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Finance and
Administration Committee

SUBMISSION

To: Review Panel, WorkCover Compensation Scheme

From: The Society of St Vincent de Paul Qld (SVDP)

Date: 31 July 2012

Subject: Issues of Concern to SVDP and Recommendations to
The Review Panel

1. Preamble:

SVDP is a large Australian-wide charity which operates in Queensland as an incorporated body through Letters-Patent issued by Queen Victoria in the latter part of the 19th century. Its work finds its foundations in Catholic moral teaching and as such supports the rights of workers to operate in a work place that is safe, just and fair.

SVDP therefore supports legislation that guarantees financial support for sick and injured workers and acknowledges its commitment to such legislation. Equally SVDP contends that any legislation to ensure the rights of such workers must not be used dishonestly or capriciously by those same workers. The rights of employers must form part of any legitimate agreement between them and their employees, thus maintaining a balance between duty and obligation, and appropriate care of the employees. No authentic justice is accomplished when the rights of one party to a social contract outweighs the rights of the other.

SVDP employs 364 workers throughout Queensland and assists over 144,000 people in need in Queensland.

2. Current Legislation Model:

The current legislation is identified as the Medical Model. SVDP has no objection to the basis of this model but has concerns with the manner in

which the model is applied, particularly so in relationship to psychological injury and psychoses.

3. Issues of Concern and Recommendations:

(a) Work Capacity in opposition to Incapacity.

Emphasis currently within the legislation appears to be on the incapacity of an injured worker to return to work rather than on a serious approach for that worker to use his/her capacity to do so. The routines attached to a return to work can assist positively in the worker regaining confidence that he/she can make a vital contribution to the workplace and the wider community. SVDP argues that the current workings of the legislation restrict the injured employee not only to exercise his/her capacities in the workplace but create disillusionment and disappointment in other aspects of the worker's life, e.g. the lack of routine in daily activities, and has the capacity to implant feelings of depression which has further impacts upon work and social activities. Whilst the emphasis on incapacity remains the norm incentives for performance decrease.

The emphasis on the notion of incapacity places an injured worker at risk of developing a secondary and psychological injury associated with the primary injury.

Recommendation: That any change to the current legislation places strong emphasis on capacity to work as opposed to incapacity to work

(b) Inadequacies within the current system.

SVDP supports an emphasis to retain protection within the legislation for legitimate WorkCover claims and urges strengthening the same by insisting on the reasonableness of all claims and more thorough investigations of them. In this regard, SVDP notes that investigations are in the main 'paper-based' and physical contact with the injured party is consigned to the treating medical specialist. This can lead to confusion and is not in the best interest of the injured party.

SVDP in supporting the medical model for the operation of WorkCover notices in modern medical practice the emphasis lies with getting a patient up and about in a robust manner when the patient has undergone surgery. Such action takes place within a short period of time, say one or two days, after the completion of surgery. Patients are encouraged to leave their beds, undertake exercise and begin and sustain the recovery to normal daily routines. Such recovery actions are not apparent in current

WorkCover practice for injured workers who have sustained a physical and/or psychological injury.

SVDP therefore argues such practices being undertaken currently with people who have undergone surgery should be translated into the practices of WorkCover, with a particular prominence being placed on ensuring an injured employee returns to the workplace within a reasonable timeframe to undertake appropriate activities therein and maintaining such practice on a daily basis. Such actions will enhance good Human Relations practice in terms of both physical and/or psychological injury and meld the rehabilitation of a worker in his/her recovery and the working environment.

Case Study: A WorkCover case worker situated in a central location and who is the claims' officer for SVDP is limited by the geographical location from meeting with injured employees and visiting their normal work locations is bound to paper-only assessments. As a result generally because of the case worker's geographical restrictions her assessments are more likely to come down in favour of the employee. A current educational video on the WorkCover website shows a case worker visiting the injured employee in the workplace and actively managing the claim made by the employee. In reality this generally is not the case; rather it is a utopian viewpoint which if practised would enhance appropriate and adequate case management.

