
Attachment 7:



Connecting
our community

THE 7.30 REPORT

Australia Post's return to work strategy under scrutiny

Australian Broadcasting Corporation

Broadcast: 29/09/2009

Reporter: Thea Dikeos

Australia Post's rehabilitation program for injured workers got the thumbs up last week at a Government awards ceremony, a win the company is putting down to safety policies and an early return-to-work program. But the union covering Australia Post workers says management is returning workers to the job too early, putting them at risk of further injury.

Transcript

KERRY O'BRIEN, PRESENTER: Australia Post won an award last week for creating a nationally consistent approach to rehabilitation management of injured workers. The Government business boasts an impressive 10-year low in work time lost from injuries, and a big reduction in workers' compensation costs. Australia Post credits this to its safety policies and an early return-to-work program that sees injured employees return to safe and suitable duties, they say. But the union covering Australia Post workers says far from being good management, workers are being put at risk of injury by being pressured to return to work too early. Thea Dikeos reports.

THEA DIKEOS, REPORTER: Australia Post is one of the country's biggest employers, with almost 35,000 workers. Since 1998, its workers compensation costs have more than halved. For a government business that runs its own workers compensation scheme, it's a significant saving.

CATHERINE WALSH, AUSTRALIA POST: We've had a 64 per cent reduction in workers' comp.' costs over the last 10 years. Something we're very proud of, obviously, and most companies would be seeking to reduce the number of lost time injury rates.

THEA DIKEOS: But the union says the bottom line is improving at the expense of workers' health.

ED HUSIC, CEPU PRESIDENT: We are seriously concerned and alarmed that people are being prematurely put back to work, they're not fit to and they're not only risking their short term health, but their long term well-being.

'SAM', AUSTRALIA POST WORKER: They don't really care, they just want to get you back to work as soon as they can.

THEA DIKEOS: Sam, not his real name, says he was pressured by his manager to return to work following an accident at work. He broke his collarbone in a fall from a work motorcycle and was rushed to hospital. As he lay in bed, he says he overheard his manager arguing with the doctor.

'SAM': They just said that I was - I was a wuss, and that I'd be back at work the next working day. He did explain that to the manager that it was broken, and the manager still argued with the doctor. The doctor said,

"Well, he's not faking it. He can't fake an X-ray. It's broken."

CATHERINE WALSH: With the 35,000 employees across 1,700 workplaces, injuries unfortunately do occur. We seek to deal with them as quickly as possible. If managers are overzealous, I don't want that to be occurring. I would like it to be brought to my attention for us to deal with.

THEA DIKEOS: The Communication, Electricity and Plumbing Union says Australia Post managers have a good reason to be zealous. Keeping shifts lost to work injury, also known as LTIs, down is part of their bonus system. LTIs are now at a 10-year low.

ED HUSIC: We're saying that the system is set up on the basis of a profit motive to get people back to work.

CATHERINE WALSH: Certainly when we're looking at the bonuses, as I said, (inaudible) will be one component. But how safety's managed across the workplace, including prevention of injury in the first place, so making sure accidents don't happen, making sure maintenance is properly carried out - all of those things will be a factor in saying, "This manager is managing safety well."

THEA DIKEOS: So LTIs are part of the bonuses system.

CATHERINE WALSH: Sure.

THEA DIKEOS: Lawyer Rachel James has represented injured Australia Post workers. She says she's encountered injured employees who've been brought back in with no meaningful work.

RACHEL JAMES, LAWYER: I've had a number of situations whereby clients have said that they arrive at work and they go and sit in a room which doesn't have a window, and that they're required to just sit there all day because they're not gonna allow them to go home and they're what's called "suitable duties".

THEA DIKEOS: In Sam's case, he returned to work on light duties, but subsequently, he was accidentally knocked and his collarbone was re-broken in the same spot.

'SAM': I went to see the manager about it and said that I think I've been injured again. I was told that I was a whinger and to get out of the effing office. I went back and continued throwing off the mail. So I was - so I finished my hours and I was (inaudible) to get home and got an appointment to see my own doctor.

THEA DIKEOS: Sam needed surgery to insert a metal plate into his collarbone.

CATHERINE WALSH: It is simply not in our interests to have workers being either injured or indeed reinjured on returning to work. So, that is not something I would see as usual.

THEA DIKEOS: Last week, Australia Post won an award by the Safety, Rehabilitation and Compensation Commission for creating a nationally-consistent approach to rehabilitation management.

As part of that scheme, Australia Post pays a team of GPs, contracted to a company called InjuryNET, to treat and assess injured workers at no cost to the worker. They're known as facility nominated doctors, or FNDs.

CATHERINE WALSH: People have quick and ready access to a doctor who is trained and skilled in understanding our workplace, to say, "Yes, you've suffered an injury, but we know that you may not be able to ride the motorcycle for a couple of weeks, but you might be able to sit and sort mail in the interim."

THEA DIKEOS: Dr David Milecki runs InjuryNET, a national network of 360 GPs. Since 1998, he's been a consultant to Australia Post about its early return-to-work program.

What is it about the InjuryNET, doctor, that makes them better able to deal with injured workers than your normal family doctor?

DAVID MILECKI, INJURYNET: Well normal family doctors can be very good at it, and really these - we're talking about the doctors operating in our program, they're GPs, they're just GPs, so ... I shouldn't say just GPs, they're GPs. And - but they've got an interest. They're willing to look at all aspects of the case and actually participate as part of the team in assisting in a return to work.

