personal injury sector to be limited in their interactions and information flow to those within their particular area of competence and only communicate with other "silos" when the imperatives of regulation or economics demand. DeakinPrime believes that by fostering full and open communications and breaking down the "silos", better outcomes can be realised, especially for the injured person and their employer. At a larger scale, these discussions, when held across Australia, will provide a picture of the current functioning of the sector from the point of view of the people who are working in it, employers, and the injured and formerly injured. It is hoped that this national perspective can define regularities that have not been previously perceived, and help inform research, training and national policy debate.

Four guided discussions were facilitated, involving participants (separate individuals, some attending multiple sessions) encompassing a broad range of subjects and covering the entire scope of an injured person's claim, with a particular focus on communications and information flow issues. Participants were invited to contribute to the discussion through an iterative grassroots engagement process designed to allow a full range of opinions to be expressed with a minimum of interference from the agenda of established political and professional entities.

There were a number of important ideas that were expressed in multiple meetings by multiple participants. **It should be explicitly noted that these were the views of the persons that self-selected to attend. The opinions expressed have neither been independently verified, nor substantively edited, in accord with the representations made to participants. The primary significance of the opinions expressed lies in the extent to which they represent the perceptions of the people working in the field that were recommended as Summit participants by their peers.** The concepts shared by multiple participants, over multiple meetings, include the following:

Multiple levels of "success" were identified

- The definition of success utilised is dependent upon the perspective and demands upon the stakeholder adhering to that definition.
- Confusion about which "definition of success" is being utilised in the circumstance at hand sometimes interferes with clear communications between stakeholders.
- Participants exhibited a general preference for holistic approaches to treatment and provision of assistance over more concrete and formulaic directives for intervention. Participants believe that the latter approach tends to elevate process measures over outcome measures.

- Tensions in the system between stakeholders were revealed by making the explicit inquiry into definitions of success, and participants appreciated the opportunity to understand the perspectives of other stakeholders.

Communications issues were a common topic of discussion

- People listen when there is a crisis or economic consequence; proactive communications with stakeholders, especially employers, is an elusive goal. Nonetheless, participants consistently praised the statutory authorities for efforts made to engage in meaningful stakeholder communications.
- Information feedback loops are often missing at all levels of system, and can be particularly troublesome when information necessary to coordinate recovery, return an injured person to work or prevent a subsequent injury is not provided to the right people. Participants noted that the statutory authorities seemed to be aware of the issue and are increasingly attempting to address it in meaningful ways.
- The three separate statutory frameworks in Queensland are not well coordinated, but statutory authorities are working hard to communicate better amongst themselves and also with providers/stakeholders.

Systemic Features were a consistent concern

- Participants noted that there is no consensus on how to measure outcomes. This was paired with a concern that processes were still too often measured in default of proper outcome measurement. Participants had several innovative suggestions with regard to measurement of outcomes.
- The holistic approaches to treatment favoured by participants contrasted with the perceived approach of the compensation system to focus only upon treatment of the immediate injury. Concern was expressed that the tendency to look at the injured person as a fixed diagnosis contrasted with the dynamic nature of recovery.
- IR/HR issues interfere with sound injury management, and both employers and workers need to learn not to misuse work injury claims in this regard.
- Liability determination creates delay that interferes with early intervention and whole person treatment. The system would have better outcomes for the injured if the liability determination could wait, but participants noted that attempts to utilise a contingent liability system for treatment in NSW had economic consequences that were regarded as undesirable.
- Worker retention of control over their life is critical to avoidance of secondary harm. There is a very strong correlation between perception of loss of control (change of locus of control) and poor outcomes.

Important Understandings and Messages

- Early intervention is critical to good clinical outcomes and the avoidance of secondary psychological injury following physical harm.
- Participants generally believe that spending money on a claim early can save money in the long term. They were encouraged that WorkCover seems to have adopted a similar philosophy.
- Setting worker and employer expectations early in the process is critical. Both sides need to understand that a work injury is intended to be a short term issue, and that the expectation of a return to normalcy is appropriate in the majority of claims.
- Education or workers, employers, doctors is a critical need. Professional associations are a starting place. In particular, GPs were seen as having an education that was sadly deficient with regard to the health effects of worklessness, the latest advances in medical treatment of the injured and the avoidance of psychological injury secondary to physical harm.
- Employer size matters – statutory authorities design intervention strategies and requirements for large employers, but there are important resources and the knowledge base in resources of small employers. Smaller employers are hard to reach with educational and culture change messages.
- Common law as a remedy has significant issues, including secondary harm from the process and misalignment between process and RTW, but contributes to fairness and finality.
- Focus of the metric of lost time injury frequency rate and the defence of "reasonable administrative action" for psychological harm claims creates a fault based orientation in what is supposed to be a no-fault system.

Challenges and Blockers

- There was a strong consensus that medical certificates are a particular problem point. They interfere with early intervention and return to work/stay at work and are often issued without proper consideration of the possibility of accommodation at the workplace. It is possible to look to other jurisdictions that have positively reframed the medical certificate into a document that shows the medically suitable abilities of the injured person and does not grant time off from work.
- There is a frequent misalignment of expectations in the system: workers place value on return to normal life (rather than on a large payout) that differs from what employers, lawyers and case managers think it is.
- "Medical model"/"sick role" are significant culturally based obstacles to recovery. The worker learns to have black/white expectations from medical care, doctor shop until they find a doctor that will promise them complete relief and then uncritically submit to any treatment that they believe will result in complete recovery. Doctors participate because they are afraid the patient will simply go elsewhere if they do not support the expectations.
- System created harm was acknowledged by all but there is no consensus on how to avoid it. Delay in resolution, creating time to "practice" disabled role and focus on limitations was seen as detrimental. Pre-court procedures to reduce disputes and speed resolution of claims were recommended as one approach.

Opportunities for Improvement

- Models of success from self insurance programs could be imported to the insurance environment; e.g. voluntary provision of limited treatment during investigation.
- Stakeholder associations were regarded as a good contact point to begin the difficult job of providing contact points for necessary education on a variety of issues.
- The development of a synergistic group working together with statutory authorities toward systemic improvement is a very positive development.

Coordination Issues

- Critical coordination of WorkCover, Q-Comp and Workplace Health and Safety is improving, especially recently, but much work needs to be done to get the statutory authorities all moving in the same direction and to eliminate gaps in time, coverage and coordination.
- Remuneration to practitioners for communication activities is well handled by WorkCover and the quality of care is improved by this development.
- WorkCover efforts at communications with stakeholders are a development that is seen as improving the environment for all stakeholders.

Background

Deakin University, through DeakinPrime, its corporate education division, first became involved in the personal injury sector in 2006 through engagement with the Personal Injury Education Foundation, building the suite of post-graduate qualifications that are run under its banner. DeakinPrime has also developed a suite of VET skills based training programs for claims management staff in the Victorian, NSW and SA jurisdictions, and is currently developing and delivering similar training for premium and credit officers in Victoria, and developing training for Rehabilitation and Return to Work Coordinators in South Australia. In August, 2010 DeakinPrime created the Industry Engagement Centre for Personal Injury to expand the scope of stakeholder involvement and address the full range of professional development needs in the personal injury sector.

The first project of the Industry Engagement Centre for Personal Injury (IEC PI) recognised that the various professionals in the sector are often functionally separated from one another in terms of professional interaction, information flow and expectations. Occasions when stakeholders were invited to interact are often undertaken under circumstances where the parties may have felt constrained to represent their economic interests rather than their common interest in the welfare of the injured. It became apparent that the creation of a different type of dialogue was actively desired and had potential for great utility. IEC PI "Summit Conferences" were conceived to facilitate this style of interaction, and the WorkCover Authority in South Australia raised its hand as a volunteer for the first of these experiences, held in November 2010. The New South Wales Summit Conference was the second in the series, eventually intended to cover all Australian jurisdictions. The third Summit was held in Canberra covering both the ACT scheme and Comcare. WorkCover staff provided significant assistance in identifying appropriate people to invite.

The process of developing the listing of invitees was unique, given the unique nature of the intended consultation. It would have been possible to utilise the common strategy of contacting the leadership of the peak professional body for each stakeholder group and ask that they nominate a representative. There was a fear that such a process would emulate, to too great an extent, stakeholder consultation processes previously undertaken, and that participation and interest might be limited. As a result, individual professional contacts of the IEC PI staff were contacted and they, in turn, nominated others with whom they were familiar, for IEC PI staff to contact. Meetings with those persons were then established on an "exploratory trip" to the jurisdiction, to interest them in the concept and enlist them to provide yet another level of nominees for participation. The process netted 202 invitees for our "Summit", held on 30 May – 1 June, 2011. The group was not "representative" in the sense that no one had designated any individual to represent the views of any stakeholder group. Moreover, different groups of stakeholders were not equally represented, with rehabilitation providers more highly represented in the eventual participant cohort. Of the 202 invitees, 49 participated actively and 23 others were unable to attend due to short notice and pre-existing commitments, but specifically asked to be informed concerning the outcome and are kept on the participants' list for future activity. All categories of desired participants were represented in the discussions though the medical and legal categories were not represented to the extent desired. Greater representation from these two categories was "missed" in the sense that other participants commented on their absence and expressed disappointment at their absence. The other participants included mental health and

rehabilitation specialists, various allied health professionals, representatives of employers and injured people, academics and representatives of various government entities.

The structure of the Summits was conceived as a series of discussions engaging different points in the injury recovery and prevention process: Physical recovery from harm; rehabilitation, return to work and behavioural health; claims management and dispute resolution; and prevention of harm. The same agenda of open ended questions concerning information flow, communications and collaboration was available to each group. The final session was an attempt to summarise and set the stage for follow up action in the jurisdiction.

It should be explicitly noted that the views expressed and reported were the views of the persons that self-selected to attend. The opinions expressed have neither been independently verified, nor substantively edited, in accord with the representations made to participants. The primary significance of the opinions expressed lies in the extent to which they represent the perceptions of the people working in the field that were recommended as Summit participants by their peers.

Participants, spanning a wide range of roles within the sector participated. Many attended multiple sessions, such that there were 71 participants in the sessions altogether. There were only two doctors and three lawyers in attendance. It is not known whether other aspects of the invitation process created any conditions that impacted upon the diversity or nature of the opinions expressed.

Physical Recovery from Injury Session

The discussion started with an attempt to define "success" with respect to physical recovery.

One participant offered that the return to full time duties on a sustained basis constituted success. Other participants expanded on the idea, offering the additional notion that all parties ought to be happy with the outcome. Meaningful engagement in an occupation was offered as a more realistic response, given that some people do not wish or are not able to return to their former life, post – injury. The idea of the worker being "content" with their outcome was offered.

