



Our Partners for Today



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SUREFACT
AUSTRALIA


Businessary

Taking Control of Difficult Claims

Aegis Risk Management Services

MCG Breakfast Seminar

October 2017





Belinda Scott

Managing Director
BJS Insurance Brokers Pty Ltd





Seminar Format



- Committed to getting you out on time
- Save questions for the panel discussion
- Speakers will be available at the end
- Feedback Form





IDENTIFYING & MANAGING AT RISK CLAIMS

PRESENTED BY SIMON BOOTH - AEGIS RISK



“As a nation Australia is no better . . (at return to work) . .
than we were 15 years ago.

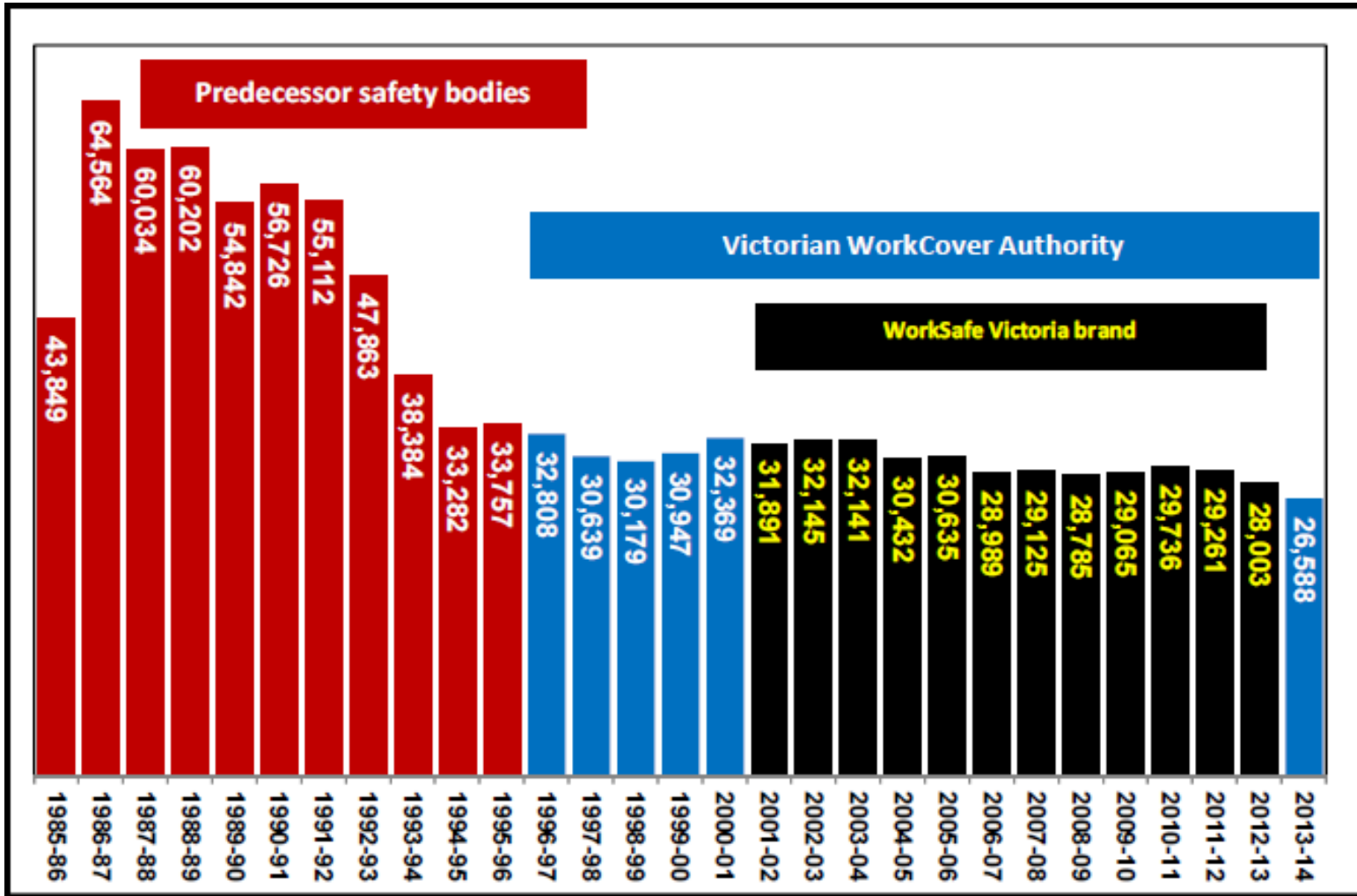
Our practises are broadly the same. Our policies have not
really changed. We have failed to innovate.”