ED HUSIC: The statistics show, based on evidence prepared and presented to a Senate Estimates committee, that about nine out of every 10 cases of people who go to see an FND, Australia Post workers who've seen FND go back to work.

THEA DIKEOS: Being part of a group that is contracted to Australia Post; do you think sets up a perception of a conflict of interest?

DAVID MILECKI: No, I don't think so, because I think that what we're trying to achieve is really a team approach, is to get everybody involved, to roll up their sleeves and say, "We're not just gonna accept unnecessary incapacity, just, you know, take it lying down. We're gonna get involved."

THEA DIKEOS: What has angered the union is how the well-intention early return-to-work policies are being implemented at Australia Post.

In one case recently settled by Australia Post, a worker who cut his hand at work went to his own doctor and was given three stitches and a certificate for five days off. The next day, his manager ordered a fitness-for-duty assessment with an FND, telling him that he would face disciplinary action if he chose not to attend and it may jeopardise the determination of his claim. The manager then faxed through suitable duties to the FND who recommended the worker go back full time to right-handed work only.

ED HUSIC: Australia Post's idea of alternative duties was to take them off the motorbike and put them on a walking beat where they would push a trolley for two hours with their right hand, not their left hand, and just use one arm to both move the trolley and deliver the mail. That is their idea of setting people up for alternate duties. It's a farce. But frankly, it's worse than that, it's a sick joke, because what they're doing is they're putting someone at risk of further injury.

THEA DIKEOS: The worker decided to take his own doctor's advice and stayed home. But when he put in his claim for compensation, it was denied and his day's off were recorded as sick leave because, "You were assessed ... as to your fitness for duty ... in this case I have preferred the opinion of Dr (bleeped out) as he is trained in the type of duties available for injured workers within your facility ..."

But according to Comcare, the external regulator that oversees Australia Post's compensation scheme, fitness for duty assessments must not be used in determining compensation claims. This case was settled by Australia Post last month in the worker's favour. The union says it calls into question whether claims managers are deliberately or unwittingly ignoring Comcare's regulations on how to manage fitness for duty.

CATHERINE WALSH: I don't see that there's an endemic or systematic problem with this program.

THEA DIKEOS: Recently, the union took some of its complaints to Comcare, which Australia Post says vindicated its program.

CATHERINE WALSH: And in fact has stated that the program is best practice. Now, I think that stands on its own, supporting the program that we are running and sets aside the constant allegations, unsupported allegations, that the union keep putting forward.

ED HUSIC: We believe that Comcare does need to pursue with greater rigour the claims that we've put forward.

THEA DIKEOS: Next year, Comcare will conduct a full audit of Australia Post. At last month's ALP National Conference, the Government agreed to an inquiry into Australia Post's treatment of injured workers. It's something workers like Sam welcome.

'SAM': The public needs to know what's goin' on with Australia Post.

KERRY O'BRIEN: That report from Thea Dikeos.

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Video

Australia Post's return to work policy strategy under scrutiny

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Images



Attachment 8:

B7

Manager
Compensation

CLAIM FOR COMPENSATION

Please see the attached statement from me regarding what has transpired in relation to this reported injury this week.

I do not dispute the incident – however – I believe that the claim should only be accepted for medical costs as there were ample light duties available for Mr [REDACTED] that would not hamper Mr [REDACTED]'s recovery or health. Mr [REDACTED] is right handed and it was his left hand only that sustained the injury. If Mr [REDACTED] had an issue with some of the discussed light duties we could easily have allocated other admin work etc to still cater for light duties as mentioned to him on Tuesday 19.8.08.

Other staff that have sustained injuries to arms and wrists in the past have delivered mail by walk buggy with one hand or performed indoor admin tasks and it has not adversely effected their recovery.

Mr [REDACTED] was aware that our FND thought he was more than capable of performing light duties but chose not to contribute to work. If we do not take the advice of our FND's why do we have them is my question? I don't believe it is unreasonable to ask people to attend work when we are paying them.

I would strongly recommend non acceptance of the claim for lost time and that sick leave be granted instead.

If you have any queries please feel free to call me on 63361145 or on 0409 072 913.

Thanks,


Carolyn Webb
Manager
Launceston Delivery Centre

21.8.08

B8

INCIDENT OF MONDAY 18 AUGUST, 2008

At about 10.45am on Monday 18 August 2008, I was advised that [REDACTED] had cut his left hand whilst trying to cut open a bundle of UMS articles in preparation for delivery.

There was quite a bit of blood so the wound could not be effectively cleaned at the LDC. Mark Badkin was in the vicinity and took a look at the laceration and suggested that [REDACTED] attend a Doctor for treatment. [REDACTED] asked if we wanted him to go to Frank (Brunacci – our FND) or his Doctor. Before Mark had an opportunity to reply [REDACTED] said that he would prefer to attend his own Doctor. Mark rang his Doctor's surgery to advise of [REDACTED]'s attendance.

[REDACTED] came back to the LDC late Monday morning after having local anaesthetic, 3 stitches and a tetanus shot to complete the P400. He also advised that his Doctor (Dr Andrew Rees) issued a certificate for total incapacity up to and including Friday 22 August, 2008. I immediately made an appointment for [REDACTED] with the FND (Frank Brunacci) for Tuesday 12.10pm (earliest time available) and advised [REDACTED] that I would be attending with him and that it was a "Fitness For Duty" assessment – not a treatment appointment.

