
ACTIVE REHABILITATION MANAGEMENT: A CORE BUSINESS STRATEGY.

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ABSTRACT

Statutory obligations for workplace rehabilitation were introduced to Queensland's workers' compensation system in February 1997 as part of a raft of reforms aimed at reduced costs and enhanced outcomes for employers and workers. The WorkCover Queensland Act 1996 obliges all employers to assist or provide rehabilitation to injured workers. Larger employers must also appoint a trained rehabilitation coordinator and implement a workplace rehabilitation policy and procedures approved by WorkCover. Through their rehabilitation coordinator and workplace rehabilitation system, these employers initiate, manage, and evaluate rehabilitation.

This paper proposes that employers who meet their statutory obligations by adopting an active management strategy will reap substantial rewards. The benefits of an active approach to managing work injuries include reduced workers' compensation premiums, reduced running costs and enhanced business outcomes (profits, image, service, etc). It can also reduce the leakage of resources through fraud and unnecessary litigation. Employers who fail to recognise the risks of adopting a passive approach may well face significant adverse impact at the bottom line.

An active workplace rehabilitation management strategy takes a long view, is closely aligned with core business objectives, and integrated with resource, safety and people management systems. Successful employers seek empowerment through an effective interface with their insurer and source expertise appropriate to their needs. The practical issues to be considered in adopting an active rehabilitation strategy are discussed, with a focus on implications for safety professionals and managers.

1 INTRODUCTION

“The scheme of this Bill is to provide that the employer shall insure his workmen with the State Insurance Commissioner, and that once he has paid such insurance he has nothing more to do with the matter, the worker's resort being against the Insurance Commissioner.”

T.J. Ryan, Premier, introducing the Workers' Compensation Act 1916

The principle that employers should insure their injured workers in case of injury has been around for a long time. Throughout most of the past century, if a worker got hurt, the employer would have '*nothing more to do with the matter*' but leave it to be dealt with by their insurer. The impetus for increasing the employer's role in managing injury costs came with the rapid increase in workers' compensation costs in the first half of the 1990s, leading to a major review of the system in 1996.

“REHABILITATION - AND EARLY RETURN TO WORK. This was the most universally canvassed of all the issues and indicated an across the board concern about ensuring injured workers received appropriate and swift rehabilitation options, in order to achieve as early a return to work as possible.”

Report of the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland (Kennedy, 1996, p19)

At the time of Kennedy's Commission of Inquiry, Queensland's workers' compensation legislation had no provision for workplace rehabilitation. While the state's sole insurer encouraged workplace rehabilitation it was the primary provider of occupational rehabilitation services. Lengthy claim decision processes and high caseloads contributed to delays in rehabilitation and ad hoc service provision.

Today in Queensland we have workers' compensation legislation that incorporates workplace rehabilitation as a core element of the scheme design, with provisions that support early and active involvement of workers, employers and their insurer. One of the main reasons that rehabilitation was given prominence in the scheme design is that it was seen to have high potential to reduce overall employer, worker and system costs, a potential that is yet to be fully achieved.

Rehabilitation obligations are seen by many employers as another burden imposed by government, by insurance financiers as a cost to be curtailed and by some workers as another way for employers to deprive them of their rightful entitlements. Poorly implemented, workplace rehabilitation can be all these things. Effectively implemented, workplace rehabilitation's value will far exceed its cost, providing benefits both now and into the future for workers, employers and the broader community.

2 CONTEXT

“Historically, workers' compensation has concentrated on compensating those suffering work-related injury or illness - rather than on prevention or rehabilitation. Increasing recognition that long-term claims account for a major proportion of overall costs has underscored the importance of rehabilitating injured/ill workers and getting them back to work.”

Industry Commission (1994) p127

2.1 The past

In the past, when a worker suffered a significant injury, their workplace and employer often provided very little assistance (or even contact) until the worker was fully recovered. Sometimes the only contact from the workplace was notice of termination. Workers feeling poorly treated or neglected by their employer after a significant injury were also more likely to sue for damages at common law, the primary driver of compensation cost escalation in the early 1990s (Kennedy, 1996).