Alex Collie

Chief Research Officer

Institute for Safety, Compensation and Recovery Research

Monash University



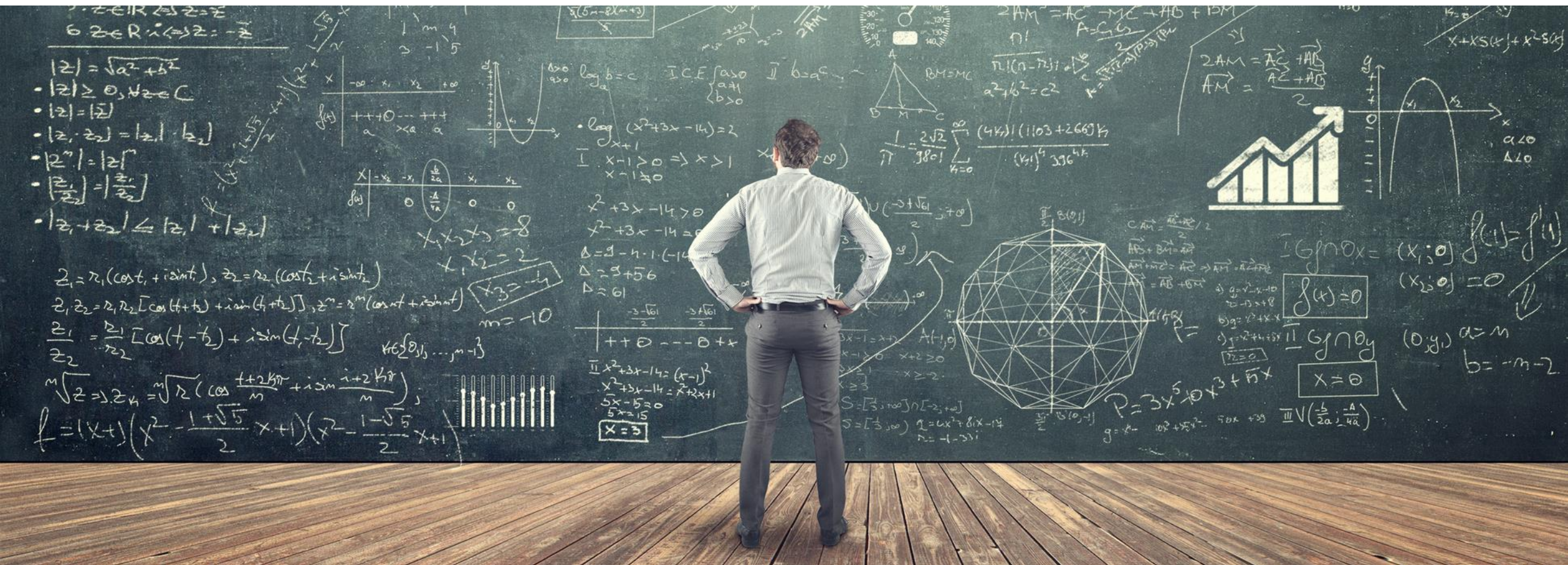
Source: VWA
Interpreted by OHSIntros

“Safety has entered a phase where only incremental reduction is possible with current strategies”

OHSIntros – 30 Years of OHS in Victoria



**“What if we don't change at all ...
and something magical just happens.”**

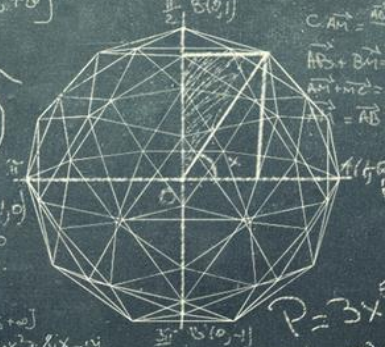


$z \in \mathbb{R} \Leftrightarrow z = \bar{z}$
 $z \in \mathbb{R} \wedge z \neq \bar{z} \Rightarrow z = -\bar{z}$
 $|z| = \sqrt{a^2 + b^2}$
 $|z| \geq 0, \forall z \in \mathbb{C}$
 $|z| = |\bar{z}|$
 $|z_1 \cdot z_2| = |z_1| \cdot |z_2|$
 $|z^n| = |z|^n$
 $|\frac{z_1}{z_2}| = |\frac{z_1}{z_2}|$
 $|z_1 + z_2| \leq |z_1| + |z_2|$
 $z_1 = r_1(\cos t_1 + i \sin t_1), z_2 = r_2(\cos t_2 + i \sin t_2)$
 $z_1 z_2 = r_1 r_2 [\cos(t_1 + t_2) + i \sin(t_1 + t_2)], z^n = r^n(\cos nt + i \sin nt)$
 $\frac{z_1}{z_2} = \frac{r_1}{r_2} [\cos(t_1 - t_2) + i \sin(t_1 - t_2)]$
 $\sqrt[m]{z} \Rightarrow z_k = \sqrt[m]{r} (\cos \frac{t + 2k\pi}{m} + i \sin \frac{t + 2k\pi}{m})$
 $f = (x+1)(x^2 - \frac{1+\sqrt{5}}{2}x + 1)(x^2 - \frac{1-\sqrt{5}}{2}x + 1)$