I suggested that we meet at the LDC at 12 noon on Tuesday and travel to the FND together. [REDACTED] indicated that he was agreeable and certainly did not protest at this point.

I completed the letter to the FND after discussing it with Kirk Ashwood (a/g HRA) and faxed it to the FND in preparation for [REDACTED]'s appointment on Tuesday.

I came to work on Tuesday 19 August and was advised by Mark Badkin that [REDACTED] had indicated to him that he would not be attending the appointment based on advice by the CEPU. I rang [REDACTED] at home later in the morning to clarify his situation. He advised that he would not be attending the FND appointment as he was advised by Peter Miller from the CEPU not to attend.

I advised [REDACTED] that it was compulsory to attend after discussing it with Kirk Ashwood and that he would face disciplinary action if he chose to not attend and advised that it may jeopardise the determination of his claim. I emphasised that this was not a threat and that I genuinely did not know if it would effect his claim or not. I read out the following text from our Injury Management/Compensation/Rehabilitation Policy:

- *"A medical examination under the IM (EI) Program for fitness for duty purposes may be required where an employee may be unfit or incapable of discharging their duties or to clarify a treating Doctor's assessment of incapacity, where a possible work related illness or injury is involved.*
- *The assessment is pursuant to the Australia Post Determination No 6 of 2006 (Clause 10 Fitness for Duty), Australia Post may require an employee to attend a medical examination to assess the employee's fitness for duty."*

* I also mentioned that any decision to not attend would only have ramifications for him not for any sources that he was seeking advice from (ie no ramifications for the CEPU).

■ then agreed to attend the FND but did not want me in attendance. I agreed that I would not attend with him as our FND is fully trained in what light duties are available and I had already sent the fax outlining duties available for ■ with the type of injury he had sustained.

I rang the FND anyway before ■'s appointment just to reiterate that we have many light duties that could accommodate ■ at work with his injury.

* I also tried to contact ■ at home at 11am to remind him to take his medical certificate with him to the FND but there was no answer at home.

Later on we received a faxed certificate from the FND that stated "Right handed work only" as his restrictions but that ■ was capable of working full hours from 18.8.08 - 25.8.08. He also indicated that he had attempted to call ■'s treating Doctor but that he was not available and that he would attempt to talk to Dr Rees the next day.

I discussed light duties options with Mark Badkin and Dale Johnson (both Ops Support at LDC) and we decided he would most likely be able to sort mail at own pace using a mail holder and do a 2 hour delivery by walk buggy using his right hand only (as is current practice for staff with injured arms, shoulders etc). We agreed that tying down and motorcycle duties were not to be included in his duties due to the nature of the tasks. We could also offer some light admin work assisting his Team Leader or other staff to fill his day.

I spoke to Luci-Anne Ottaway and she advised that I was to contact ■ and advise him of the duties available and that his claim may be effected if he refused to come to work. She further explained that his claim may only be accepted for medical costs and I should explain that to ■ when I spoke to him.

* I attempted to ring ■ at home to advise of the duties we had discussed at 5.20pm but there was no answer. I called back at about 7.20pm and Ron answered the phone. I advised ■ that I had light duties available that would not impede his recovery and that would assist his team and explained what the duties were. ■ then advised that he had trouble with the allocation of work to him and that he would not be at work on Wednesday as he was going to follow the advice on the medical certificate issued by Dr Rees.

* ■ also asked how the FND could make a determination of fitness and light duties. I explained that our FNDs are fully trained in what work we do, the equipment we use or have available to us and that they have a complete and thorough understanding of what light duties are available in our work centres - allowing them to make better informed decisions about the allocation of light duties. I also explained that our FNDs determine light duties based on the premise that staff need to get better so the light duties allocated will not impede their health or recovery. He seemed to understand the logic behind the system.

I mentioned that his non-attendance could jeopardise his compensation claim and that his claim may only be accepted for medical costs and that the time may have to be deducted from his sick leave. If this was the case he would not get averaged overtime or shift penalty payments for the leave. He seemed to understand the situation.

He said that he would need a letter from me advising that I required him back at work and what the reasons were for that requirement. He also mentioned that he would most likely be contacting his own Dr again on Wednesday 20 August. I did not *enquire why and he didn't explain the purpose of this either. I assume it was to ensure the certificate would be "water tight" due to an incident earlier this year involving a Dr's certificate - (but that is speculation only).

I contacted Kirk Ashwood on Wednesday 20 August to advise what had transpired the previous evening and he advised that Mr [REDACTED] can follow his own Dr's certificate, he would not be subject to the discipline process and confirmed that Mr [REDACTED]'s claim could be effected by the possibility of the acceptance of medical costs only. He also advised that there is no further need at present to contact Mr [REDACTED]

Frank Brunacci (FND) called me on Wednesday 20 August as well to advise that he had contacted Dr Rees and had advised him that there were light duties for Mr [REDACTED] and explained a little about our duties, equipment and alternative duties available. Dr Rees indicated that he was agreeable to issue subsequent medical certificates with the inclusion of light duties for Mr [REDACTED] based on the injury he had sustained. He had verbally agreed that this would not impede Mr [REDACTED] recovery.


Carolyn Webb
Manager
Launceston Delivery Centre

20.8.08

Attachment 9:



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User Login

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PRACTITIONERS

What types of Practitioners are in the Network?