A competing line of reasoning emerged, suggesting a more medically oriented response to the inquiry. Necessary treatment to recover to the best of the patient's ability (to a reasonable medical probability) was offered, as was "stable and stationary" which is language utilised in the Queensland legislation.

A new direction was offered that appeared to garner broader support. The client's "ownership" of their life and employment circumstances was discussed and a consensus emerged from that direction.

Without regard to the definition of success, the participants found consensus in the idea that all measures of success relied upon the injured person taking "ownership" of their outcomes and not allowing others to dictate to them what is desirable. A number of blockers to that result were noted: Worker ignorance (or inexperience) was mentioned, as was the legal/cultural expectations set up by parties that equated a large payout with a good outcome. Doctors and the medical treatment process often contribute to the loss of a sense of control. Confusion of industrial relations issues and work injury recovery also was seen as creating a dynamic that was not conducive to the retention of a sense of personal control. In particular, the participants cited the process of making a claim (and disputing it, if challenged) as creating circumstances that were inconsistent with retention of a sense of control and self-management. There was also a consensus that the expectation that "someone will look after me" was destructive of the self reliance and sense of retention of control participants believe is necessary to facilitate recovery. Early intervention was seen as a model that had the advantage of keeping people out of the process, and thus of achieving better ends.

Participants shifted the conversation to a more global level, observing that each of the players has its own set of imperatives with respect to key performance indicators, legislative mandates and economic imperatives and that responsiveness to those conflicting demands created the circumstances where loss of control and self-management developed. Concerns about determination of liability before commitment of funds leads to delays in treatment. Issues of preservation of access to information and mistrust of the motives of potentially adverse parties hamper the communication of doctors with others. Everyone is treated as having an ulterior motive governing their behaviour. The participants acknowledged that about 20% of the claims cause about 80% of the costs and headaches, but suggested that we treat every claim as if it was one of the problematic 20%.

The participants felt that the challenge of maximising recovery was to foster communications amongst General Practitioners (GPs), specialists, surgeons, allied health and non-medical personnel, and particularly between the worker and employer. WorkCover has recently been using face-to-face conferencing to address the issue, which participants felt was working, in appropriate cases. The insurer must be respectful of the doctor's time in investigating and administering the care proposed and given, and realise that spending money can save money in the long run.

The conversation then turned to the perception that the enhanced communications were effective because, and to the extent, that they helped set worker and employer expectations effectively and appropriately. Planning and patient education are potentially effective blockers to secondary psychological harm as an overlay upon physical injury or illness. Participants believe that those activities require early intervention and assessment. In the absence of such early intervention, other factors will tend to build up a "disabled persona" that will have to be undone to achieve reintegration into the workforce. There was a strong sentiment that much of effective intervention is coaching to preserve the employment relationship, and that concerns running to determination of liability directly interfered with the timing of such coaching.

Quality of care issues were the next topic raised by participants. One factor noted was the monetary expectations of health care providers. Some are used to a particular level of income for their services and when the system attempts to restrict the remuneration for particular services, the provider may engage in services or behaviours aimed at recapturing that income. This is the motivation for some overtreatment, including some surgery. The opinion was expressed that WorkCover's efforts regarding direct contact with health care providers was improving the situation.

A consensus emerged expressing concern about the delay of medical treatment while liability issues were being determined. Provisional liability was discussed, and the opinion was expressed that it was an issue that was dependant on the good faith of the participants in the system. There was no consensus developed concerning the advisability of provisional liability, especially in light of the perception that it had led to fiscal challenges in New South Wales. Along a similar vein, delays in medical treatment caused by legal issues was regarded by participants as being detrimental to the worker's welfare and generally something that needed to be minimised in the system.

"Enhanced primary care" was discussed, and the group felt that the paperwork loading on the process (without remuneration for the additional administrative work) left the initiative underutilised. The facilitator notes that there was wide variation amongst participants about the nature and scope of the program.

The group posed a question arising from the discussion of the "enhanced primary care" program. They asked whether the "medical model" was working for injured people. By "medical model" the group referred to a view of health care prevalent in the cultural environment that sees health and recovery from injury as a more or less binary function (you are 100% fit or stay at home, pain free or still injured) where the patient was a passive participant in the healing process. In that view, there is always some external treatment which, if it could be found, would completely resolve the medical situation, and the doctor is the only one that can provide it. Patients and to an extent, doctors, participate in this mythology, and ultimately, both are harmed by it. It was asserted that about 80% of claims resolve without this model being invoked and about 20% fall into the trap of this way of thinking.

At that point an assertion was made that WorkCover had a 93% success rate in returning people to work with a 95% goal. There was sharp disagreement with the statistic expressed, and it raised questions about how outcomes are measured in the system. The question was asked, "How can you measure return to work rates without a baseline?" The assertion was made, to general agreement, that it should be the role of the doctor to treat the whole person, rather than to segment the care in keeping with the structure of the law. It was suggested that the law was therefore capable of artificially creating circumstances where the care was compromised to comply with the legal context. The setting of correct expectations by doctors, at the initial stages of treatment could minimise this difficulty, but many doctors do not understand that role or do not feel that it is expected since they may believe that no remuneration is given for that kind of participation. Since treatment is not holistic, but limited to work related conditions, the participants felt that treatment itself was subject to liability issue limitations, and that liability became an interference with effective treatment of workers.

The discussion then turned to the issue of what impacted on the quality of care. Outcomes from surgeries, particularly orthopaedic surgeries, were questioned. In particular, fusion surgeries for the back were singled out as a procedure that often did affirmative harm to a patient. The observation was made that there were evidence based medical treatment guidelines that provided guidance in some areas. The consensus amongst participants was that such guidelines were valuable where they were present, but that there was a huge variation in acceptance amongst physicians regarding such guidelines, based upon a variety of factors. There was a strong consensus for tying of effectiveness of treatment to appropriateness of treatment, but the belief was expressed that the statutory agencies should take a leading role in implementing these kinds of initiatives, because these issues are often resolved in legal, legislative and administrative arenas where they are seen as having more influence. Utilisation of such evidence based information was also regarded as being fairly difficult for the lay person, and there was some discussion of the presence of an Australian firm that had addressed that issue.

The question was then asked where the responsibility should lie with regard to achieving consistency in assessment and treatment. The participants acknowledged that treatment is difficult and the presence of guidelines cannot control the behaviour of individuals without some sort of external control to impose them. The participants offered that the statutory authorities have the best opportunity to mandate the circumstances where such guidelines are utilised, although there was a good deal of pessimism that change could really occur in the working environment when the liability issue continually fed the legal system and tied the cases up in court. The possibility of medical tribunals was discussed, but the participants felt that scheme design issues were outside their province. The participants emphasised that the system should not lose sight that it is dealing with a whole person, and not just a work injury. In this regard it was observed by one participant that patients often regarded surgery as the end of the game, when in reality it was just the beginning of new game. This was offered as an example of why a holistic approach was the only feasible way to avoid patients sliding into a "medical model".

Looking toward the improvement of the system, the matters around which consensus formed were:

- The need for improvement of communications with doctors, so that they would understand more broadly the implications of the latest research around the health effects of work;
- The need for more realistic employer expectations, which were seen as a significant barrier to return to work, and the development of a system where liability was an issue that did not result in delay and influence on medical treatment;

- Better "host employer" programs so that there were more re-entry points to work, for the previously injured; and
- More professional development among all the people who deal with the injured.

The participants also articulated a general philosophy for system management that they felt would be sound in the environment. It includes:

- Having the end in mind. There was a sentiment expressed that the focus of the system was not well grounded, and that more effort should be placed in achieving consensus on what the system was intended to achieve.
- There was a feeling generally expressed that if the intent of the system was to return people to life by getting them to stay at or return to work, then there was a failure of the legal and medical systems and employers to focus their efforts in that direction.
- In particular doctors did not get anything but minimal exposure to rehabilitation and occupational medicine at university, and many GPs are not sufficiently aware of rehabilitation.
- Medical certificates are a huge problem. The role of "advocate" for the patient must be reformulated to take into effect the health effects of work. Several examples of "tough love" speeches were offered.

One employer representative conveyed the experience of his company with worker education packets at the time of injury.

It was observed that Q-Comp had control over the medical certificate form, and that they should be looked to for restructuring or at least piloting a reformulation of the approach. Meaningful consultation with the medical profession would be necessary to get it right, but a "certificate of capacity" would be a good direction in which to move.

Some employers are large enough to provide this sort of feedback on a continuing basis by bringing the specifics of the worksite environment to the attention of the doctor. Unfortunately, there is limited interest perceived on the part of doctors, and educational opportunities are limited due to the limited percentage of the total medical caseload made up by workers' compensation. This leaves a large burden on the statutory authorities to provide more by way of post-graduate training opportunities.

Employers can be led to better engagement by avoiding the trap of the avoidance of lost time injury statistics. This is a pernicious influence that causes more manipulation of the statistical reporting system than real avoidance of harm. The involvement of industrial relations issues in the workers' compensation arena is also problematic. Finally, participants felt that the KPIs of managers need to be reviewed to include a more holistic approach to avoidance of injury and cooperative involvement in recovery when an accident does occur.

Consensus was reached for the proposition that early intervention and a cohesive and holistic approach are necessary. Communications, education and the setting of appropriate expectations are especially important and these systemic improvements needed support from the highest levels of the organization/government.

Rehabilitation, Return to Work and Behavioural Health Session

The discussion of what constituted success was not characterised by a single definition, but rather by the participants offering a series of characteristics that cumulatively described success in this realm. The participants believed that success was properly determined on a person - specific basis. This observation was supplemented by a number of observations about the participants in success. The group felt that the family was critical to success and the failure to engage or consider them in the worker's recovery was too narrow a focus. Employers were also a critical player and a number of dynamics were involved, including industrial relations issues, individual human resources issues, productivity requirements and issues that arise from accommodating persons of different abilities in the workplace. Lost time, training and recruitment costs and general employee morale are also challenges that arise in this context.

Participants observed that the insurer's role can have a great effect on the success of rehabilitation, depending on the incentives built into contracts, and the statutory scheme itself can provide challenges and opportunities. Participants believed that the treating GPs can and do influence the outcomes of rehabilitation, return to work and behavioural health during recovery whether intentionally or accidentally. The same can be said for other medical specialists and allied health professionals.