Prior to 1997, employers lacked incentive to take an active role in injury management due to an unresponsive premium system. Many employers saw workers' compensation as another form of government taxation rather than an insurance product. This perception enhanced by the fact that

the scheme operated as a government monopoly, led some employers to adopt 'tax minimisation strategies' to control their workers' compensation costs. Legislative changes have rendered most of these past practices ineffective.

2.2 The WorkCover Queensland Act 1996

The current rehabilitation provisions of the Queensland workers' compensation scheme were introduced in the WorkCover Queensland Act 1996 (the Act) along with a package of other reforms resulting from Kennedy's review. The Act details the rehabilitation obligations of workers and employers, along with WorkCover Queensland's responsibilities.

The Act, together with the WorkCover Queensland Regulation 1997 (the Regulation) provides a framework for an active rehabilitation management strategy in which rehabilitation is initiated and managed at the workplace. An active rehabilitation management strategy, effectively implemented, reduces costs by restoring a worker's capacity to work and earn a living. Hip pocket reinforcers in the legislation reward active employer and worker involvement.

Although the current Government identified a number of concerns about the fairness of the Act in a review last year (DETIR, 1999) it has retained the essential features of the 1996 Act.

2.3 Compensation Cost Drivers

Once an injury occurs, **duration of incapacity to work** is the primary driver of costs for both statutory and common law claims. While common law claims were only 2% of the total number of new claims lodged with WorkCover Queensland in 1998/99, they accounted for 57% of all claims costs paid by WorkCover (WorkCover Queensland, 1999). The average settlement amount of claims settled in that year was \$79,775 (average statutory claim costs were \$3,264). The adversarial nature of the common law system serves to focus participants on grievances, rewards incapacity, and detracts from efforts to solve problems.

In Queensland if a worker is assessed as having a permanent disability, the insurer can terminate the claim by offering a lump sum. The amount of the lump sum bears no relation to the economic impact of the injury on the worker. This practice, while keeping statutory costs low, increases the risks that an injured worker will sue at common law for damages. In common law claims future economic loss (largely the ability to work and earn a living) is a key determinant of settlement amounts. Workers are more likely to sue for damages at common law if they end up poor (without a job and/or ability to earn a living) and/or angry (feel they have been badly treated by their employer).

Employer insurance premiums are now based on a complex formula incorporating statutory and common law claims experience over a five year period. Employers can reduce their premiums by reducing the frequency and average cost of claims. Prevention strategies reduce claim frequency while workplace rehabilitation strategies target claim cost.

2.4 Indirect costs

For many employers the indirect costs of workplace injury (eg turnover, replacement of injured staff, lost experience, impact of litigation on business operations, public image, business interruption, reduced productivity, poor morale and workplace relations) are substantially higher than direct workers' compensation costs. Ratios of indirect to direct costs of workplace injury and disease have been estimated to vary from 1:1 (ie. the indirect costs equal direct costs) to more than 7:1 (ie. indirect costs are seven times the direct costs) (Worksafe, 1994).

3 WORKPLACE REHABILITATION FRAMEWORK

"245(1) The employer of a worker who has sustained an injury must take all reasonable steps to assist or provide the worker with rehabilitation for the period for which the worker is entitled to compensation.

(2) The rehabilitation must be of a suitable standard as prescribed under a regulation."

WorkCover Queensland Act 1996

3.1 Responsibilities

The Act provides specific responsibilities for the key parties to the rehabilitation process (see Table 1 below).

WorkCover Queensland	Employers	Workers
<p>Secure the rehabilitation and early return to suitable duties of workers entitled to compensation by:</p> <ul style="list-style-type: none"> • providing or approving workplace rehabilitation training courses for employers • ensuring workplace rehabilitation programs are provided for workers • paying for rehabilitation. <p>(refer s238-240 of the Act)</p>	<p>Provide or assist injured workers with rehabilitation of a suitable <i>standard</i> (while entitled to compensation).</p> <p>With 30 or more workers at a workplace:</p> <ul style="list-style-type: none"> • appoint a trained rehabilitation coordinator • have a written workplace rehabilitation policy and procedures accredited by WorkCover. <p>(refer s243-245)</p>	<p>Participate in rehabilitation and mitigate loss</p> <p>(refer s247-249)</p>
<p>"Rehabilitation" is defined as including suitable duties, services or provision of aids and equipment (see s44).</p> <p>"Workplace rehabilitation" is defined as the system of rehabilitation accredited by WorkCover that is initiated or managed by an employer (see s47).</p>		

Table 1: Summary of statutory responsibilities and obligations for rehabilitation

The Standard for rehabilitation for employers is detailed in the Regulation, outlining how injured workers are to be assisted or provided with rehabilitation. Table 2 summarises key provisions of the standard.