InjuryNET Practitioners are mainly **General Practitioners (GPs)** and **Physiotherapists**.

Since InjuryNET is focussed on providing the **earliest possible primary care** for injuries and illnesses, we work with GPs to ensure prompt access.

We recognise that GPs are generally the first medical practitioner seen by injured workers. We have been able to develop effective relationships with the Practitioners to ensure prompt access, communication between all parties and provision of relevant, detail-specific medical information.

How many Practitioners in the Network?

As at November 2009, InjuryNET includes 3726 affiliated Practitioners in 1352 **locations** throughout Australia.

State	Doctors	Physios	Locations
ACT	11	35	13
NSW	631	448	497
NT	10	14	14
QLD	471	358	284
SA	174	137	79

TAS	36	43	32
VIC	490	460	300
WA	243	165	133
TOTAL	2066	1660	1352

Where are the Practitioners located?

InjuryNET's Practitioner Network is national. It provides access to Practitioners in all metropolitan areas and most major regional areas.

Click here for a [Location List](#)

Key Characteristics of InjuryNET

Practitioners

Knowledge - of occupational medicine and workplace compensation issues

Communication - with all stakeholders, in a proactive and solution oriented manner

Reassurance - of workers and employers re: recovery and ability to work

Commercial Sense - awareness of the financial impact of medical decisions on organisations and injured employees

Objectivity - opinions based on objective information

No Fixed Beliefs - a solution oriented approach to injury management and return to productivity

Treatment based on best available scientific evidence

How is Network performance measured?

Key Performance Indicators include:

- Lost Time Injury Rates
- Lost Hours
- Duration until return to pre-injury duties or permanent alternate duties

What is the relationship between InjuryNET and Practitioners?

InjuryNET works with Practitioners who are independent and can provide considered and balanced opinions on the basis of communication with all stakeholders - employers, workers, other practitioners, insurers etc.

The relationship between InjuryNET and Practitioners is purely one of referral and

information provision.

Practitioners are paid directly by the organisations (or their insurers) who contract InjuryNET's consulting services.

InjuryNET is paid by the organisations who contract us to assist with identification, development, implementation and monitoring of a treatment network for the organisation.

Service Standards

InjuryNET has identified 4 key areas of Service Standards for Practitioners:

- **Medical Practice Standards**
- **Customer Service Standards**
- **Professional Service Standards**
- **Qualification Standards**

Acceptance of referrals for InjuryNET projects implies agreement to InjuryNET Service Standards.

Practitioners are provided with a full description of InjuryNET Service Standards upon initial training with InjuryNET.

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Attachment 10:

Our Reference: 08/200495
Contact Officer: Ann Lewis
Telephone No. : 9202 6414



HUMAN RESOURCES NSW/ACT
MAIL & NETWORKS DIVISION

219-241 Cleveland Street
STRAWBERRY HILLS NSW 1420
auspost.com.au

Dear Mr. [REDACTED]

SAFETY, REHABILITATION AND COMPENSATION ACT 1988

I refer to your claim for compensation in respect of left forearm muscular strain and in particular your claim for incapacity payments for two shifts, from 22:15 on 24.7.08 to 05:36 on 26.7.08.

It is noted that a medical certificate issued on 24.7.08 by Dr A Alcantara indicates that you were unfit for work for the period 24.7.08 to 27.7.08. I note that a medical certificate issued on the same date by Dr T Wong, indicates that you were fit for suitable duties from 24.7.08 to 27.7.08 for full hours.

Dr Wong has noted that you could perform suitable duties for your full hours, with restrictions of lifting maximum 7kg right arm, 1kg on left arm, nil repetitive movement of left arm, also noting that you should be provided with meaningful work as your regular job is truck driving. Given Dr Wong's knowledge of the availability of suitable duties at your workplace, and Australia Post's capacity to provide suitable duties, Dr Wong's opinion is preferred and you are therefore considered to have been fit for suitable duties for the period 24.7.08 to 27.7.08.

After careful consideration of all the evidence, I am not satisfied that liability exists under section 19 of the Act to pay compensation for total incapacity for the period 22:15 on 24.7.08 to 05:36 on 26.7.08.

If you are dissatisfied with my decision, you are entitled to request a reconsideration under section 62 of the Act. Any request for reconsideration must be in writing and should be accompanied by any additional evidence that you feel supports your request. It should then be forwarded to:

Reconsideration Officer
Litigation Section
219-241 Cleveland Street
STRAWBERRY HILLS NSW 1420

A notice which outlines your rights in more detail is attached for your information. *Al*
Your attention is drawn to the thirty day time limit mentioned in the notice.

If you have any enquiries, please contact me on the above telephone number.

Yours sincerely

Ann Lewis

Ann Lewis
for Australia Post Compensation
19 August, 2008

Attachment 11:



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WPM

GPO Box 2020
MELBOURNE VIC 3001
australiapost.gov.au

Telephone: 9299 4512

Facsimile: 9299 4548

File Reference: 08/729165

22 September 2008



Dear Mr [REDACTED]

SAFETY, REHABILITATION AND COMPENSATION ACT 1988

I refer to your accepted claim for compensation in respect of "lacerated left hand", sustained on 18 August 2008.

This is in relation to your period of incapacity from 19 to 22 August 2008. I note that you were booked for sick leave from 19 to 25 August 2008.

Reasons for decision

You sustained injury to your left hand on 18 August 2008. You consulted Dr Rees on the same day. Dr Rees certified you unfit for work from 18 to 22 August 2008.