$\log_a b = c \iff b = a^c$
 $\log(x^2 + 3x - 14) = 2$
 $x^2 + 3x - 14 = 100$
 $x^2 + 3x - 114 = 0$
 $\Delta = 9 - 4 \cdot 1 \cdot (-114) = 9 + 456 = 465$
 $\Delta = 61$
 $x = \frac{-3 \pm \sqrt{61}}{2}$
 $x^2 + 3x - 14 = (x-1)^2$
 $x^2 + 3x - 14 = x^2 + 2x + 1$
 $5x - 5 = 0$
 $5x = 5$
 $x = 1$

$2AM^2 = AC^2 + AB^2 + BC^2$
 $AM = \frac{AC^2 + AB^2 + BC^2}{2}$
 $AM = \frac{100 + 100 + 100}{2} = 150$
 $AM = \frac{AC^2 + AB^2 + BC^2}{2}$
 $AM = \frac{100 + 100 + 100}{2} = 150$
 $AM = \frac{AC^2 + AB^2 + BC^2}{2}$
 $AM = \frac{100 + 100 + 100}{2} = 150$

$f(x) = f'(x)$
 $f(x) = 0$
 $g(x) = 0$
 $x = 0$
 $(0, y) \quad a = m$
 $b = -m - 2$
 $V(\frac{-b}{2a}, \frac{-\Delta}{4a})$





Defining At Risk Claims



Claims that have the ability to:

- Significantly increase premium
- Disrupt business operations
- Increase stress for Owners / Managers
- Impact on workplace morale





Defining At Risk Claims



Difficult for three main reasons:

- The Injury
- The Person
- Our Practices





Defining At Risk Claims



The Injury:

- Severity
- Diagnosis
- Treatment
- Evidence Based Medicine





Defining At Risk Claims



The Person:

- Performance
- Absenteeism
- Presenteeism
- Conflict





Defining At Risk Claims



The Person:

- Family
- Finances
- Personality
- Employment Duration





Defining At Risk Claims



The Person:

- Previous Injuries
- Age
- Disregard for Policies & Procedures
- Nature of the duties





“Why would a person who didn’t want to be at work before an injury, be motivated to return to work after an injury”

Simon Booth – Just Now



Defining At Risk Claims



Our Employment Practices:

- Policies & Procedures
- Recruitment
- The RTW process
- Employee Management
- Prioritisation





Taking Control





What Can't We Control



- The Injured Worker
- The Treating Doctor
- Other Treaters
- The Independent Medical Examiner (IME)
- The Insurer





What Can We Influence



- The IME
- The Insurer
- Strategy
- Our Employees





What Can We Control



- The Process
- Available Duties
- How We Manage Employees
- Information





Taking Control



What Success Looks Like:

- Return to Work
- Termination of Employment (no/reduction in benefits)
- Suspension/Termination of Benefits
- Genuine Dispute