Standard for Rehabilitation	
<p>All workers requiring rehabilitation must:</p> <ul style="list-style-type: none"> • be contacted as soon as practicable • have a written rehabilitation plan • be treated with respect and equity • have a file that includes all documentation (including accurate and objective case notes). <p>Rehabilitation must:</p> <ul style="list-style-type: none"> • be goal directed with timely and accurate service provision • focus on return to work • focus on independence if return to work is precluded. <p>Suitable duties must be meaningful.</p> <p>Information must be treated with confidentiality.</p>	<p>The rehabilitation plan should contain:</p> <ul style="list-style-type: none"> • objectives and steps to achieve the objectives • details of rehabilitation required to meet the objectives • projected costs and time frames • review mechanisms and dates • progress to date. <p>The treating doctor's approval of all rehabilitation plans and amendments be obtained and documented.</p> <p>The rehabilitation coordinator must:</p> <ul style="list-style-type: none"> • ensure that rehabilitation is coordinated with and understood by line managers, supervisors and co-workers • evaluate the effectiveness of rehabilitation strategies.

Table 2: Summary of the Standard for Rehabilitation (see sections 64 - 73 of the Regulation)

3.2 Non-compliance risks

Employers who don't get actively involved in rehabilitation are likely to be breaching their legal responsibilities, particularly if they have more than 30 workers at a workplace. There are substantial penalties under the Act for failure to comply. While the risks of such penalties being applied are low, a more serious non-compliance risk for most employers lies with future litigation. As well as encouraging workers to pursue legal redress, failing to meet minimum legal requirements makes a plaintiff lawyer's job easy, and can add substantially to economic loss components of a damages claim.

3.3 An active approach

Being active in injury management means that the employer gets directly involved in managing the return to work process from the time of injury and takes responsibility for outcomes. The rehabilitation provisions of the legislation requires an employer to do more than simply offer suitable duties when prompted by a medical certificate or the insurer. Success with workers at risk of long-term incapacity requires a more thorough and proactive approach.

An active workplace rehabilitation system provides timely and responsive rehabilitation that cannot be matched by reliance on external systems. An insurer can't act until a claim is lodged and accepted - statutory time frames for applying for and determining compensation mean that

employer can act as soon as an injury is reported. Where the insurer ceases rehabilitation on termination of a statutory claim, an employer can continue to provide rehabilitation and assist the worker, reducing risks of future litigation.

Treating practitioners treat the damage to an injured worker's leg, arm, back, etc. They can rarely 'treat' its functional impact at work, impact on workplace relationships, the worker's problems in getting to and from work. Treating practitioners may not have an accurate understanding of the demands of the worker's job, of suitable duties or of the environment in which the work is performed. An employer taking an active role will address these issues. By acting early and seeing things through, by working cooperatively with the treating professionals and by ensuring clear communication and an effective interface with the insurer, the employer can achieve a synergy between treatment, occupational rehabilitation and compensation processes.

4 MANAGING WORKPLACE INJURY RISKS

4.1 Controlling risks

The best way to control the risks associated with workplace injury is to prevent injuries from occurring at all. Smart employers ensure that appropriate levels of resources and systems are devoted to identifying and controlling risks associated with incidence and frequency. Many employers in Queensland are doing this well. However, unless you can guarantee 100% success at preventing injury your efforts at prevention represent only half the equation of effective risk management.

Smart employers also ensure that sufficient resources and systems are devoted to controlling the risks by also assessing and managing the consequences of workplace injury. Employer outcomes have included:

- In the USA, Marriott hotels reduced workers' compensation cases by 30-50%, saved \$4 for every \$1 spent, and reduced litigated cases by 50% (Shrey, 1996).
- A regional meatworks in Queensland achieved a 68% reduction in average injury cost over a three year period, reducing premiums by 82%. A Queensland food manufacturer was successful in reducing statutory claims costs by 85% over a three year period. (Murphy, 1998)
- In 95/96 Queensland employers using workplace rehabilitation reduced average claim costs by 17%, and average claim duration by 5 days (WCB(Q) 1996).
- In Michigan, USA, a study found that the 6.2% employers with poor workplace rehabilitation systems accounted for 56.5% of all workers' compensation claims (Habeck, 1992).