The participants felt that the tendency of doctors to regard themselves as "advocates for their patients" was complicated by the perception that many doctors were unaware of the health effects of worklessness, and that they believed that advocacy for what the worker requests was appropriate. Several participants noted that such advocacy was "enforced" by the tendency of patients to look for another physician if the one they went to was not giving them the time off (or the treatment) that they expected. Unions and lawyers were regarded as a major impediment to success in the function of focusing the worker on large cash settlements obtained at the expense of staying out of work for extended periods while pursuing litigation. Societal expectations and the stigma that attends being off work on workers' compensation was cited as an additional factor complicating return to work and rehabilitation.

The participants noted that there are several competing notions about what should be the focus of return to work and rehabilitation efforts. The "same job, same wages" formulation was common, but a slavish adherence to the criterion could produce undesirable and unintended consequences, especially when there was a factor like human resources issues in play. If the worker hated their job before being injured, they were more likely to resist return to it after injury and trying to force that outcome was viewed as counterproductive.

Durability of return to work was cited as an important factor, as it is sometimes the case that workers are pushed back into an environment where they are programmed to fail by the particular circumstances of the workplace.

Another consideration was the ability of the worker to return to the same sort of work, so a stepped approach to judging success was proposed: "same job, same wages" was the first goal, but "different job, same wages", "same job, different employer", "different job, same employer" and simply finding a durable return to productive work were all seen as successes in the appropriate circumstances. The role of lawyers in seeking common law settlements was seen as a contrary and inconsistent success regime to the criteria for success that were being discussed by participants.

A consensus was reached with respect to an entirely different formulation: "removing the effects of injury and returning the worker to their pre-injury life to the greatest extent possible", but this was seen as a different sort of measure, which was much harder to quantify.

The discussion shifted to the impact of liability determination on the achievement of success. Employers tend to focus on the impact of people staying out of work. As a result, WorkCover has (rightfully, in the view of participants) devoted its resources to "front-end loading" of the rehabilitation services, with the emphasis being on early assessment and service provision to facilitate the majority of workers to return to work in a timely manner. Participants observed that the termination of liability for rehabilitation services is a bit ambiguous, with both adequate functional gains and the achievement of maximum benefit from treatment being possible determinants of the end point. It was suggested that the ambiguity of the end point was an intentional design feature in the system, in that the uncertainty provided motivation to participate at the earliest point in the rehabilitation program, enhancing its success.

Participants identified several factors that were important in achieving a good rehabilitation outcome. They included:

- A supportive work environment, where the employer understands the value of returning the worker to work where possible, understands that the worker did not have to be 100% fit for work to be able to safely do their job and is willing to make a rational choice to invest in support for the injured worker, in anticipation of a positive return on investment, as compared to recruiting and hiring a new person. It was also seen as important that the employer not utilise the injury as an excuse for resolution of IR, HR or performance issues. A supportive work environment also includes management engagement with the impact of return to work on other workers, so that secondary psychological injury caused by co-worker attitudes is avoided.
- Understanding what the worker is experiencing. The employer, worker, claims manager and doctor must all understand what is happening, and invest time and effort in communicating clearly to the others concerning the current status of the workers' recovery. A worker is a person and not a diagnosis, and moreover, not a static diagnosis. The diagnosis and prognosis change over time, as impacted by the health, psychosocial and work circumstances of the worker.
- Early intervention is a key concept. There was widespread understanding and appreciation for the impact of worklessness on health, and for the well-documented phenomenon of increasing time off from work, resulting in decreasing likelihood of eventual return to work. Nonetheless, there was a certain amount of frustration expressed that systemic barriers to early intervention exist. WorkCover was cited as endorsing and supporting early intervention.

- Goal setting is regarded as a viable management tool for rehabilitation. There was significant support expressed for the idea of asking the worker what they wished to accomplish during rehabilitation. Reservations about the reasonableness of the goal were also expressed, but there was consensus that the rehabilitation effort was substantially enhanced when the worker "bought into" the goal of the rehabilitation. It was acknowledged that the institutional goal of "same job, same employer" was not always a goal that the worker was inclined to endorse, and that rehabilitation almost always went better when the worker was invested in their own rehabilitation plan.

Concerns were expressed that other factors in the environment also impacted the functioning of the rehabilitation system. The ageing workforce is a cause of concerns. The motivations and opportunities for placement of ageing workers present special challenges. Especially with regard to manual labourers, the body simply wears out, with respect to the work that was being done at the time of injury. The payments in the system are set up to support during recovery, not provide a living income. The tendency is to shift such workers to other societal safety nets (i.e. Centrelink) but the broader policy implications have not been properly considered.

Financial pressures, whether due to individual or broader economic conditions, may impact claiming behaviour. There was speculation concerning the degree to which claiming behaviour shifted during the Global Financial Crisis. Participants were alerted to some resources that discussed the issue.

Proactive education of workers and social education programs were acknowledged to have some beneficial impact, but there were misgivings expressed concerning the extent to which the message was lost by not being delivered at the point in time where it was needed, i.e. at the point of injury. Individual participants did not think they had the power to impact the broad dynamics of perception of the system within the culture, and suggested that incentives and disincentives were the best approach for controlling behaviour. At the same time, a cautionary note was raised, to the effect that it was not uncommon for incentives and dis-incentives to be manipulated by the parties in their own self interest, such that they had unintended consequences that were sometimes difficult to predict.

The "sick role" was a factor in the environment that attracted considerable comment. The role was characterised by a lack of individual responsibility and externalisation of outcomes and results. Over time the injured person gets into a "comfortable" role of being "looked after" which enables the continuing ill behaviour and thinking. The injured person in this role is not necessarily faking or exaggerating their experience, but rather has adopted patterns of thought that actually influence their experiences. This was seen to impact an estimated 20% of claimants, but that 20% was seen as creating a disproportionate burden on the resources of the system.

Participants saw the "sick role" as closely related to the "medical model" The "medical model" is a view of medicine that suggests that all illness and injury are circumstances where the affected person looks to a doctor for a cure and externalises all responsibility for recovery. It is an entirely passive approach to health with a binary outcome – the doctor either completely cures the illness or injury or the treatment has been a failure and the options are to continue to treat, look for a new doctor with a better treatment or medicate to mask the remaining symptoms. This model of health contrasts sharply, in the minds of participants, with the World Health Organization model of wellness, which is much more holistic and participatory and suggests that people need to feel well to be well.

Participants felt that the empowerment of workers was necessary to avoid the sick role, but that the basic structure of the system dis-empowered those in it in a way that makes the avoidance of the sick role difficult. This was seen as being an issue of the basic structure of workers' compensation schemes, and not an issue arising from the actions or inactions of the statutory authorities.

Participants also observed that "secondary gain" was involved in the "sick role" because being looked after, in general, and some treatments, specifically, was regarded as being a rewarding activity that derived from the injury or illness. "Secondary gain" in this context, is not intended to suggest any inappropriate explicit choice to take advantage of the system or situation. Participants observed that secondary gain is a normal part of human functioning and can be expected to influence behaviour in a wide variety of circumstances.

To combat the influences of the "sick role", "medical model" and "secondary gain" on systemic behaviour, the participants strongly recommended goal setting with the injured person as a strategy. One difficulty in implementing this desired approach is the perception that legislation dictates the goals of rehabilitation, and takes the choice away from the ability of the worker and employer to work it out for themselves. Sometimes a worker doesn't want to return to the same job with the same employer, and that kind of disparity of goal setting dis-empowers the injured person and creates impediments to success, in the view of participants.

There was a strong consensus that early intervention was very useful in identifying potential problems whilst they were still avoidable. By setting expectations with all parties before mis-communications and uncertainty destroys the relationship, the essential parties remain in a position to work to the real best interests of the injured person. Participants felt that it would be helpful to provide incentives for smaller employers to participate in early intervention programs. The large companies may have more resources to create opportunities for return to work, but participants felt that smaller companies often had a more personalised culture that could facilitate effective use of early intervention techniques.

The steps participants felt were essential in the establishment of a good early intervention program were:

- The program needed to be in place and well understood, before the need arises;
- The program needs to be trust based. All participants should be explicit about what their interest is, so all others will understand that they have compatible motives;
- The early intervention process must be continuous rather than a series of siloed events. This is not a "tick box" intervention; it needs to be fluid, flexible and personal;
- A good early intervention system was seen as going hand in hand with a highly functional OH&S program.

Participants then turned the discussion to the risk-based premium system used in Queensland, which was seen as giving the employer some motivation to participate more fully in the avoidance of workplace harm and enlightened responses after the harm. There was a critique levelled by some participants that the mechanisms for determining premium increases were a bit too blunt to be as effective as possible for the intended purpose. Participants suggested that they believed that the current premium system creates a dis-incentive for rehabilitation, because return-to-work costs are lumped into health care, hiding the return on investment from that activity. The comment was made that the criteria should be more than "just lost time". Suggestions for more positive mechanisms for connecting risk to premium were not forthcoming from the participants.

Early resolution of claims was suggested as the appropriate focus, rather than merely early intervention. Participants suggested that the workers and employers should have control during this period of time, but that they do not. The GP role with respect to medical certificates was discussed, and participants felt that the criticism of GPs with regard to their handling of medical certificates had a basis, but was too harsh. GPs are not intended to be the gate keepers of the system and the incentives operating on them were seen as running counter to the use of medical certificates as a mechanism to facilitate early resolution of the claim. GPs are advocates for the worker, and are often on time constraints that make the investigation into the real possibility of return to work difficult or impossible. The statutory authorities were praised by participants for providing appropriate remuneration to allow a good quality of communication between medical and rehabilitation/claims personnel.

Participants shifted to a discussion of other issues that impacted upon what they saw as the appropriate functioning of the rehabilitation system. The system was seen as being run to encourage participants to view it as a zero-sum game. That is to say, participants believe that the system is set up so that the wins of one party come at the expense of losses by the other party. In the domain of rehabilitation, that is often expressed as cost savings coming at the expense of cuts in service. The participants expressed the belief that a "zero sum game" was not appropriate when considering rehabilitation, as the savings often came at the expense of the unintended consequence of more serious or prolonged disability when the needed services are not provided in a timely manner. The participants contrasted the way people with a work injury are treated as contrasted to the way people with an injury that was not work related are treated, and noted their belief that the source of the injury should not "be a determinant of care".

The observation was also made that the Health and Safety Act does not co-ordinate properly with the Workers' Compensation law. Participants expressed the belief that injury management should be directly integrated with occupational health and safety and that information flow between them would be quite helpful. Participants asserted that data was not collected to show the opportunities that co-ordination between occupational health and safety and workers' compensation could create. At the same time, participants praised WorkCover for several programs that attempt to foster communication between injury management and occupational health and safety programs.