Return to Work

Treating Doctor Reviews

COMPLIANCE



Occupational Rehabilitation

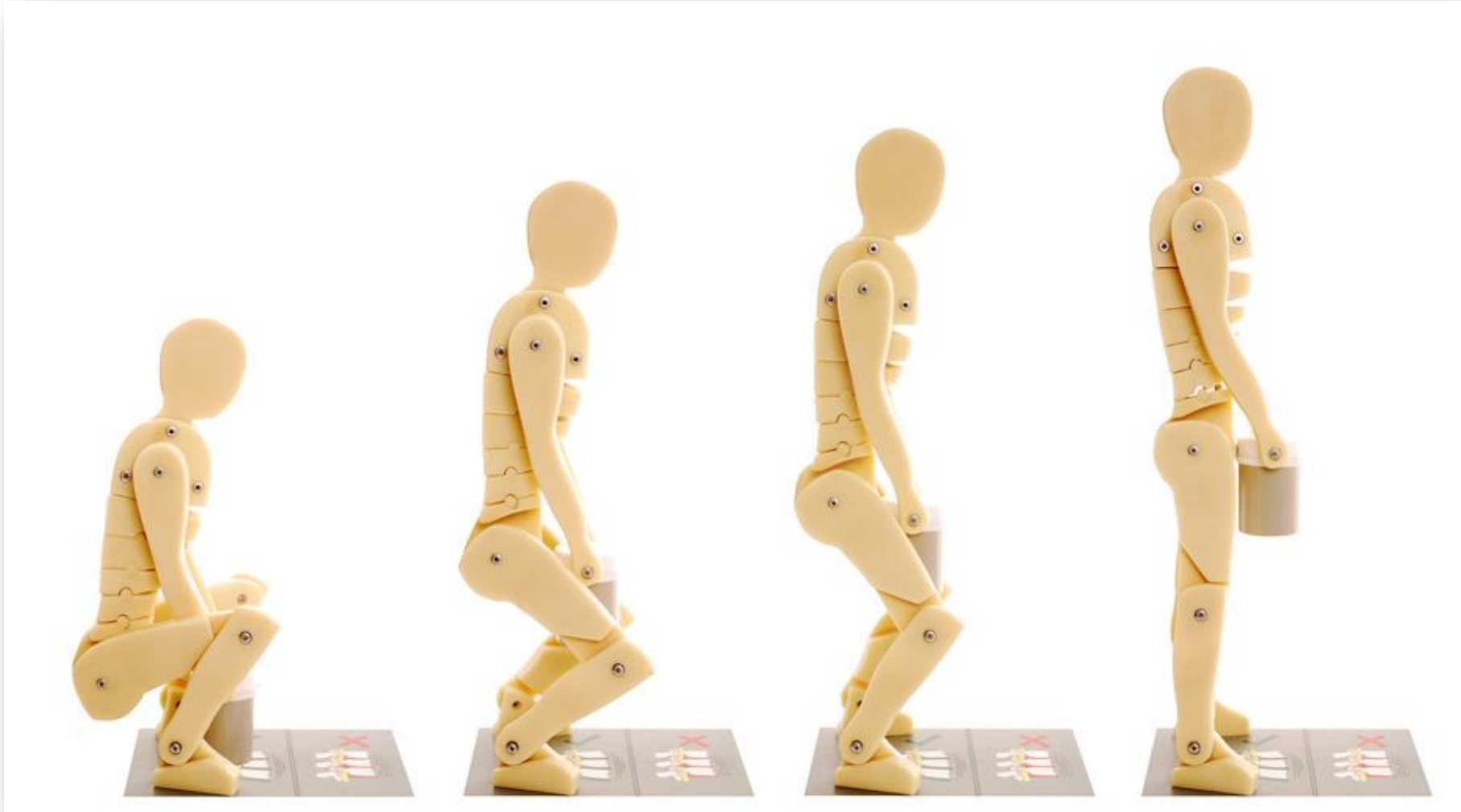
Injured Worker Meeting

Worksite Assessments

Independent Medical Assessments

RTW Meetings

Suitable Duties









JUDGE:

HIS HONOUR JUDGE BOWMAN

WHERE HELD:

Melbourne

DATE OF HEARING:

18, 19 and 20 November 2008

DATE OF JUDGMENT:

13 March 2009

CASE MAY BE CITED AS:

Kerridge v Monsfelt Pty Ltd

MEDIUM NEUTRAL CITATION:

[2009] VCC 0154

Early Intervention and the Resolution of Injuries

Presented by
David Carroll (BAppSci - HMS, MPhty)



Contents

- The Benefits of Accurate Diagnosis and Early Intervention
- The Employers role in early intervention and recovery
- Musculoskeletal healing timeframes
- What to do when the injury is not progressing



Accurate Diagnosis and Early Intervention

Likelihood of an injured employee returning to work after time off



Accurate Diagnosis

- Know what you are treating
- Indicates healing and RTW timeframes
- Determines appropriate management

Benefits of Early and Appropriate Intervention

- Day 1-2 intervention = 9.8 days case duration
- Day 2-7 intervention = 12.3
- Day 7+ intervention = 16.5