4.2 Taking action?

During the past three and a half years many Queensland employers with more than 30 workers at a workplace have taken action to ensure that they meet their obligations under the Act. They

have appointed one or more rehabilitation coordinators, ensured that each rehabilitation coordinator is trained in a WorkCover approved three-day course, have developed a workplace rehabilitation policy and procedures and had it accredited by WorkCover.

These employers will be rewarded for the investment of resources in their workplace rehabilitation system. However, many have adopted a minimalist approach, introducing workplace rehabilitation solely because 'it's the law' rather than as a component of a risk management strategy. That can lead to pretty frustrating experiences for injured workers, rehabilitation coordinators, supervisors and managers. A workplace rehabilitation system that hasn't been designed to 'fit' the workplace may do more harm than good. A workplace rehabilitation system that doesn't fit with the workplace can lead to real problems (remember those plaintiff lawyers?).

Evidence suggests that we could do better with workplace rehabilitation in Queensland. A national return to work survey in 1998/99 interviewed workers at eight to nine months post injury (Workplace Relations Ministers' Council, 2000). All workers interviewed had had more than 10 days compensation paid. The survey indicated that almost 30% of injured workers in Queensland had not made a durable return to work at the time of interview and more than one fifth of these had had their employment terminated. The survey also found that, of all Australian jurisdictions, Queensland had the lowest proportion of injured workers who had a return to work plan (about 32%). In a state with strong statutory rehabilitation provisions, such figures are of concern.

In the private sector, failure to control risks through workplace rehabilitation can have a major impact on the bottom line and competitive capability. In the public sector, such a failure will have the effect of reducing the resources available to educate our children, police our communities, maintain our health etc. In very real terms, an active approach to managing workplace rehabilitation is a core business strategy.

4.3 Why Workplace Rehabilitation?

"Effective injury management is widely accepted as the best method of containing workers' compensation premiums."

WorkCover NSW, 2000

An effective workplace rehabilitation system ensures the early identification and assessment of injured workers at risk of long-term incapacity, and development of a plan that enables the quick, safe return to suitable employment (Hawkins & Murphy, 1999). Safe and early return to work assures the maintenance of work skills, knowledge, and workplace relationships. It enables the worker to regain work fitness, both physically and psychologically. An effective plan enables a timely return to full capabilities or early identification of options for redeployment or outplacement when return to work in the pre-injury job is not possible.

Cost outcomes for workers and their employers resulting from any given injury are not fixed. The outcome over the long term is affected by many factors including the obvious such as nature and severity of injury, timeliness of first aid and medical treatment. Less obvious factors include functional impact at work and at home, availability of suitable duties, pre- and post-injury workplace relationships, pre- and post-injury social supports and a range of psychological issues

(see Kenny, 1995). Perhaps the most important factor to the achievement of successful return to work outcomes is early intervention in terms of the return to work process (Industry Commission, 1994; Worksafe, 1995; ACOM & ACRM, 1987; Strautins & Hall, 1989; Shrey, 1996; Lewis et al, 1996).

Workplace rehabilitation, effectively implemented, also reduces fraud by limiting opportunities for secondary gain and alienation and by maintaining close communication with the injured worker. It also reduces the potential for common law litigation by addressing the causes of resentment and anger that often fuels such litigation.

5 ACTIVE WORKPLACE REHABILITATION

“Disability management policies, procedures and strategies, when properly integrated within the employer's organisation, provide the infrastructure which enables employers to effectively manage disability and compete in a global environment.”

Shrey, 1996

5.1 Active workplace rehabilitation

Active workplace rehabilitation involves a systematic approach to workplace injury management that is embedded in the workplace culture, closely aligned with core business objectives, and integrated with resource, safety and people management systems. Such a system will be built on an infrastructure of a cogent workplace rehabilitation policy and procedures that are truly integrated with other management systems of the business and adopted for practical application by its workforce.