You were assessed by Dr Brunacci on 19 August 2008 as to your fitness for duty. Dr Brunacci certified that you have the capacity to work full hours from 18 to 25 August 2008, with restrictions of "right handed work only" in that you have the capacity to work performing right handed duties.

Your facility manager advised this office that you were offered light duties in line with Dr Brunacci's recommendation. However, you declined the offer and was absent from duty based on your doctor's opinion. A copy of Ms Webb's statement is attached for your information.

In this case, I have preferred the opinion of Dr Brunacci as he is trained in the type of duties available for injured workers within your facility.

In consideration of the evidence at hand, incapacity leave for the period 19 to 25 August 2008 has been denied.

- 2 -

If you are dissatisfied with the decision, you may write to:

The Reconsideration Delegate
Litigation Section
GPO Box 2020
MELBOURNE VIC 2001

I refer you to the attached Employees' Rights and Responsibilities for your information.

Yours sincerely



G. Clark
Claims Manager
Australian Postal Corporation

Attachment 12:



JURISDICTIONAL POLICY ADVICE NO. 2000/05

APPLICATION OF "FITNESS FOR DUTY" PROVISIONS

Background

1. Many awards and agreements with coverage of Commonwealth employment, as well as some statutory arrangements, contain long standing provisions under which employees may be required to attend for medical examination to assess their fitness for duty. The provisions serve a variety of purposes but are primarily a management tool for the employer. They ensure that appropriate information is available upon which to base decisions on employment arrangements for employees who may be wholly or partly unfit for duty, for whatever reason.
2. Determining authorities have indicated that it would be useful to have policy advice on the extent to which information obtained in the course of a fitness for duty examination can be used for a purpose related to the management of a compensation claim. More specifically, there is a need for advice on the relationship between the employer's power under these types of provisions and the determining authority's power to require an employee to undergo a medical examination under section 57 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act).

Policy Advice

3. Throughout this advice, references to "use" of information should be read as including both use and disclosure of that information. In all cases, employers will be bound either by the conditions of their licence under the SRC Act or by the relevant Information Privacy Principles (IPPs) under the *Privacy Act 1988*. A copy of the Information Privacy Principles is attached, and determining authorities should take particular note of IPPs 2, 9, 10 (limits on use of information) and 11 (limits on disclosure of information).
4. The basic principle to be followed is that information should only be used for the purpose for which it was collected, unless the person to whom it refers has given permission for it to be used for another purpose.

5. If information regarding an employee's medical condition is collected for an employment-related purpose (for example, to record absences from work or to assess their fitness for duty) it should not, in principle, be used for a compensation-related purpose (for example, to support a decision to continue or cease liability). With the employee's written permission, however, the holder of the information may grant access.
6. Determining authorities which are also employing authorities may wish to consider seeking permission to grant access as a matter of course when they refer employees for fitness for duty examination.
7. Where the employee's permission has not been obtained, the circumstances of a particular case may be such that the IPPs would allow a workers' compensation determining authority to use information which would not normally be made available by an employer. The nature of a compensation claim may suggest that there is a particular need for access to fitness for duty information. By way of example only, cases where use might be permitted, depending on specific circumstances, would include:
 - i) where Comcare (but not a licensed authority or licensed corporation) may have cause to require specific documents or information relevant to a claim to be provided under s71 of the SRC Act; or
 - ii) where there is reasonable suspicion that a claim may have been lodged with fraudulent intent.
8. When a determining authority requires independent assessment of a claimant's medical condition, the normal course would be to use the provisions of section 57 of the SRC Act to refer the claimant for examination. It is particularly noted that it is not open to determining authorities to use "fitness for duty" or similar employment conditions as an alternative to SRC Act provisions which impose a minimum interval between times when an employee can be referred for examination in relation to their compensation claim.

Separation of Roles

9. In order for access to employment-related information to be adequately controlled, it is recommended that determining authorities should review their arrangements for separation of workers' compensation management roles from management of terms and conditions of employment. Where appropriate "arm's length" arrangements are not currently in place - including in regional or district offices - it may be necessary to consider changes in administrative procedures, structure or lines of control to ensure that the principles outlined above are observed.

10. In particular, it is recommended that determining authorities review any written workers' compensation, fitness for duty or early intervention procedures. This review should ensure that they do not conflict with the principles regarding use of information for the purpose for which it was collected.
11. Enquiries about the application of this policy should be directed to the Policy & Co-ordination Group on 1300 366 979.

Regulatory Services Division
Comcare
27 June 2000

Attachment 13:



Australian Government

Comcare

Mr Ed Husic
Divisional Secretary
CEPU Communications Division
PO Box 472
CARLTON SOUTH VIC 3053

Australia Post's Injury Management Program and use of Company Doctors for Injured Employees

Dear Mr Husic

Thank you for your letter of 18 November 2008 seeking Comcare's assistance to investigate your claim that Australia Post is in breach of its *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) licence conditions and the Act itself in the manner it uses company doctors in workers' compensation cases.

I apologise for the delay in responding to your letter, although you would appreciate that Comcare wanted to ensure that it undertook a thorough review of your concerns.

Comcare undertakes, on behalf of the Safety, Rehabilitation and Compensation Commission (Commission), various processes to ensure licensed self insurers (licensees) are conforming with their conditions of licence, including complying with the SRC Act and the *Occupational Health and Safety Act 1991*.