Participants were impressed with the rehabilitation programs of self-insurers generally and suggested that the efficacy of such programs could be extended to smaller insured employers through utilisation of a certification program such as is utilised to make sure that self-insurers are correctly implementing rehabilitation plans. The suggestion was made that such a system could be incentivised through adjustments to premium.

The educational component of rehabilitation was also recognised. The assertion was made that the knowledge necessary to understand the value of proper rehabilitation was in place, but that there was some difficulty in getting it out to the "shop floor". The unions were said to be "on board" and the use of industry associations as an educational contact point was suggested.

Participants then turned to a discussion of the components of a successful early intervention model. They include:

- Direct contact with the worker;
- A "remain at work" model;
- Open communications;
- Good information, for all parties, about the claim and the nature of the injury;
- Separation of roles was also seen as helpful; participants felt that asking one person to be the claims manager, return to work coordinator and employer contact created too many, and potentially conflicting, demands;
- Training for the involved personnel was seen as a critical component. Qualified personnel are necessary to effectively deliver what can be bad news in the context of the claim. Most people are not equipped or trained to handle this task, so it often is poorly done or goes undone.

Participants had the view that Q-Comp's training program for return to work coordinators is a good start, but needs to be expanded and deepened. There were no specific suggestions given at that time as to how the training might be improved.

At the same time, there was recognition that there are practical limitations on the amount of training that can be given, and that the complexity of the problem was compounded by the need for the system to deal with a number of different models of employer size and sophistication. It was also recognised that the legislation, by not requiring employers to re-employ an injured worker, didn't go as far as it did in Victoria.

An issue that was raised, but not pursued was the impact of rehabilitation efforts on overall productivity in the workplace.

Claims Administration and Dispute Resolution

The session started with the question 'What constitutes success?

Participants offered several formulations. One suggested that it consisted of resolving all issues, in the same forum, to the satisfaction of the parties. Another participate noted that there was inherent tension in the system, in that quick return to work was not entirely consistent with maximising the economic outcome of a claim. The participant suggested that easing the tension in the system constituted success in claims administration and dispute resolution. Another participant offered that financial viability of the scheme was one measure of success. This suggestion generated significant conversation. Participants did not feel that financial viability was a primary consideration for the participants in the scheme but rather felt that that was a consideration of the statutory authority and of Parliament in passing the legislation. This lead to a re-formulation of the original suggestion, offering that a scheme model that was less driven by the economic motivations of the parties, would be considered successful. An additional formulation that was offered, suggested that the ability for people involved in the scheme to be able to move on with their lives, constituted success.

In that context the question was asked "does economic settlement help people get back to their lives? The answer offered by participants was that it didn't hurt, but that it wasn't the only important component in the story. The employer's motivation to return a worker to work, the worker's motivation to be well, each parties desire to be "right "and the fight for "justice" were all motivating factors. It was observed that in current society injury was equated with the opportunity to receive money and compensation even though the "no fault" system was created to avoid the equation of money and injury. Participants suggested that workers were inherently interested in getting well and that money comes in later as a consideration when a grievance arises. The suggestion was made that common law gives the worker the chance to move on. Yet at the same time it was noted that sometimes the process becomes derailed and that the subsequent delay causes additional harm to the worker. It was noted that lump sum payouts may or may not leave the worker in a place where they can respond to long term disability and the management of healthcare over a long period of time. It was noted by one participant that the vast majority of claimants will return to work and that a lump sum settlement allows them to do so faster. Other participants emphasised that the return to work segment of this system should not be forgotten. In light of these observations, the group reached a consensus on the following formulation of success: "The maximisation of function, earning capacity and return to work in a system that balances the needs of employers and workers".

In light of this consensus it was suggested that money comes into the equation when the system's intention to return workers to work (within their limitations) fails and the parties become adverse. Under that formulation, litigation is, by definition, a failure of the system.

The discussion then turned to those factors which militate against successful resolution of the system. First, one participant noted that there were gaps in the assessment of claims. By "gaps" the participant intended to convey

the idea that different parties had different information and as their information sources varied so did their assessment of the validity of the claim.

Participants felt that pressure to get claims closure may be interfering with proper resolution of claims. They suggested that better communications between the three statutory entities would help align the expectations and attitudes of claims administrators, claims referees and safety personnel in helpful ways. To achieve this kind of alignment, however, it was suggested that a shift in attitudes would be necessary. Participants suggested that an environment where a claim may be fully and finally resolved, will yield successful and sustainable outcomes over the long run. Participants suggested that the "once and for all" nature of common law is helpful in achieving an environment where a claim can be resolved fully and finally. It was acknowledged that the finality for the worker is dependent on their individual personalities. But these personality issues can be impacted by the timeline engaged in during the process. One participant noted the detrimental impact of "constant rumination" by the claimant on what abilities and life opportunities they had lost during delays in the claims resolution process. He noted that early closure addressed common feelings of insecurity and loss of control. Long delays in resolution of the case can also create family and other social pressures. Participants noted that medical symptoms may worsen during the pendency of litigation, for some individuals.

Some of the lawyer participants noted that the propensity for litigants to settle rises during acute phases of litigation. That same propensity diminishes during later phases, or until final resolution. Participants felt that this suggested that alternative dispute resolution techniques effectively take advantage of this predictable cycle in the willingness to settle, if was done early enough and effectively. Unfortunately, there was no specification as to whether the comment was aimed toward common law or statutory claims, but the comment occurred in the context of discussion of common law claims.

Participants noted that current procedures are designed to concentrate the process into the first year. Claims conferences are mandated within a reasonable time. That period of time is determined statutorily, but according to participants the statute does not take into account the human factor in the impact of claims processing. The point of time when the injured person "experiences a change of goal" determines the probability of success of outcome. Return to work is one half and if the worker is kept on that goal then it is a likely outcome in all but the most severe cases. However, if there is a failure of return to work, participants believed that the likelihood of a successful outcome changed dramatically. The change of goal from return to work to something else was believed by participants to be the strongest determinant of outcome in the ultimate resolution of the case. If it's handled well, then the case can proceed successfully. If it's handled poorly, then participants felt that a poor outcome was very much more likely. Relations between the rehabilitation provider and the employer were critically important in making sure that the change of goal was avoided, or if circumstances made it necessary, allowed it to be handled constructively.

Participants felt that the incidence or rate of lost time injuries, as a metric, created a poor quality of decision-making that was inconsistent with the workers' compensation system's policy and intent. All participants were aware of actions taken by employers to avoid a claim from being registered statistically as a lost time injury. When someone is injured and is unable to avoid losing time from work, the avoidance of the lost time injury statistic creates pressure to dispute claims with respect to the claim being work related. Participants felt that this dynamic

created much of the pressure from employers for contesting the claims, and therefore created a significant portion of litigation incidence.

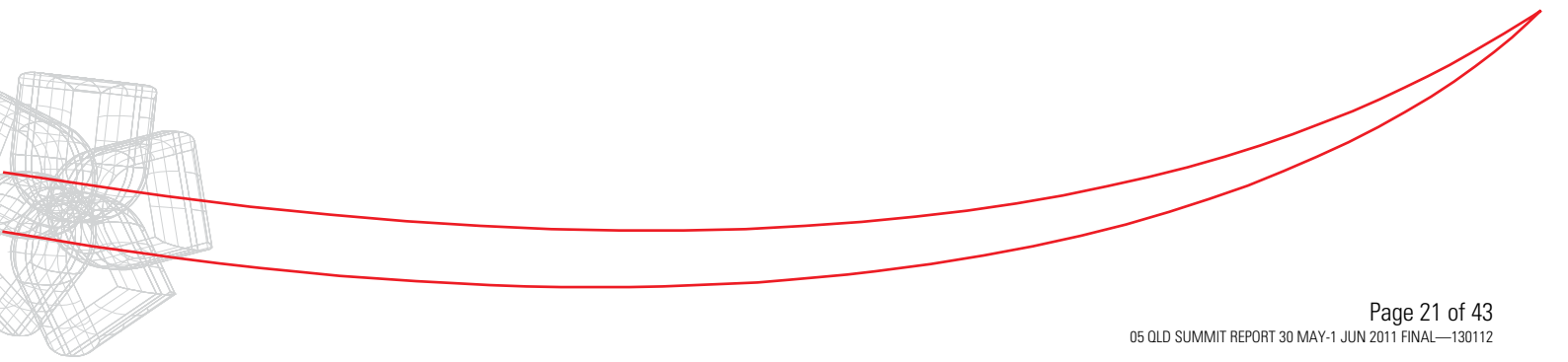
Participants noted that the number of statutory entities that were involved in the workers' compensation system led to confusion and communication problems. They particularly felt that the separation of workplace health and safety is problematic. The lack of constructive coordination that participants felt, creates issues of employer liability and interference with rehabilitation, that conflicts with the best possible outcomes.

Psychological injury is also an area that has become fault based, as a matter of practical reality. When the motivation is the avoidance of fault, the decision-making has a tendency to drive litigation. Participants noted that early intervention can be effective for both primary and secondary psychological injury but that employers routinely dispute primary psychological claims. The disputation of these claims leads to withholding or delay of treatment and the possible exacerbation of the claims. Participants noted that event-based psychological claims are easier to deal with and that it is often claimed that primary psychological injury has a source that can be traced back to a time before the injury actually occurs. Because the source of the injury (workplace conflict, workload, interpersonal conflicts, etc.) can be identified, the credibility of the injury is less likely to be questioned. The possibility for avoidance of secondary and exacerbated psychological injury through earlier intervention was noted by participants. Unfortunately, participants felt that the attitude of employers in denying liability for such claims often interfered with early intervention that might have led to better overall outcomes.

Participants felt that was important to understand was that common law crystallises the loss in a way that allows the injured person to move on with their life, let go of the incident, and return to productivity and happiness to the extent their injury will allow. Participants noted that in Northern Territory a policy decision was made that allows the crystallisation of losses early in the claim, and that has led to an avoidance of the phenomenon of psychological claims and lost time injury metrics having a tendency to reintroduce "fault" concepts into the workers' compensation system.

Participants noted that "fairness" was also a critical portion of the perceived fairness of the system. Participants recognised that "fairness" was often in the mind of the beholder and suggested that an objective view of "fairness" was a "balance of disappointment". Acknowledgement of the injury and the effects of the injury on the person was considered an oft-overlooked portion of "fairness" and it was noted that the kind of people who could undertake that role in the management of claims were not often the people in those jobs. Real engagement between claims people and injured people was seen as necessary to avoid undesirable results, and that could include "tough love" on occasion. This suggested to participants that having the right personality types amongst claims managers was important and that empathy and good skill sets were of great significance. Participants noted that it was good business to treat people well in the claims process. The claims managers need to "get it", with respect to the impact their personal attitudes can have on the claimant and the processing of the claim.