These figures were replicated for duration of restricted work and Lost work days

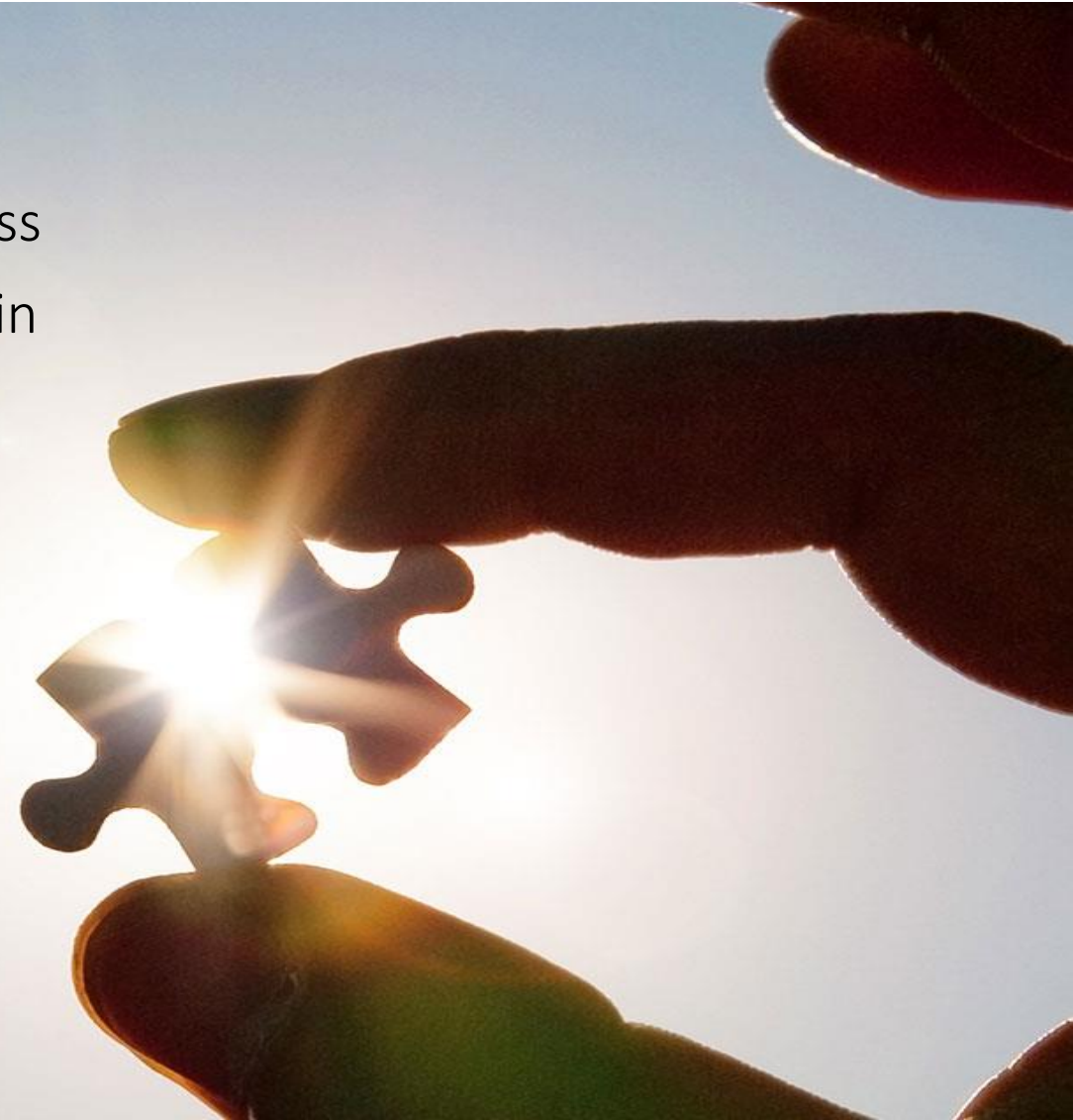
Get Involved

How can the Employer Influence the injury outcomes

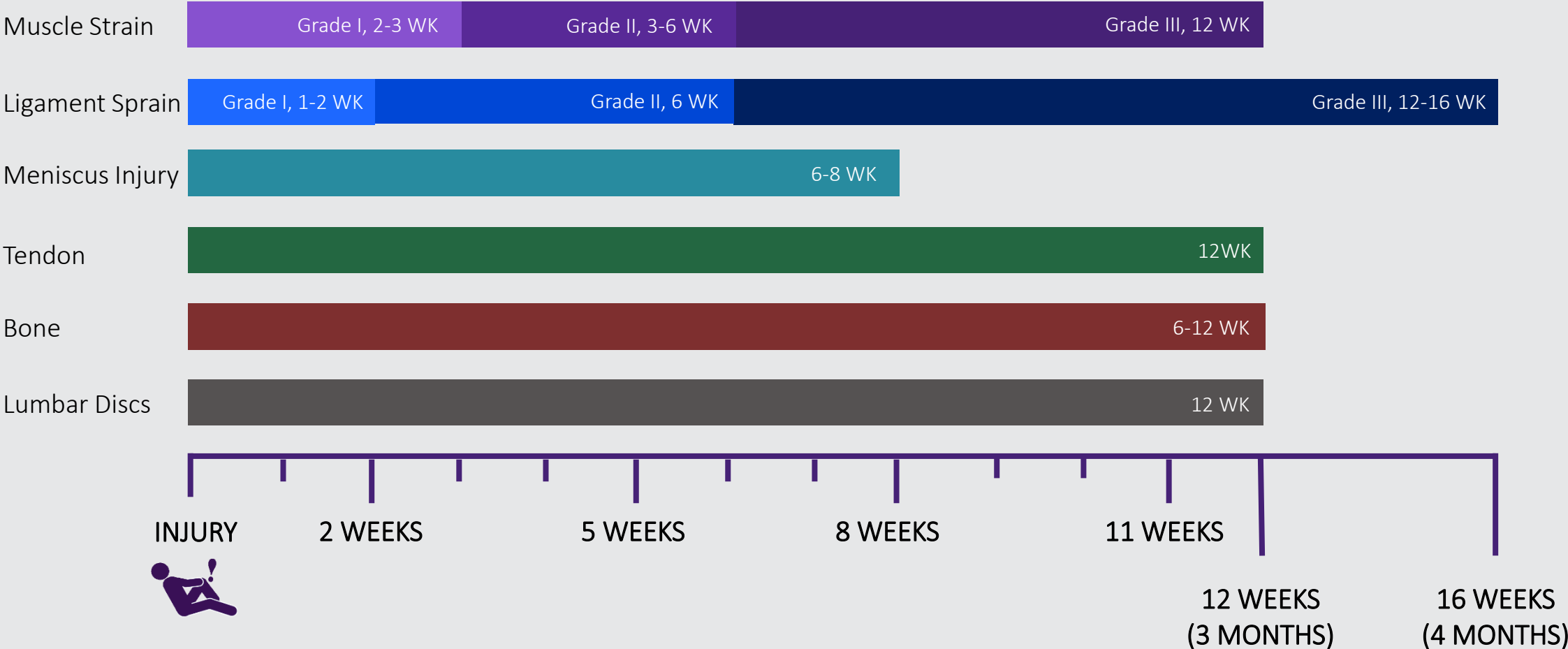
1. Prevention of injuries – eliminates and reduces loss
2. Prompt and sustainable Workplace interventions in the event of a injury – mitigates and attempts to control loss