The main process is the Commission's licensee improvement program (LIP) which requires a licensee, such as Australia Post, to periodically participate in the Commission's external audits against its conditions of licence and the SRC Act. It also involves the licensee carrying out a yearly program of self audit using the Commission's audit tool and reporting the outcomes to the Commission each year. While the Commission will determine the frequency and mix of internal to external audits, external audit, for a mature licensee such as Australia Post, is usually reserved for the last year of a four year prior of licence, ie just prior to the Commission's decision on licence renewal.

Australia Post is currently in its last year of licence and Comcare will be auditing Australia Post's claims management and rehabilitation management systems in this period (2009-10) prior to Australia Post's expected application for licence renewal. An audit involves an examination of randomly selected claim files and rehabilitation case files against the audit tools which are designed to test conformance and compliance of a licensee's claims management and rehabilitation management systems.

GPO Box 9905, Canberra ACT 2601
1300 366 979 www.comcare.gov.au

AUSTRALIA'S SAFEST WORKPLACES

Consequently, a detailed case file examination to examine the concerns of the CEPU must await such an external audit. However, Comcare, on behalf of the Commission has had discussions with your officials and Australia Post senior managers.

Ms Melissa Ryan, General Manager, Research and Policy Branch, and Mr Alex O'Shea, Director, SRC Policy Section, met with Mr Burt Blackburne and others on 2 April 2009 to allow the CEPU to further explain its concerns and to provide details of alleged breaches of the Act and Australia Post's licence conditions. Ms Ryan and Mr O'Shea subsequently met with Australia Post senior managers, where the operation of Australia Post's injury management systems and process was discussed as well as the CEPU's specific concerns and allegations.

At the CEPU meeting, your officials outlined that the main concern involved Australia Post's Injury Management (Early Intervention) Program (IMP) and its use of a nationally contracted network of facilitated nominated doctors (FND) for injured employees. The CEPU considered that the IMP and its use of FNDs could be described as 'an evidence collection and information management scheme' directed against the better health and well being of Australia Post employees and designed to minimise Australia Post's workers' compensation liability and to minimise its lost time injury (LTI) Commission indicator measure by passing employees onto sick leave, rather than to provide them workers' compensation benefits.

An example was provided by your officials which detailed an incident where an employee was injured in the course of employment (eg a witnessed motorcycle accident, fall, or other trauma), but was dealt with under the IMP and FNDs rather than the rehabilitation and workers' compensation powers under the SRC Act.

At the meeting, the CEPU officials also contended that Australia Post's managers were benefiting personally from having low recorded frequencies of LTI; consequently the IMP was open to abuse and would encourage poor practice. An example of such abuse was requiring an injured employee to return to meaningless duties (such as watching two hours of TV in a back room per day to avoid a LTI occurrence).

The CEPU also detailed a number of other or supplementary concerns regarding the IMP and Australia Post's practices in managing its injured employees. These are detailed at Attachment 1.

Ms Ryan and Mr O'Shea then met with Australia Post's senior HR managers and program managers responsible for the operation of the IMP and FND within the postal network. Comcare put to Australia Post a list of topics to explore the operation of the IMP and the processes of referring injured employees to FNDs. The meeting then addressed the CEPU's specific concerns and allegations regarding the operation of the IMP and FND. These are provided at Attachment 2.

Australia Post explained in detail the operation of its IMP, differentiating it from its fitness for duty processes under the arbitrator's determination and how the IMP and the use of FNDs operated within a workers' compensation context. Australia Post also responded to the specific issues related to CEPU allegations in these matters.

Firstly, looking at the concept of best practice injury management in the workplace generally, Comcare encourages all scheme employers to be proactive and to expeditiously manage all employees who notify of a workplace injury, well in advance of any workers' compensation liability decision or even the lodgement of a claim by the employee. Where there is a report of an injury in the workplace, such a proactive approach would involve assisting an injured employee to obtain early and expert medical diagnosis and treatment. 'Best practice' employers would offer the provision of this medical attention without cost to their employees and from local and readily available doctors who have been inducted into the local workplace and have a good knowledge of the range of alternative or suitable duties, should the employee be immediately unfit to return to his or her normal duties. In this way, there would be a seamless transition from acute care to primary rehabilitation (recovery) to tertiary rehabilitation (maintenance at work or return to work), or a smooth transition from injury management to occupational rehabilitation.

Comcare also encourages scheme employers to adopt a model of occupational rehabilitation by developing rehabilitation management systems which seek to either maintain injured employees at the workplace on suitable duties or to return injured employees to the workplace, quickly but in a safe and durable manner. There are positive gains for both the employee and the employer in such an approach and one which is consistent with the aims of the SRC Act.

Comcare's approach to early intervention is supported by general research outcomes and is also followed by other Australian workers' compensation schemes.

After examining the intent and documented operation of Australia Post's IMP, Comcare concludes that it seeks to adopt such a system and process. The Australia Post IMP is one which is made readily available through local worksite managers, but on a voluntary or 'opt-in' basis, for employees who notify of a workplace injury (via completion of a P400 form). All staff who lodge a P400 are advised of their eligibility to participate in the IMP, its voluntary nature and its benefits in the form of free and rapid access to medical attention and limited free medical treatment from doctors who are meant to be familiar with Australia Post workplaces. All employees, especially those who lodge a P400 form, are advised of their eligibility to lodge a workers' compensation claim and the availability of a workers' compensation claim form and the claims information pack.