In this context, participants noted that workers' compensation claims are treated differently with respect to empathy expressed for auto accident injuries, sport injuries, or non-work related illnesses. The lost time injury metric and future premium liability are impacted by the claim of the worker, which affects the attitude of employers. It is also noted that there is a tendency amongst some employers to think that all workers who may claim are dodgy and acting inappropriately.



Participants felt that the training received by claims managers to evoke empathy, can be effective in increasing their effectiveness. Participants noted the belief that rehabilitation workers and WorkCover operate in environments that are restricted by the issues of acceptance of liability from true creation of empathy in the processing of claims. At the same time, participants agreed that WorkCover was working toward a more enlightened approach. Participants expressed the hope that service providers will become less restricted by employer and insurer concerns about liability, and trust them doing the right thing in their treatment for injured people.

Early and intensive intervention with regard to rehabilitation services was regarded as being appropriate and helpful by a consensus of participants. However, participants acknowledge that spending money on those early intervention services was a difficult business call, because some participants will improve on their own without the provision of services. Employers have a role to play with respect to obtaining early intervention for the workers, but they may not be informed of their role in the process. The consensus felt that employers are responsible for injury management, but noted that only large employers really have the resources to carry out their role successfully.

Small employers were seen as less educated or enlightened with respect to the return on investment for early intervention in return to work and rehabilitation. Education activities for this group are difficult to organise but helpful. The difficulty is that small employers often have workplace injuries very infrequently and may receive education at a time that is remote from any need for the information, so that timeliness and relevance are compromised. Small employers also often have fewer resources in terms of personnel, money and opportunities for alternative duties to assist in the early intervention process. Participants believed that approximately 80% of Australians were employed in small business, so the education issue was regarded as a significant problem. Participants believe that more could be done, especially with regard to alerting small employers to the fact that information resources are available online. It was suggested that professional associations and industry associations might be helpful in disseminating information to smaller employers.

Workplace Health and Safety is involved in the personal injury space as well, but was seen by participants as having a different purpose. Risk assessments with respect to the injury will help prevent second injuries of similar nature and also will help channel the individual injured person to the kind of care that would be most helpful. Because employers have liability they must be involved in this process. Conferencing about cases prior to the determination of liability is often done internally for large organisations; the smaller employers might also benefit from such a practice. No mechanism for obtaining that kind of outcome was suggested. In fact, participants noted that one size does not fit all in injury management. The system has an opportunity to concentrate on sub-processes that will be more flexible within the constraints of a statutory context. The participants reached a consensus that a more flexible approach had a better chance of reaching a wider variety of employers.

Participants noted that the legal disputation process has the potential for creating additional and new harm for the individual worker. This psychological overlay on physical injury can be more serious and more long-lasting than the physical injury and under some circumstances can help establish "the sick role" and chronic pain behaviour that can be very difficult to treat. Participants discussed whether or not minimisation of harm could be considered part of the definition of success and noted that that this offered level of analysis occurred different logical level than the other elements of definition that have been previously offered. A consensus was reached that avoidance of system created harm is critical, and the processes to avoid such harm need to be linked to overall strategy.

Participants believe that they need a “roadmap" to help them avoid harm that is created by the system. They noted that the system takes a mechanistic view of specific injuries and conditions, rather than considering the harm to the whole person. It is common for the initial diagnosis of the worker to control the treatment through the entire life the claim, even though it is well understood that natural healing processes will change that diagnosis over time, and with it change the issues to which the system ought to be responding. Unfortunately, a mechanistic view of the claimant does not invite the mental flexibility to make these adjustments smoothly. A personal or holistic approach was seen by participants as being more likely to result in good outcomes. The “medical model” of turning responsibility for care and outcome over to medical personnel to be “fixed” was seen by participants as being part of the cause of the harm created by the system. Participants also noted that the initial diagnosis is relied upon far too heavily in the course of claims management. They suggested that the reliance on a diagnosis had a tendency to medicalise claims, reduce the amount of flexibility that was brought there on the rehabilitation task, and force injured people into a medical model that was not helpful. Participants suggested that some instances of low back pain are nothing more than low back pain, and that it is neither necessary nor helpful to create a diagnosis that supported the symptom. They recognise the diagnosis is necessary under statute and to inform treatment and prognosis. The search for diagnosis beyond medical significance can be detrimental in that it causes delay and creates conditions for the injured person to become excessively fixated on the label that has been placed on them in the diagnosis process.

Participants also noted that the source of harm should not have the impact that it often does. They felt that the question of whether the injury “happened at work”, which arises from the insurance basis for liability funding, often creates a “zero-sum" game in which one party must win and the other party must lose. Participants noted that zero-sum games create issues in claims management and dispute resolution, rather than resolving them. They also noted the lack of feedback loops for information in the system as an issue. Parties have information that should be valuable to others in providing their treatment. Lack of organised feedback, time and remuneration issues and confidentiality provisions in the statute discourage medical reports and other communications from being freely circulated to the professionals who might use such feedback for the benefit of the worker.

Participants suggested an improvement in the system which all felt worthwhile. Claims determination, common law processing and statutory claims management should all be in one location. By creating a single point of entry for the system, missed communication, lack of coordination and delay can be minimised. Participants felt that reductions in these communications failures and errors would reduce the unintended consequences occurring during the pendency of claim resolution on the injured person, and it was felt that it would result in better overall outcomes for workers and employers. As one participant summed up the consensus of the group, saying, “The key is creation of synergistic engagement, working toward systemic improvement". This initiative has been independently implemented by WorkCover since the Summit.

Prevention of Harm Session

The question "What is success in the area of prevention of harm?" stimulated participants to offer several formulations. Reduction of workplace absence was regarded as being important especially where that reduction was expanded to include "presenteeism". Prevention of harm was regarded by some participants as being a 24-hour endeavour and holistic in issue. In this regard participants did not believe that reduction of physical injury was the only goal which needs to be served. Reduction in the numbers and severity of people who are "harmed at work" was also part of the success criteria offered by participants.

Participants noted however that problems occur when success is linked to financial reward or other factors. Participants expressed dissatisfaction with the utilisation of lost time injury frequency rate as a measure of success and prevention of harm. They noted that it was a lagging indicator, which only gives you information after-the-fact. Participants expressed the idea that the metric had a disproportionate impact on small employers as compared to large employers because it was possible to hide a significant number of injuries in a large workforce that would present as a huge proportion of the workforce for small employers. Participants also noted that avoidance of lost time injuries sometimes lead employers to unusual behaviours, which were counterproductive to good injury management. At the same time, participants noted that the lost time injury frequency rate was embedded in the industry as a standard by which safety is often measured and that, as an entrenched standard, it would be difficult overcome. Nonetheless, participants indicated that positive and lead performance indicators would have advantage over lost time injury as an indicator.

Positive and lead performance indicators that are designed to assist in the achievement of wellness, health and safety were considered goal/success criteria by a majority of participants. The cultural environment was viewed as being supportive of raising safety issues and that has become more important as information about the health impacts of healthy work becomes more widely disseminated. This one participant said "it's all about people and their ability to fulfil life purpose".

Participants noted that there are multiple layers of success in the prevention of harm. Business success in achieving business goals was the primary criteria of employers. Improvements to the bottom line, including achieving metrics that allowed them to compete successfully for work, would likely be regarded as the sole criteria motivating many employers. For health and safety professionals, success consisted of smoothly operating a fully integrated system in which harms can be identified and eliminated. Safety professionals recognise that information feedback loops need to be in place to prevent second occurrences of injuries. Workers just want to come home at the end of the day the way they left for work. Systemic success is measured in terms of scheme viability and sustainability, which is related to the trending of frequency and severity of injuries.

The multiple layers of success in these different parties results in unspoken discrepancies and values and therefore in occasional misalignment and misunderstanding between the parties, their intentions and their statements concerning prevention of harm. The Safework Australia initiative is intended to bridge these various levels of stakeholder-based success criteria and forge some unity amongst the various participants. WorkCover data drives some of the health and safety initiatives. There was appreciation expressed for the coordination efforts undertaken, although also an acknowledgement that there was still more to be done. Workplace Health and Safety

is also attempting to coordinate and improve collaboration amongst the various statutory authorities. Nonetheless, data access issues create blockages to the responsiveness of the system. Advancements in understanding what happened and how to prevent future harm is going slowly.

Participants felt that "learned helplessness" was a significant feature in the personal injury space and that rehabilitation coordinators are not valued appropriately. It was also suggested the feedback loops from doctors and rehabilitation providers focusing on prevention of harm would be helpful, but there is a lack of a formal mechanism for such communications. There is also a lack of clear specification of the data that would need to be passed on to allow prevention of harm specialists to benefit most from prior experiences, and gain understanding about the current situation. Participants also felt that good practices were not necessarily being passed on, and suggested giving the ownership of data back to the industry so that they could improve outcomes by utilisation of that data, would be helpful development.

Participants suggested that it would be helpful to create a forum where all the relevant people could discuss their communication needs relating to prevention of harm at the same place and coordinate amongst one another. Participants recognised that data is now collected for insurance purposes rather than prevention of harm purposes and they suggested better data gathering coordination and dissemination could be used to good effect if the input and needs of harm prevention specialists was considered. Participants also noted that the data collection currently being done failed to look at self-insurance data significantly (although as noted that the safety data for some injuries was reviewed for the specific purpose of regulation of self-insurance programs.) Participants felt that if such data were available it could be used to target activities contributing to the prevention of harm in a way that would leave the system better aligned and more effective.

Participants noted that the size of employer did matter with respect to the amount of awareness and resources devoted to prevention of harm. Large employers may be developing the ability to utilise incidence data to prevent future harms, but small employers were not necessarily positioned to receive the same benefit. Information was not getting to small employers, and data was not necessarily being obtained from small employers to the same extent. Participants noted that, all too often, small employers have a "tick box" mentality with regard to prevention issues. Prevention of harm is sometimes regarded as a chore to be accomplished rather than part of the core business. It was also noted that is very difficult to institutionalise small improvements in the safety culture of small employers because of a low accident frequency and turnover of personnel, which together contribute to loss of institutional knowledge and motivation over time.