Recommendation: That WorkCover reviews its practices to ensure both employees and employers through industry-specific over-site can be ensured of fair and reasonable outcomes.

SVDP notes also the current legislation specifies injury as "a injury" and this can lead to further (e.g. psychological injury) claims. Hence, a return to the specific use of the definite article, that is "the injury" would ensure a more reasonable approach to individual situations.

Recommendation: That the WorkCover legislation revert to the use of the definite article when referring to injury; to read "the injury" as opposed to "a injury".

(c) Reasonableness of claims is another area of concern for SVDP.

SVDP argues that work must be seen as the significant factor as contributing to the injury. This will ensure reasonableness in any claim because it will place the emphasis on the true cause of the injury and disallow further and somewhat unrelated claims.

No-fault claims have become a serious issue for employers. The Harmonisation Legislation of the *Workplace Health and Safety Act 2011* places more responsibility on the employee and his/her responsibilities within the workplace whilst WorkCover continues to ignore such responsibility. WorkCover practices must ensure consistency, fairness and just outcomes for both the employee and the employer. As matters stand now the balance is rather lopsided in favour of the employee.

External factors need to be considered when deciding/ reviewing an employee's claim as both physical and physiological injuries can be impacted on external hobbies/activities or events that happen outside of work.

SVDP contends further that an employee should be interviewed by appropriate medical assessors in regards to incidents including psychological incidents to ensure the views of both the employee and employer are heard and assessed before an outcome is decided.

Recommendation: That any changes to the current legislation will seek to ensure adequate and appropriate responsibilities are placed on an employee whilst in the workplace or other locations recognised as being associated with the workplace, so as to ensure a proper balance in terms of responsibility for injury.

(d) SVDP has issues with the disincentives for return to work under the current legislation.

SVDP is concerned that as matters now rest there is no encouragement, in fact disincentives, for injured employees to participate actively in the rehabilitation process. SVDP seeks to actively rehabilitate its injured workers in the event of a legitimate injury and believes that an onus should be placed on both WorkCover and the injured employee to participate in that process.

Case Studies.

1. One employee, terminated for inappropriate behaviour in February 2012, was under Workcover for a finger fractured on 7 July 2011. This has meant Workcover has been paying the employee as a full time employee for almost 12 months during which time the employee has been engaged in suitable but restricted duties. However, full-time WorkCover continues to pay the worker which can be interpreted as a reward for inappropriate behaviour and a disincentive to find other employment.

2. Another employee, terminated in March 2012 for performance reasons, has not worked at the Society for nearly 12 months yet the WorkCover claim is open still and paying the employee at a full time rate whilst the person concerned has participated in host employment for only a limited time during this period.

Recommendation: That any review of the WorkCover legislation places appropriate controls for performance by an injured employee in the work rehabilitation process and that WorkCover Qld be required to manage that process with diligence.

(e) Time frames for the processing of applications

This is another issue of concern for SVDP. This is coupled with the present practice of the backdating of claims.

Whilst SVDP supports the medical model as the appropriate model for work compensation matters, there is a need to ensure the model is consistent with best Human Relations practice. SVDP is concerned that the model is divorced from best HR practice by:

- The length of time it takes to both initiate a claim and close it.
- The lack of appropriate feed back from WorkCover to improve workplace practice to enhance better Human Relations performance.
- The backdating of claims for seeming WorkCover convenience.
- Access to precedent case so that an organisation knows how legislation is interpreted and can put in place correct policies and procedures to protect the employee and employer
- When a claim is accepted and/or decline advise what the organisation did wrong and where improvements can be made in the future to ensure the employer is providing a health and safety work environment for all parties
- As workcover is the insurer, they should provide resources/training sessions to employer's on where to improve in the business eg. case management, risks in the industry etc.
- IMEs are not an independent process as only the employee's point of view is considered, employers are not consulted through the process.

Case Study:

(cf Case Study 2, p.4) The Workcover case in regards to this employee was instituted over three months after the incident for a ankle injury and over eight months for a psychological injury and only when performance counselling was being undertaken.

(f) Another and major issue of concern for SVDP are psychological injuries.