In terms of the IMP's actual operation, Australia Post reports that employee participation in the IMP is high and that it is well supported by its employees. This is to be expected as Australia Post's own research confirms that a majority of its employees do not have a regular treating doctor and without the IMP would need to seek treatment generally in a medical centre/bulk billing clinic, usually from an unfamiliar doctor, with no guarantee that a subsequent visit will be to the same doctor. Such medical practices often have little regard to the objects of occupational rehabilitation, particularly in working closely with the workplace to maintain and injured employee at work or to return him/her to suitable duties.

Australia Post advises that, for many of its employees, the IMP's rapid access to injury diagnosis, acute treatment and medical management in the context of the employee's duties and alternative duties often results in the employee being able to be maintained at the workplace or return to the workplace on suitable duties with nil or minimal loss of time.

That is, it achieves the object of injury management and rehabilitation systems; a quick, safe and durable maintenance at work or return to work.

In certifying fitness for suitable duties under the IMP, it is the responsibility of the FND to specify the functions for which the employee is medically capable as well as documenting any restrictions. It is the responsibility of the manager to provide the employee with duties (restricted or not) matched to the certified functional capacity of the employee and it is the responsibility of the employee to adhere to them, but also to report any problems and to follow any subsequent upgrading of duties. In situations which require it, Australia Post is able to provide assistance from its own in-house or contracted rehabilitation health professionals to assist the manager to devise suitable duties and upgrade programs which align with the functional capacities and restrictions as advised (certified) by the FND.

As a complimentary process to the IMP, employees may also elect to seek primary treatment from their own doctor or local medical officer (LMO). This may result in a similar return to work on suitable duties as under the IMP, but often an incapacity certificate involving days, and sometimes many days, off work will result as the LMO may be less aware of the availability of suitable duties at the worksite and will often err on the side of certifying time off work. Australia Post may respond by having one of its FNDs contact the LMO to discuss a return to work on alternative duties, or ask the employee to see an FND for an assessment of their capability to return to suitable duties. Under the IMP, Australia Post has confirmed that such a request seeks the employee's voluntary cooperation, that is, the FND assessment is not mandatory.

Should Australia Post feel an employee's fitness/unfitness for duties status warrants it, it might seek to arrange a fitness for duties medical assessment under the terms of its 'arbitrators determination'. Australia Post reports that its managers take particular care to explain that such an arrangement stands outside the IMP, is only proceeded with under the delegation of a senior HR manager and is used sparingly, particularly at the early stages of post injury management.

Australia Post also admits that, while it might prefer the medical opinion from an FND in terms of an employee's capability of achieving an early return to work over that of an employee's local doctor who continues to certify incapacity, it stresses that its employees are entitled to follow the advice of the employee's local doctor under the IMP. However, should a workers' compensation claim be lodged, Australia Post is entitled to weigh up the two medical opinions and make a decision accordingly, with that decision being able to be contested externally at the Administrative Appeals Tribunal.

It is Comcare's conclusion that Australia Post's IMP is designed to emulate best practice workplace injury management systems. It is designed to be initiated by workplace managers at the local level with the cooperation of the injured employee. It involves priority access to doctors who are familiar with Australia Post worksites and suitable duties programs in order to either maintain the injured employee at the workplace on suitable duties or to return the employee to the workplace as soon as possible following restoration of some functional capacity. Accordingly, it is not a process which is inconsistent with SRC Act rehabilitation, nor would it be in conflict with Australia Post's conditions of licence.

However, Australia Post admits there have been instances where employees have unfortunately been mis-diagnosed by one of its FNDs or where employees have been returned too early or on duties which have proved too ambitious. There have also been examples where line managers have exerted pressure on employees to 'voluntarily' attend an FND treatment or assessment.

Comcare subsequently sought further information from Australia Post regarding its process to oversee and remediate such situations. Australia Post reports that all complaints by employees toward management behaviour in applying the IMP are investigated by Australia Post. Further, to ensure the ongoing integrity of the IMP, Australia Post reports that it takes any misuse of the IMP – whether by medical practitioners, managers, or employees – extremely seriously and would welcome the CEPU bringing to its attention any such specific issues or allegations. Australia Post also has a 'whistleblower' facility under its Employee Grievance process which can be utilised.

Australia Post also reports that since 2005 it has appointed a senior manager to oversee the IMP and that reports to senior management on the number of treatments and assessments under the IMP are provided on a monthly basis. The contracted FND provider also monitors the medical practitioners engaged under the program and undertakes reviews with Australia Post bi-monthly. The ongoing training of these doctors is managed and reviewed by the same company.

In regards to issues raised concerning the provision of appropriate and meaningful duties, Australia Post reports that it is committed to providing its injured workers with real duties that are in keeping with their medical restrictions, but that it would welcome the CEPU bringing to its attention any specific issues.

Australia Post acknowledges its IMP links to workers' compensation and it confirms that, once an employee's claim is accepted, the injury is managed under the SRC Act.

In summary, without the benefit of auditing Australia Post's claim and case files, but after detailed discussions with CEPU officials and Australia Post managers, including examining IMP documentation, Comcare can conclude that Australia Post's IMP has been established as a mechanism to effectively manage employees injured at work by adopting the best practice approach of making available, through an FND, early diagnosis and treatment of injuries with an emphasis on matching an employee's current functioning to available duties in the workplace.