Workplace interventions can be categorised into those that seek to:

- Modify working conditions
- Deliver healthcare & communicate with providers
- Coordinate the delivery of services and information



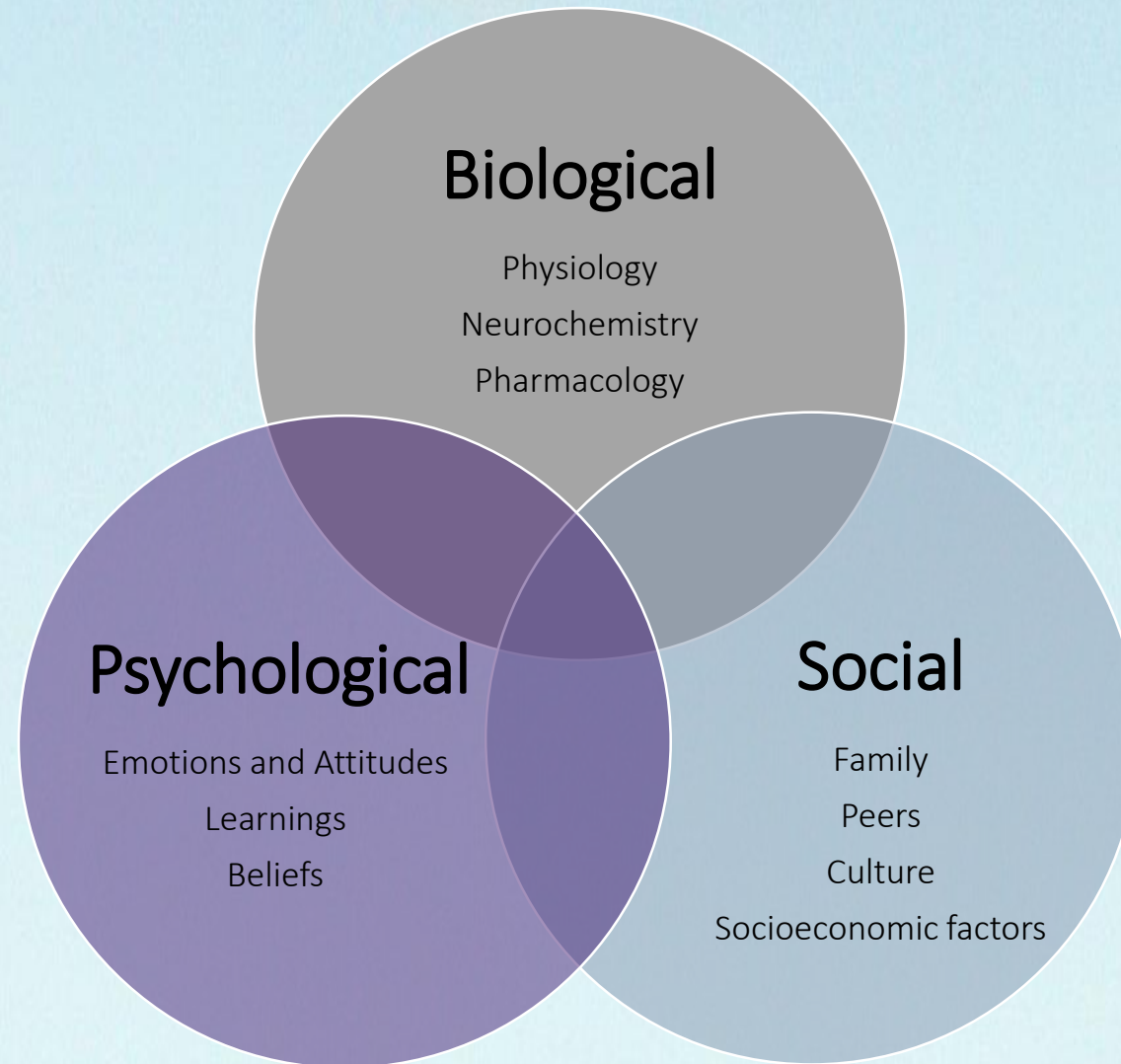
Time to Heal Conservatively



What happens when the injury is not progressing?

- Be Proactive
- Communicate
- Be aware of timeframes
- Investigate
 - Diagnosis
 - Treatment
 - Scope
 - Aggravating Factors
- Seek second opinion?

Biopsychosocial Model



Case Study

- Injured Elbow



Summary

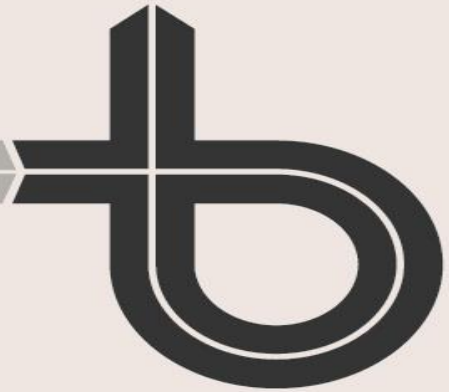
- Early and Accurate Diagnosis and Intervention
- Be involved!
- Communicate
- Ask the right questions when things are not progressing
- Remember the Biopsychosocial model



We are Businessary

Performance Managing Injured
Workers

October 2017



Triggers for performance management

Performance management is generally initiated due to under performance.

As defined by FairWork Australia, underperformance is:

- unsatisfactory work performance, that is, a failure to perform the duties of the position or to perform them to the standard required
- non-compliance with workplace policies, rules or procedures
- unacceptable behaviour in the workplace
- disruptive or negative behaviour that impacts on co-workers

Underperformance is not the same as misconduct.

What is misconduct?

Misconduct is very serious behaviour such as theft or assault which may warrant instant dismissal. In cases of misconduct employers should seek specific advice about how to proceed before taking any action.



Performance managing employees on workers compensation

Steps to manage under performance

- Undertake a fair **process**
- Document, Document, Document!
- Schedule separate meetings to address performance and return to work
- Third party attendance – i.e. offer for the worker to bring a support person