Resources are directed at enabling injured workers to continue to be able to earn a living rather than on adversarial medico-legal processes that serve to crystallise incapacity and invalidity. An effective system identifies and addresses systemic barriers to early return to work. To control risks, employers differentiate between different levels of risk, and put together plans that work to minimise the likelihood of a high cost outcome for themselves and their workers. Smart employers allocate resources proportionate to the level of risk, ensuring that high-risk cases are assigned to a rehabilitation case manager with the requisite level of expertise and access to necessary resources. In large employers this may mean recruiting and retaining these skills on staff. Smaller employers may opt to buy in such expertise as the need arises. This expertise needs to be responsive to the needs of both the worker and employer.

Active rehabilitation means internalising treatment resources where possible (eg select a preferred medical provider and a preferred rehabilitation provider). Active employers ensure an effective interface with their insurer by communicating their needs and clarifying roles and responsibilities. An active system takes a long view - workplace injury costs take time to manifest, sometimes many years. Performance indicators and management information systems enable performance monitoring in the short term, predict long-term outcomes, and support appropriate behaviour by managers and workers at the workplace.

5.2 Barriers to implementation

There are a number of barriers that can get in the way of employers and safety professionals seeking to implement a more active workplace rehabilitation system:

- **Inertia:** It is hard to effect change within any medium to large organisation without a well put together change management plan. Before this occurs, you need to convince key decision-makers that change is necessary. The impetus for implementing best practice rehabilitation systems often comes after a rude shock in the form of a workers' compensation premium notice. These cost increases are predictable but time, skill and resources are required to make them so.
- **Financial & Management Systems:** Where these systems weaken the links between cause and effect relative to workplace injury it becomes hard to make an effective business case for workplace rehabilitation. If senior executives, accountants and business unit managers can't see the connection between active rehabilitation and achieving core targets they won't support it.
- **Injury = Failure:** No organisation likes to focus on the fact that it may (does) injure its workers. Some workplace cultures value safety so strongly that to put resources into rehabilitation is perceived as an admission of failure. This is counterproductive to effective management of accident consequences.
- **Expertise:** In a system where 2% of cases account for almost 60% of costs, employers need a system that ensures expertise is applied at the right time to make a difference. Such cases need expert *rehabilitation* case management. Sourcing and internalising such expertise is a must for employers serious about their efforts. Like any tool, rehabilitation is best applied with an appropriate level of skill.
- **Long Time Frames:** In a world where performance is measured in ever decreasing timeframes its sometimes hard to get attention paid to issues that may have their greatest adverse impact in five years time. Accounting systems that acknowledge the claims history as a true asset/liability of the organisation start to address this problem.
- **Does It Really Help Workers?:** An active workplace rehabilitation system will not work as a risk control strategy if it does not really help injured workers. If workers can't see the benefits the system will not become part of the workplace culture. The most effective systems provide rehabilitation regardless of the cause of injury / illness.

6 CONCLUSION

In the past low insurance costs and a narrow legislative framework made it easy for employers to avoid dealing with the consequences of injury in the workplace. This is no longer possible - employers who abrogate their legal obligation to provide rehabilitation to their injured workers face serious consequences in legal and financial terms. What an employer does after an injury occurs has *everything* to do with the matter. Employers seeking to control the risks of workplace injury must implement effective prevention and rehabilitation strategies. The rehabilitation

provisions of the Queensland legislation are probably the most supportive of all Australian jurisdictions in providing an effective framework for employers to target workplace injury risks.

The bottom line tends to drive business decisions thus this paper has focused on risk management and cost saving. The cost benefits are definitely there. But the most important reason that workplace rehabilitation should be actively implemented in Queensland workplaces is that it will make a huge difference to injured workers' lives. By acting early and helping our injured workers maintain employability we prevent people becoming invalids and ending up on the scrap heap. Workers' compensation is not a zero sum game - workplace rehabilitation is a way to short circuit the win/lose focus inherent in litigation and some industrial relations practices of the past.

If employers focus their energy and resources on preventing injuries from turning into permanent incapacity and invalidity we save not just a huge financial burden on our organisations and workforce, but will have a dramatic impact on the human cost of workplace injury. Far better surely, to focus our resources on solving problems up front rather than spending a small fortune arguing cause and quantum once the damage is beyond repair.

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