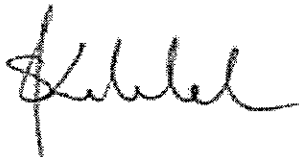
This process is able to integrate into vocational rehabilitation if and when a claim for workers' compensation is received and determined. While it might be argued that an employee notification of an injury (eg via a P400 form) could invoke Part III (rehabilitation) under the SRC Act prior to a determined claim, scheme employers have the choice to establish separate injury management systems which operate prior to the finding of workers' compensation liability. The success of these separate injury management systems will largely depend on the levels of employee participation and how well they integrate with rehabilitation under the SRC Act. It is Comcare's view that Australia Post's injury management system performs well and in conformance with its conditions of licence and in compliance with the SRC Act.

While Australia Post has admitted to a number of instances where there have been shortcomings, it has also demonstrated its capacity to identify and remediate them. It has also demonstrated that it has a strong level of management oversight of the operation of its IMP, it has an employee complaints and grievance handling system, and would invite the CEPU to provide it with information where it believes it is not operating effectively.

In providing advice to the Commission about Australia Post's performance under the LIP in 2009-10, particularly through the claims management and rehabilitation audits, Comcare will pay close attention to the issues the CEPU has raised.

Thank you for bringing this matter to my attention.

Yours sincerely



Steve Kibble
A/g CEO

11 August 2009

Supplementary issues raised by CEPU on Australia Post's IMP and use of FNDs in dealing with injured employees

The CEPU claimed that:-

- there was a lack of clarity to employees on whether they were attending a FDN for treatment or for assessment with the implication that these distinct roles have very different responsibilities, including issues of privacy;
- injured employees who attend their own doctor and receive medical certification were being threatened that a refusal to also attend an FND examination will jeopardise the finding of workers' compensation liability;
- FNDs are not being trained in post injury management, lack familiarity with Australia Post worksites and consequently have little knowledge or appreciation of the working environments and range of duties to which they send injured employees back with "fit for light duties" certificates;
- FNDs issue 'retrospective' certificates which certify an employee fit for duties or fit for light duties from a date in the past - and prior to the FND examining the employee;
- when an FND issues a 'fit for light duties' certificate, it is the manager who determines the nature and extent of the light duties (with the implication that the FND does not then ratify or further certify those duties as appropriate); and
- the IMP/FND does not seem to have a process whereby incompetent doctors can be taken out of the system.

Issues for discussion with Australia Post to explore it's system of early intervention injury management following notification of workplace injury or illness

- Process for employees notifying on an injury or illness (P400 lodgement)
 - who provides form
 - who receives form
 - who else is notified
- Process for lodging a workers' compensation claim
 - access to claim form
 - access to claim information (eg requirement to provide: m/c, witness statements, supporting material)
- Process for managing 'early intervention' action following injury notification or w/c claim lodgement
 - when to use fitness for duties processes
 - when to use SRC Act processes [s37, s36, s37]
- Instructions to site managers on advice of P400 notification which may involve lost time
 - referral to FND
 - treatment - V - report on RTW/suitable duties
 - option for employee to elect to seek treatment/report from LMO
 - is attendance at FND examination compulsory for employee
- What are employee expectations following P400 lodgement?
 - is there a brochure or instruction which explains option to undergo FND or LMO treatment for acute injury/medical condition
 - what is employee expectations on FND/LMO reporting requirements in terms of fitness for duties/alternative (light) duties/total incapacity
- If FND/LMO certifies fit for modified or alternative or restricted duties – what happens?
 - who contacts employee
 - how are suitable duties selected
 - how is employee inducted into suitable duties program
 - what documentation does employee receive
 - who monitors adherence to suitable or restricted duties
 - what happens if employee reports difficulty with duties
 - who upgrades suitable duties

- who downgrades suitable duties
- Role of FND in assisting in determining workers' compensation liability
 - completion of certificate or report that provides medical opinion on extent of employment contribution (disease) – reporting for workers compensation liability purposes
 - certification for ongoing incapacity/capacity
 - role of FND to inform the injured employee of the FND's role and relationship with Australia Post
- What happens if W/C claim is accepted and employee is under suitable duties program?
 - is a s36 assessment required
 - basis for making a s37 determination
 - difference between suitable duties program and SRC Act rehabilitation program

Addressing specific issues related to CEPU allegations

- Comment on CEPU's reports from Australia Post employees who have been:
 - 'sent to company-paid doctors (FNDs) after a serious workplace injury only to be forced back to work before they were physically able, including with broken limbs'
 - 'fired after suffering work-related injuries'
 - 'been denied workers compensation coverage for an injury because Australia Post won't accept evidence from the employee's own GP' (Gail Seaton was diagnosed with epicondylitis, a painful repetitive strain injury, by her GP. A company-paid specialist subsequently denied the condition was still active)
- Comment on Australia Post's relationship with FNDs and examining specialists which:
 - 'puts pressure on doctors who rely on big clients such as Australia Post to give false diagnosis and inappropriate treatment, compromising their professional practice'.
- Comment on Australia Post's system of rewards and pay bonuses for executives:
 - 'who reduce the costs (by) roort(ing) workers of their entitlements and personal safety'.
- Comment on allegation that Australia Post seeks to reduce lost time injuries (LTI) by:
 - 'rebadging time off associated with injuries as sick leave' or other leave or to require staff to attend the workplace when not fit for any duties (eg to watch TV or to carry out menial tasks etc)