Participants suggested the compliance work was not what was needed. Rather coaching and mentoring were likely to be more effective in obtaining changes in the safety outlook of employers, and also more satisfying for safety professionals. The fear expressed by participants was that management, particularly in small business, was not getting the overall safety message and making changes in the environment, because the return on investment from safety initiatives was not being recognised at the appropriate levels of management. To achieve a higher level compliance, and ultimately culture change with regard to prevention it is important to reach the hearts and minds of management. One participant suggested that an action research approach would be useful to get management attention. Other participants suggested that "shop floor input" is valuable with respect to hazard reporting, responsiveness, and the creation of an atmosphere of trust and lack of retaliation. All participants noted that there

was interplay between shop floor input and human resources/industrial relations issues that could complicate the communication flow and lead to unintended consequences.

It was asserted the 300 inspectors are collecting data with regard to safety, but that the innovative and effective company initiatives were not always being collected. This led to some confusion between proactive and reactive functions at Workplace Health and Safety. Some participants expressed lack of clarity on the criteria for inspection. Workplace Health and Safety allocation of scarce inspection resources was asserted to be validated by research and industry networks. It was suggested that Workplace Health and Safety does more than people understand, but that raised a subsidiary communications issue – if people didn't understand, didn't that define a failure of communication? This led to comments from participants that there would be value to greater transparency with respect to the operation of Workplace Health and Safety. It was suggested that such information is available via the Internet and through an online communications device known as e Safe[1].

The "blockers to progress in prevention of harm" were the next topic of conversation. With regard to psychological injuries, it was also noted that people now know their rights and that there is a heightened sensitivity to psychological claims, along with reduced stigma perceived in making them. The decrease in claims caused by higher rejection rates doesn't mean the claims are going away. Concern was expressed by participants who suggested that stress, anxiety and distraction can cause physical harm, lead to higher accident rates, and exacerbate existing conditions and such injuries as do occur. Nonetheless participants suggested that psychological injuries are unlikely to get people's attention except during times of crisis and that economic and political constraints will keep prevention of psychological harm from getting its proper consideration until such a crisis occurs.

Participants praised Workplace Health and Safety and WorkCover for recent efforts at collaboration, but suggested that it wasn't sufficiently robust. Issues in the workplace can create cost driven suppression of early intervention services that some participants believed have the potential for creating a cost blowout later on in the process. Participants noted that the workers' compensation and work health and safety legislation are not coordinated. They also suggested that allocation of resources was improperly directed to post-event interventions to too great an extent.

Participants suggested that the system tolerates large dollar expenditures on dispute resolution procedures at the expense of the willingness to spend significant sums on early intervention and prevention of harm. Moreover, participants expressed a concern that second instances of injury were not being prevented in some instances because of information delay. Participants expressed the belief that an over-emphasis on control of behaviour led to an under emphasis on the work of influencing behaviour. Influencing behaviour was seen as being more fruitful in the long run if it produces real change, rather than mere tick box compliance. This is particularly true with regard to instances of prevention of second instances of injury. Understandings and information gathered during the

[1] e Safe is an online resource of the Queensland government that offers newsletters, current information and resources, communications and other features to interested parties. Their website can be found at: http://www.deir.qld.gov.au/workplace/publications/safe/

treatment of the claim is not properly fed back to appropriate people in the workplace, so that re-engineering to prevent second instances of injuries can occur.

Participants expressed the view that there is a discrepancy of values regarding who is responsible for prevention in the workplace. Participants felt that prevention activities were not health based, but rather event-based. This was suggested to be the result of the influence of premium on the prevention of harm. Premium is based on risk, and the impact of common law claims on premium underwriting is significant. Participants suggested it was possible to have health and safety initiatives drive premiums as a lead indicator rather than using a harm-based lag indicator. Under such a system, innovative and appropriate behaviour by employers with respect to safety initiatives would be rewarded in the premium system and inattention to safety issues would be penalised. In this manner participants believe that system design can be used to properly drive employer behaviour. The relationship between Q-Comp and WorkCover was discussed. It was suggested that if the Q-Comp regulation of self-insurance with regard to safety initiatives was used as a model for employers covered by WorkCover, the advancements in the safety culture of covered businesses could be substantial. One impediment to this result was the Queensland "short tail" system that was seen by participants as potentially covering up the real "pain" of failures of prevention. Claims shifted to Centrelink and to the common law system mask the true impact of failures of workplace health and safety.

Participants noted that the statutory authorities and the various participants in the system were operating under legislative constraints that allocate roles in ways that limited the participation of individuals. It was felt that the entities and participants could not be faulted for the way that they were doing their jobs in such circumstances. Participants felt that the current role separation with respect to workplace prevention of harm issues might be addressed by better information feedback loops. However, participants noted that employers "don't know what they don't know", so it was left to the statutory entities to impress upon them the imperative to make advances in prevention of harm. Participants suggested that important lessons could be learned from each incident but that the system often moves on before learning anything. They felt that it would be helpful for the statutory entities to push the message that every incident or "near miss" was an opportunity to learn what could have been done better.

Participants returned to the lost time injury issue. They noted that lost time injuries were post-event, or lag indicators, and that there was significant potential for reporting suppression and manipulation. The suggestion was made that replacement of the lost time injury frequency rate with a measure of "workplace well-being" could result in significant changes. Introduction of such a metric as a key performance indicator would emphasise pre-event intervention and, if properly designed, minimise opportunities for reporting suppression. It was also suggested that social marketing with respect to prevention of workplace harm would be a useful change in the environment. Participants suggested that society is generally unaware of prevention of harm issues, and has lost focus on prevention of harm. In light of the ageing workforce and other factors, this loss of focus was regarded as particularly disturbing.

Nonetheless participants noted that injury frequency is down, return to work rates are up, and while the industry could do better, things are generally improving. With respect to psychosocial injuries claims, participants believe that duration is increasing and that presents a going concern. Participants want to emphasise the idea that claims rates aren't the only indicator of how well the system is doing, and that it was important to celebrate successes and get the information out to society at large.

The session ended with a discussion concern innovative ways for the dissemination of prevention of harm messages to the public at large. Participants noted that it was necessary to capture the imagination of the public to create real social change. Suggestions ranged from social marketing on understandings gained from the best businesses in the world to a reality show based on improvements in safety in various workplaces.

Wrap Up Session

Discussion started with a presentation of observations that were common to more than one group of participants regarding success.

Multiple levels of success were identified by the participants and they tended to depend upon both the perspective of the party being discussed and the context in which success is being defined. The definitions of success discussed across multiple sessions by participants with respect to workers tended to differ from the same discussion with respect to employers. The definitions of success utilised by the statutory authorities were also different in many instances, as they are required to respond to legislative and social policy dictates. Moreover, different stakeholders may have internally inconsistent success criteria depending on the endeavour being discussed. For instance, workers may feel in some circumstances that success in claims management is maximisation of benefits and compensation. Those same stakeholders may believe that the quickest possible return to normalcy and work defines the criteria of success with respect to rehabilitation. These two positions are inconsistent but, nonetheless, participants at the Summit believed that those criteria are appropriately identified to the stakeholder. This suggests that not only does the definition of success vary from stakeholder to stakeholder, but that the perception of definitions of success may vary amongst the observers of the behaviour of that same stakeholder.

In addition service providers may have entirely different sets of definitions of success dependent on their particular needs and perspectives. Summit participants felt that, in many instances, success criteria for service providers depended upon the extent to which the success criteria contributed to their overall economic welfare. However, those were not the only criteria for success attributed by participants to service providers. Once again, the ability of service providers to hold mutually inconsistent criteria for success depending on the nature of the inquiry as noted by participants, and may reflect genuine internal inconsistency or the tendency for outside observers to attribute inconstantly in their perceptions of the motivations of service providers.

These differing definitions of success led to some difficulty in communicating about success criteria for each participant, in each session. It therefore appears necessary to discuss not only what constitutes success, but what constitutes success at a particular phase of the claim, in the eyes of that observer. The sharing of multiple perspectives with respect to what constitutes success appeared to be beneficial to the participants, giving them greater insight into the motivations and behaviours of other parties. Participants found that their lack of understanding about the assumption sets of others, once exposed, allowed them to open their perspectives and understand in a broader context than had previously been the case. Thus, tensions in the workers' compensation system were revealed by making the explicit inquiry of what constituted success in each phase of the case.

Across all groups, participants had a general emphasis on holistic measures and on a person - specific approaches, and tended to reject approaches and measures that were more concrete and mechanistic. Thus, participants across all groups acknowledged the need for systems to be structured to allow and facilitate the healthy recovery of both the mind and body. In addition, participants agreed that the best practices with respect to each phase of the case sought to avoid psychological harm and other forms of damage, that were consequential to the operation of the part of the system of personal injury recovery being discussed.

Observations common to more than one group regarding communications

Participants believe that people who set policy or regulatory requirements listen when there's a crisis or economic consequence. They note that proactive communications with stakeholders, especially employers, is a difficult and elusive goal. They noted that it was difficult or impossible to get legislative attention for "mere" improvements in the system, which were not motivated by crisis. WorkCover and Q-Comp were praised for recent efforts contrary to this trend. Stakeholder engagement with respect to these two authorities was identified as a strength by participants. At the same time, however, communications and coordination amongst the three statutory authorities in Queensland environment was regarded as being less than optimal.

Participants felt that information and communication feedback loops between the regulator, stakeholders and service providers were often missing and that these failures decrease the quality of communications and created certain problems that were otherwise avoidable. Recent activities, particularly by WorkCover, were cited as having made progress along these lines, but there is still much to do. Particular attention was given to the often-identified failures of communication between employers and health care providers with respect to the availability of alternative duties, between general practitioners, other doctors and allied healthcare providers, and between occupational health and safety personnel, and virtually all other service providers and stakeholders in the system.

Participants noted that the various statutory entities were not communicating as well as might be hoped and that this was likely the result, in part of the various statue statutory frameworks not being well coordinated. Participants did note a general belief that the statutory authorities are working hard to communicate better amongst themselves and also are communicating better with stakeholders and service providers. Of particular note was multiple references by participants to appropriate action taken by WorkCover to encourage communication between healthcare providers and others by providing remuneration for healthcare provider efforts in that regard.

Systemic features were also the source of observations that were common to more than one group

There was no consensus on how to measure outcomes within the workers' compensation system. This appears, according to participants, to have at least as much to do with the fact that perceived success criteria varies significantly between the various system stakeholders and service providers. The statutory authority uses a metric that is appropriate to its view of appropriate success criteria, when other stakeholders may feel that the metric is

non-responsive to their differing view of success. Participants also felt that in some instances the use of metrics that were less than helpful (such as lost time injury frequency rate) were the result of failures of imagination and long-entrenched practices. Accordingly, participants felt that further discussion concerning measurement of success would be helpful in capturing the full range of acknowledged success criteria.