Case Studies:

1 An employee whilst filing documents in a Manager's Private Employee files read a confidential document in another employee's personnel file. The document that the employee read by acting inappropriately by accessing information in another employee's confidential personnel file was a perception by a co-worker, not the views held by the line manager and/or the SVDP. Whilst the comments made in the document certainly distressed the employee, had the employee not read the document, she would not have any knowledge of the comments made, nor would she be distressed by them. SVDP opines the employee must take some personal responsibility for her inappropriate actions and her response to the content in the document as a senior manager.

The employee notified her line manager of the document and requested that the employee whose private and confidential personnel file was read be notified.

The Manager conducted mediation between the two employees, at the employee's request in which both parties raised their voice during the discussion and during this meeting the employee removed herself from the meeting and firmly stated that she had enough and left the premises.

Workcover Claim

The WorkCover claim was made several months after the incident and was accepted and the employee has been unable to work since due to medical advice Initially the worker applied for annual and long service leave both of which were approved. It was after this leave of approximately 4 months was exhausted that the worker made a claim under WorkCover provisions. An IME (Independent Medical Examination) was conducted in May 2012 which was an in-factual bias report on the situation and stated the employee could not work in the geographical region however would be fit to work in another location.

The employee since November 2011 has expressed she wanted a transfer to the Brisbane/Sunshine Coast area as her husband was made redundant and they were desirous of moving closer to family. Please note: The fact her husband was made redundant and put financial strain and stress on the employee was not a factor when receiving her WorkCover application.

SVDP has stated it has no capacity to transfer the employee's employment and the position is based in the current geographical location where it needs to be performed to complete required objectives.

In July 2012, the employee moved to the Sunshine Coast wherein WorkCover continue to pay her and are organising suitable duties through a host employment. SVDP notes that now the injured worker has moved to her desired and expressed geographical location by which move her treating doctor has testified would overcome her psychological injury, the case should be finalised.

The IME conducted in May 2012 states the employee is able to work in any other region outside of the then geographical location. Hence it is the view of SVDP that the case should be close.

2. An employee in a senior management position after a number of warnings on performance issues was terminated. After termination that employee developed secondary psychological injuries related to costal phobic psychoses. The employee continues to be paid by WorkCover.

Recommendation: That due and urgent consideration be given to WorkCover claims for psychological injuries in terms of:

- Pro-active case management*
- Post Traumatic Stress Disorder*
- The day-to-day activities of the injured worker*
- Secondary injuries e.g. depression*
- Lack of control in case management*

(g) A need for preventative resources in terms of claims' analysis and the management of premiums.

The following information illustrates SVDP's concerns of costs associated with WorkCover premiums and claims' costs to WorkCover, viz

- SVDP premiums total for the period 2007/08 to 2011/2 \$1,780,132
- WorkCover payments = \$1,070,990.68 for the same period

Recommendation: That WorkCover provides appropriate feedback to employers to assist in their management of WorkCover issues with a view to a decrease in WorkCover costs in terms of both premiums and payouts and especially in ways which aim to prevent injury.

(h) Medical treatment is an area SVDP believes should warrant attention. It contends there is a need for independent medical assessments, the need to address the increasingly slow response of WorkCover Qld in managing claims and the need for it to be proactive in closing of claims. Further it sees the need for WorkCover to address the drawn out process being practised and exercised currently, and the expense being incurred by employers until claims are closed.

Recommendation: That the WorkCover review considers the following matters as related to present practises:

- *The current WorkCover list of treating doctors should be widened as the present WorkCover approved list is restrictive*
- *WorkCover should undertake face-to-face meetings with doctors*
- *WorkCover should ensure the quickening of outcomes from the time of the initial notification to doctors to make a decision and create an effective plan against which claims are monitored*
- *Emotional resilience as a one-off event which should not hamper process*
- *Education of medical personnel.*

(i) QComp and administrative appeals are another and considerable issue for SVDP.

Areas of concern to SVDP are:

- Paper-based reviews
- Decisions being made when the paper-review is compared against legislation
- Time frames for reviews
- Backdating of claims

- Independent investigations.

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