- Employers still need to be mindful of their workers' compensation obligations:
 - You can not direct an employee to attend work for the purposes of attending a performance management meeting if their treating Doctor has certified them unfit for all duties
 - In some cases performance management may need to be delayed to a more appropriate time and undertaken in a sensitive manner



What if performance management triggering a claim?

- Employees may claim workers compensation for a number of reasons including stress and anxiety triggered by performance management
- This may delay your process but don't let it derail it!
- Ensure that your WC insurer is informed where you suspect an employee's claim has resulted from "reasonable management action", but stay focused on the operations of the business
- As a employer you are well within your rights to take 'reasonable management action' to ensure an employee fulfils the inherent requirements of their role.



Termination of employment whilst on workers compensation

There are several pieces of legislation protecting employees on workers compensation from being terminated, however demonstrating procedural fairness is the key.

Under s352 of the Fair Work Act, an employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury.

Termination can take place as long as the employer demonstrates procedural fairness by:

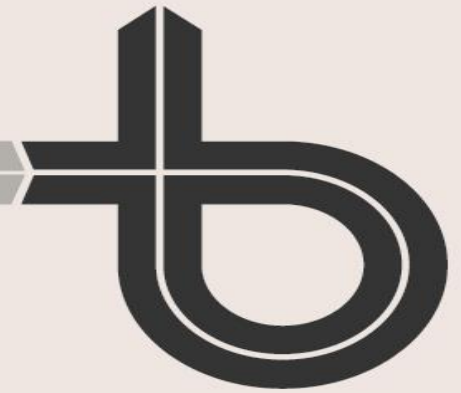
1. Investigating an employee's future capacity
2. Inviting the employee to respond to being unable to fulfil the inherent requirements of their role
3. Requesting (where necessary) for medical evidence
4. Showing reasonable adjustments were made but were unsuccessful in achieving suitable performance outcomes
5. Consulting with the employee in case of a potential redundancy and demonstrating a genuine structural/operational adjustment