Participants generally felt that holistic approach to treatment of injured workers contrasted with a "work injury approach "and that the latter approach characterised the workers' compensation system. Participants uniformly felt that healing the physical injury, whilst causing psychological sequelae to the physical injury, was a common, and unhelpful, outcome.

Participants across many groups noted that industrial relations and human resources issues interfere with sound injury management. There was considerable concern expressed that some employers used injuries as occasions to rid themselves of workers that they didn't want in the first instance, and with injuries being seen as opportunities by some workers to leave jobs that they didn't like. Employer education was suggested as an appropriate response by many groups. Early intervention is critical to good outcomes. Not only does it create an opportunity for treatment to be given at the point in time likely to do the most good, but it also leaves the "locus of control" in the hands of the worker. Thus, in the minds of participants, early intervention operates to prevent the secondary harm that they regard as being present in virtually every case that becomes litigious or otherwise has outcomes that are difficult and unexpected.

As a corollary, participants felt that spending money on a claim early can save a great deal of money on the claim in long run. Participants noted that about 20% of the claims can create 80% of the costs. By their reckoning, a reduction of the number of difficult claims by the expenditure of some funds early in the case could have a sufficiently positive impact to more than offset the expenditures.

Participants across several groups felt that, setting worker and employer expectations with regard to the injury and recovery process, the value and necessity of early return to work, the nature of benefits obtainable from the workers' compensation system and their costs, and the cooperation that the system requires of the parties would all be extremely helpful in obtaining better results. As a result, participants consistently recommended public educational initiatives for the purpose of facilitating appropriate expectations. Participants noted that the education process is very difficult, particularly because workers and some employers will not retain the information until it is needed, and presentation of the information at the point of need can be problematic. This is particularly true with respect to small employers, since they may not experience accidents with sufficient frequency to retain institutional knowledge of procedures and policy considerations. Participants often suggested that professional associations and industrial associations with good starting places for disseminating the kind of educational messages that were necessary.

Participants across several groups noted that employer size matters and that the differential, and needs between large and small employers, creates confusion and complication for the regulator and policymaker. It was noted that the system tends to design with the largest employers in mind, noting that they have the resources, institutional memory, and frequency rates that would allow them to respond appropriately to return to work, prevention of harm and other initiatives. Small employers present a much more difficult challenge, both because they have less resources to devote to return to work and occupational health and safety matters, and because their frequency of

injuries is less common. In such circumstances any institutional memory developed in a prior incident may not exist when a new injury takes place. Moreover, smaller employers, by virtue of the numbers, relative sophistication and resources for electronic communications are much harder to reach.

Some participants felt common law as a remedy has significant issues including the creation of secondary harm from the dispute resolution process, and misalignment between common law process and the goals of return to work. At the same time other participants felt that common law contributes to the fairness and finality in the system, both of which were perceived as being important criteria for avoidance of secondary harm. Participants demonstrated a willingness to confront these issues and openness to possible solutions but were less successful in offering constructive suggestions for improvement of the process.

Features singled out by participants as requiring special attention

Lost time injury frequency rate and the eligibility for psychological injury were both singled out by multiple groups of participants for their impact with respect to creating a fault-based system in an environment that is intended to be a no-fault. The focus on lost time injuries creates an environment where employers, in their motivation to avoid adverse impact of lost time injuries on their competitiveness in the marketplace, compelled them to dispute claims with respect to medical causality, sometimes in inappropriate circumstances. Thus, participants in all four sessions noted that the lost time injury frequency rate metric has a tendency to create litigation and delay liability determination, and create circumstances that are detrimental to the goals of the majority of stakeholders and service providers.

Multiple participants noted that the exclusion of psychological claims on the grounds that the alleged injury arose from "reasonable administrative action" by the employer, creates important protections of governance and productivity in the workplace. However, they believe that it also creates an atmosphere which motivates employers to defend the reasonableness of their action in many instances. As a result, both lost time injury focus and the criteria for exclusion of liability for psychological injury, was seen by participants as creating a fault-based system that is prone to litigation.

Coordination issues were also common upon by participants in more than one group

Critical coordination of work between Q-Comp and Workplace Health and Safety has been improving, especially recently. However it was noted in multiple groups that the legislation under which these entities operate is not well coordinated or entirely consistent and that the attitudes allowing better coordination of the statutory authorities should be encouraged.

Participants in many groups noted that communication activities between the various groups of service providers and stakeholders is the core of setting appropriate expectations, aligning definitions of success, and providing quality services at the right time and a reasonable cost. All these were in turn critical to the success of the system.

Participants repeatedly noted that activities designed to improve communications had generally been handled well and that such efforts should be encouraged.

In particular WorkCover was singled out for its efforts in establishing remuneration for communications activities and encouraging communications amongst stakeholders and service providers. These efforts were both appreciated and regarded by participants as being largely successful.

A number of challenges and blockers were identified by participants in more than one session

Medical certificates are regarded widely as a particular problem point, and every group identified the current medical certificate as being an impediment to early intervention in the case, quick recovery and return to work, and maintenance of the employer-employee relationship. Several groups discussed the initiative in the United Kingdom that has been recently reported by Dame Carol Black, where the "sick note" was re-cast so as to remove the ability of the doctor-ordered time off of work. Notwithstanding the fact that the current medical certificate is well entrenched in the local environment, participants in all groups responded positively to the possibility for the improvement of system outcomes by a simple change in a form that was reported to be under the control of Q-Comp.

A number of participants opined that there was a misalignment with respect to expectations within the system, which they believed could be addressed by better education. Participants suggested that many inaccurate generalities were commonly held to be "realities" within the system. For instance, it was commonly held that workers who made claims were trying to "put one over" on the system. Participants believed that there is a mis-match between the understanding of what motivates workers and what employers, lawyers and case managers *think* motivates workers. Similarly, participants believe that there are inappropriate discrepancies between what employers, claims managers, the regulatory authorities and service providers actually believe and what other parties in the system believe motivates them and governs their behaviour. This mis-alignment of expectations leads to mis-communication and the mis-communication only reinforces any inaccurate beliefs concerning motivations. Thus, participants noted that real communications could elude them even when participants thought that they were using the same words with the same meanings.

The "medical model" and "sick role" are culturally based obstacles. Participants felt that injured people come to the system with their expectations about the medical system and medical treatment. In that context, they learn from the way the system treats them how to act like a "disabled person". The model of medical intervention is passive and binary. A worker gets a diagnosis and then looks for the healthcare provider that can "fix" the diagnosis by passive submission to treatment. This model of healthcare is deeply entrenched in society as a whole and may be exacerbated by the way that we treat people during their claims processing.

Similarly, people were injured learn what the appropriate behaviour is for an injured person both from society as a whole and from the people who provide them with advice and assistance during the claims process.

As a result virtually all participants acknowledged that some harm, and particularly some portion of harm in difficult cases, was created by the workers' compensation system itself. The delay of case resolution was seen as

creating time to "practice being the disabled", and focus the mind on limitations. There was no consensus reached as to how to avoid this system-created harm. Early intervention, early liability determination and alternative dispute resolution mechanisms that avoid the delays and complications of formal disputation were all recommended as approaches.

Participants in multiple groups saw various opportunities for improvement in the system

The successes realised by some self-insurers with respect to practices that minimise delay caused by liability determination, maximise early intervention and return to work efforts, and recognised the positive return on investment of activities designed to prevent harm in the first instance were all seen as improvements that could be imported into the insurance environment. While WorkCover was seen as being responsive, flexible and appropriate in the innovations that have already been adopted, it was felt that more could be done.

Educational opportunities were seen across a wide variety of topics to be of significant benefit by most participants. There are a number of difficulties noted with respect to educational efforts, including disparities with regard to the size of employers, and the impact that might have on educational initiatives, and the relative unlikelihood that small employers in individual workers will seek out information that may already be available via the Internet. In particular, participants across all groups felt that the setting of expectations for each stakeholder and service provider was an educational initiative that could have great benefits if it were successfully pursued.

Participants in all groups expressed the belief that they found the opportunity to work, and exchange views with people outside of their own specialties to be rewarding, stimulating and valuable. In particular, participants seemed encouraged by the participation of the statutory authorities in the sessions and the potential for the creation of ongoing interaction between stakeholders and service providers and the statutory authorities aimed toward systemic improvement.

Analysis

What follows is a summary of the views expressed by the participants at the Summit. No claim is made that the following statements are well supported or objectively true, but they are presented as an attempt to present the views, opinions and beliefs of the participants in a "big picture" view that is true to the ideas the participants expressed.

Build on Communications Initiatives

The attitude of the stakeholders during this set of meetings demonstrates that the impact of meaningful stakeholder engagement can be substantial. The General Manager for Customer Services at WorkCover has related that the current program of enhanced stakeholder engagement by that authority has been a relatively new development. Participants consistently noted positively the efforts made in these consultations, even where noting that more needed to be done. This strongly suggests that the act of listening to stakeholders, in a manner that makes them feel that they have meaningful access, is of significance in the perception of satisfaction with the scheme. Stakeholders exhibited some cynicism with regard to communications efforts outside the context of a perceived crisis. Communications were viewed as needing to be proactive.

Coordination and communication amongst the three statutory authorities appears to be a continuing issue for Queensland, despite recent efforts to address the concern. Of note, there appears to be concerns that efforts at improvements in the creation of a safety culture in Queensland may be compromised by failures of information feedback between entities that have information about incidents (near misses and accidents) and those charged with responding to them. Feedback loop issues also seem to occur between GPs and allied health professionals, and appear to impact return to work efforts.

Participants responded strongly to the realisation that the definitions of success differed amongst the various stakeholders and service providers, and differed with respect to the phase of the claim, even for the same stakeholder or service provider. The resultant enlarging of their perspectives made them better able to comprehend the purpose of initiatives and systemic demands, and even to participate in the formulation of more effective strategies for achieving stated ends or outcomes. The possibilities for enlistment of stakeholders (including service providers) in the regulatory and management models of the Queensland systems appear significant.

Manage the Metrics

The most common comment, in the DeakinPrime journey across Australia to date has been the concern that the "system" measures processes rather than outcomes. Many of the metrics in use received critical attention, as encouraging the counting of actions that were insufficiently personalised, or insufficiently related to the injured as a whole person to be meaningful, except to satisfy a perceived need to measure.

The "lost time injury frequency rate (LTIFR)" was frequently mentioned as a feature that creates artifacts of employer conduct to avoid the development of adverse statistical reporting. Similarly, incentives to service providers sometimes were cited as creating a "tick box" mentality with regard to service provision that did not serve the injured person. This "tick box" mentality was also cited with regard to safety initiatives, especially with regard to small employers.

Conscious attention to what is being measured, and what the measurement is intended as a "proxy" for, seemed to appeal to participants as a way to help develop the field. Understanding the underlying intention of the LTIFR, for instance, allowed participants to think creatively about more accurate ways to measure the effectiveness of safety initiatives that were less subject to manipulation by employer actions. Metrics, in general, seem to be a useful addition to the topics upon which the statutory authorities and the stakeholders (including service providers) could enhance their communications.

One Size Does Not Fit All

Participants noted that the size of the employer has a significant impact on return to work, safety, early intervention strategies and other issues. They also noted that the statutory and regulatory schemes appear to take this factor insufficiently into account. The demands on large and small employers with regard to safety initiatives, provision of alternative duties during recovery and accommodation of the workplace, ought to differ along with their relative economic strength and the flexibility inherent in a larger scale operation. Yet participants felt that the statutory and regulatory schemes focused too much on large employers, and left small ones to fit into that model.

This phenomenon was particularly pronounced with regard to educational efforts. Small employer frequency of accident rates suggest that there may be no institutional memory of the procedures for handling an industrial incident in management at any given time for a small company. Information that is not used is lost, so educational efforts aimed at this population are particularly hard to target and deliver. The use of professional educators, with multi-media approaches to reaching these groups, including approaches through industry professional associations, entertainment media and social media was discussed.

Clarify the Allocation of Responsibility

There were multiple instances where participants noted that there were multiple parties attempting to do the same thing. Safety inspection and educational/consultation work and return to work efforts were mentioned as having multiple systems based in statutory authorities, that sometimes were well coordinated but sometimes worked less efficiently.

Of particular note, however was the striking lack of clarity concerning who "should be" and "who was" in control of the claim/recovery process.[2] The worker, employer, claims manager, statutory authority/ies and GP were all regarded as potential loci of control, but there was no clarity amongst participants as to either who should be in control or as to who actually was in control as a practical matter. The lack of understanding and consensus on the issue seems as significant as the answer to the underlying question. If the parties don't know who is in control, then expectations about consistency of claims handling are not realistic and predictability in the system is compromised. Case conferencing may be a good way to address the logistical issues created, and it remains to be seen whether the perception of no single locus of control has any impact beyond the logistical challenges created.

There appears to be a widespread recognition that medical certificates that authorise a worker to stay off work are not within the general expertise of GPs. Such certificates are infrequently based upon sufficient information about the workplace, or sufficient objectivity on the part of a doctor trying to preserve the doctor patient rapport necessary for an optimal healing relationship. There is a widespread conviction that they are misused by workers and that such certificates delay the onset of early intervention and return to work efforts that are viewed as the most effective response to an industrial incident. It was noted that the current form was under the control of one of the statutory authorities, and the model of the United Kingdom in reformatting the certificate to remove the portion of certification off work, and focusing on what activities the worker was able to do, was discussed.

Beware Unintended Consequences

There was significant discussion concerning the need for medical diagnosis before claims can be accepted, the need for liability to be accepted before treatment and other interventions can begin, LTIFR and other systemic features in driving behaviours that are not desirable. The emphasis on diagnosis gives rise to medicalisation of claims and the creation of functional syndromes to justify treatment. Liability determination was seen as the major blocker to desirable early intervention protocols. LTIFR created circumstance where accidents were under-reported and people placed in inappropriate light duty placements to avoid statistical notice. In each case, participants expressed frustration with what they saw as ways in which the intention of the system was being compromised.

Dispute resolution was, however, the focus of many comments about unintentional consequences. Medical treatment was influenced by the context of a pending claim or common law case, as was return to work. Moreover, there was a clear recognition that, along with the benefits of finality and certainty created by litigation, there were substantial elements of anti-therapeutic impacts in the creation of habits of thought that left an injured person with the belief that they were disabled.

While the participants were generally unable to suggest solutions to problems that were seen as "scheme design issues", there was considerable frustration with the consequences of not addressing these kinds of features on the outcomes of injured people.

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[2] Although none of the groups specifically discussed this challenge as a stand-alone issue, it appeared as an undercurrent to all four of the substantive conversations.

Future Directions

There was no evident movement amongst the participants as a group to follow on with any specific activities as a result of their participation in the Summit, as had occurred in some of the other jurisdictions. Several individuals were active across the entire program, indicating a commitment to systemic improvement and willingness to personally participate in a variety of ways. Representatives of WorkCover were present at every session. This leads to the recognition that in Queensland the process of engagement in dialogue at this level may require additional encouragement before a critical mass of stakeholders outside the system create a self-sustaining forum for process improvement.

DeakinPrime will continue to provide resources through its online discussion portal and virtual library to those who wish to continue, and expand, this process. It appears that there are at least two additional things that could be done. To the extent that any of the statutory entities operating in Queensland wish to sponsor additional forums to bring together diverse groups of stakeholders to talk "outside" of their "silos", it appears to DeakinPrime that there is a willingness, and perhaps a hunger, for that to occur. To the extent that the industry sector wishes to create its own continuing cross-speciality engagement, there are a number of models of pan-personal injury professional educational and networking associations. Such groups provide periodic training opportunities, social and networking functions, recognition and often charitable initiatives. DeakinPrime is happy to discuss or assist in the formation of such a body, to continue the work started during the conduct of this Summit.

The analysis of the participant views in the Summit also offers one more opportunity. Several of the big picture learnings from the Summit can be operationalised without the necessity of legislative change. Such things as clarification of roles and investigating and promulgating a lexicon that would set helpful expectations in the system, are within the grasp of the regulatory authorities. To the extent that the analysis can be mined for initiatives that can be implemented by the regulator, we believe that the participants would welcome an opportunity to participate.

Appendix A

Industry Engagement Centre Summit Conferences overview

This document was sent to all invitees to the Queensland Summit Conference. It was also handed out to attendees in each of the sessions.

Industry Engagement Centre Summit Conferences

Conditions in personal injury treatment and compensation continue to unfold at what seems like an ever-increasing rate. Rising medical costs, changing demographics regarding the workforce, related changes in the nature and treatment of injuries, increased emphasis on return to work and pressure to reduce needless disability all create new needs for the understanding of the roles of all the stakeholders in the system. Without this critical knowledge, systems will under or over utilise professional services, costs will continue to escalate and injured persons will not get the systemic response necessary to fully return to productive life. For these reasons, personal injury professionals need to concern themselves with their continuing professional development, the quality and completeness of information supplied to the other stakeholders with whom they interact, and international best practices with regard to every aspect of personal injury intervention.

The first initiative of the Industry Engagement Centre for Personal Injury (IEC_PI) is a series of nine Summit Conferences held in each of the states and territories and for the national schemes. Managers and others with strategic level understanding of the role of their profession in the personal injury sector will be the most valuable participants. Summit Conferences will seek to bring together the widest available range of industry stakeholders to:

- share their concerns and needs
- express their views about what does and does not work for them in their respective schemes and/or their related field of work
- define workforce and professional development and education needs for themselves and for the stakeholders that utilise their services
- create a more open and inclusive dialogue amongst the stakeholders.
- Participants will benefit in the following ways:
- By taking part in focused discussions involving a broader range of industry stakeholders than is usually engaged in one function. These discussions will allow DeakinPrime to structure the Industry Engagement Centre, and the programs that it develops, with the real needs of the stakeholders firmly in mind.
- By participating in a facilitated focus group environment, run by a neutral party, where the opportunity to express opinions. Each focus group will be directed primarily at the interests of an identified constituency, but others will be welcome to observe the proceedings and submit additional comments.
- By having direct input into the workforce and professional educational development of the industry.
- By being provided with a report on the information gained in the local Summit Conference and, if desired, with the report summarising the national initiative.

The Summit Conferences will lead to the following outcomes:

- Increased dialogue and networking amongst all the stakeholders in the personal injury sector
- Modifications to existing training programs to reflect more relevant and critical educational needs
- Development of new accredited training programs
- Development of specialty seminars, especially with respect to effective utilisation of the expertise of various stakeholders
- Consultations with respect to needs assessment, available resources, and modification of internal systems to best take advantage of the enhanced understanding of the roles and capabilities of other stakeholders and international best practices.

Participation in each local Summit Conference will be by invitation. However, invited participants are strongly encouraged to nominate additional parties to the IEC_PI for inclusion. Local participants will be best situated to identify the necessary local parties to accomplish constructive change and the identification of such parties for inclusion will be greatly appreciated.

Appendix B

Agenda - Summit Conference for Queensland

This document was sent to all invitees to the Summit Conference for Queensland. It was also handed out to attendees in each of the sessions.

Summit Conference for Queensland

Sessions	**Monday 30 May 2011**	
	9.00am – 12.30pm	Physical Recovery from Injury
	1.30pm – 5.00pm	Rehabilitation, Return to Work and Behavioural Health
	Tuesday 31 May 2011	
	9.00am – 12.30pm	Claims Administration and Dispute Resolution
	1.30pm – 5.00pm	Prevention of Harm
	Wednesday 1 June 2011	
	9.00am – 12.00pm	Summation, Feedback and Action Planning
Place	Mantra South Bank Brisbane, 161 Grey Street, South Bank, QLD 4101	

Agenda

Item
Information
Who should know more about your proper function in the system?
Does anyone in the industry seem to have mistaken information about your role or function?
Who has information that you need for optimum functioning?
Role
Are there ways in which you are you under-utilised?
Are there situations where you feel pressed into unsuitable roles?
What is the best use of your time/energy/knowledge?
Support and systemic improvement
Who are your natural allies?
Who calls upon you to support them?
Are there features of your environment that would you change to make things better?
Blockers/Challenges
Are demands placed upon you that seem inappropriate?
Is there anyone who interferes with you doing your job?
What do you wish you could do better?
Are there any other critical questions we are failing to ask?

Appendix C

Queensland Participant Attendance Analysis

Participants	Mon AM Physical Recovery from Injury	Mon PM Rehabilitation, Return to Work, and Behavioural Health	Tues AM Claims Administration and Dispute Resolution	Tues PM Prevention of Harm	Wed AM Summation, Feedbck and Planning	
Doctor / Physician	1	1	1	0	0	
Employer	6	8	3	4	0	
Lawyer	0	0	3	1	0	
Professional/ Industry Association	0	1	1	1	1	
Rehabilitation Provider	3	7	2	3	5	
University Researcher	1	2	0	1	0	
Workers' Compensation / Motor Accident Authority	3	3	3	4	2	
	14	**22**	**13**	**14**	**8**	*71*

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