What you can do TODAY

- Ensure there are relevant company policies and/or guideline in place
- Nominate employees in key roles as per employer obligations and offer appropriate training and education
- Ensure employees have read, understood and signed off on their obligations re company policies as well as performance expectations
- Always ensure a fair, reasonable and consistent process is followed across the business
- Check in with your workers compensation insurer to understand changes to legislation and/or obligations
- Seek advice (maybe a trusted HR services firm?!) that can provide you with the right advice from a business operations and legislative perspective to ensure you are always one step ahead when managing people issues





Businessary

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Thank You

BJS Insurance Group

Workers' Compensation

Breakfast Seminar – 25 October 2017



Aim of Today's Session

- How does effective surveillance progress a Workers' Compensation claim?
- How is surveillance conducted and what are the tools of the trade in this era of ever increasing technological advancement?



Aim of Today's Session

- Getting to know SureFact
- Introduction
- Surveillance in the Industry
- Difficulties
- Objectives / Outcomes
- Myths
- What we CAN NOT do
- What we CAN do
- Open Source Intelligence Techniques
- How you can Assist
- Equipment
- Summary



SureFact: Who Are We?

- SureFact's evolution is derived from due application of practical workers' compensation industry knowledge into a contemporary investigation service
- Client and customer focussed design
- Over 200 Years combined workers' compensation and investigation experience



Introduction

Surveillance Services are Provided to:

- Insurance Industry
- Commonwealth & State Governments
- Corporate Clients
- Domestic Clients
- Surveillance is an important and effective method of gathering information and evidence



Surveillance in the Industry

Is becoming increasingly more difficult: Why?

- Claimant's and the public are more aware of the use of surveillance
- Claimant's are coached by Treater's and Legal representatives and are generally more aware of the claims process
- The increase in crime (home invasions and burglaries in Suburban Melbourne)



Surveillance in the Industry

Is becoming increasingly more difficult: Why?

- Increasing traffic density
- Greater number of traffic control systems
- Claimant is surveillance aware
- Neighbours
- Claimant resides in a block of units, a rural or semi-rural area
- Environmental elements



Objectives / Outcomes

- Surveillance is one part of the claims management investigation process
- Determine how the Claimant presents in accordance with their Medical Restrictions
- Gather information and evidence to be used in the claims management / investigation process
- Confirm information already known in respect to the Claimant
- Burden of Proof Identification of the Claimant



Surveillance Myths



What we CAN NOT DO

We are Governed and must adhere to various Legislation and the WorkSafe Code of Practice for Investigators

We must not:

- Conduct illegal searches or inquiries
- Use listening devices or “bugs” to hear conversations
- Use tracking devices
- Trespass or engage in illegal activity
- Offer, entice or entrap a person into saying or doing a particular activity
- Record people’s activities whilst attending a funeral or other activity that would be regarded as potentially embarrassing to the Client or, have adverse moral implications



What we CAN DO

- Comply with the Privacy Act and any other relevant legislation
- View activities that occur in or are visible from a public place
- Attempt to confirm the identity of the Claimant
- Ascertain any employment activity engaged in
- Determine the level of activity of the Subject
- Obtain legal and relevant information that will assist in the management of the claim / investigation
- Open Source Intelligence Techniques (OSINT)



Open Source Intelligence Techniques (OSINT)

- Open source intelligence is defined as any intelligence produced from publicly available information that is collected, analysed and is overt in nature
- OSINT methods form part of a Desktop Investigation
- OSINT may provide relevant and targeted information when to conduct Surveillance on a Claimant
- OSINT should be used in conjunction with a Surveillance Investigation to provide better outcomes
- These skills will enhance many of an investigator's activities and enhance the quality of investigation outcomes.



How you can assist

- Provide your Claims Agent Identification picture of the Claimant
- Provide details of the vehicle the Claimant drives/mode of transport
- Most up to date RTW Plan and Roster
- Up to date Medical Certificates with restrictions
- Whether the Claimant is active on Social Media
- Confirm hobbies and or sporting interests
- Is the Claimant married and/or have children?



Equipment



Activity

[Example video](#)



Summary

- Surveillance is an effective Claims Management Tool.
- Surveillance is a difficult task
- Be innovative
- Encourage understanding by all stakeholders to maximise investigation outcomes
- Encourage open lines of communication and a sound working relationship with Clients



MAJID RAHGOZAR
OCCUPATIONAL PHYSICIAN

25 October 2017

INDEPENDENT MEDICAL EXAMINATION / EXAMINERS

Healthcare professionals

Approved by WorkSafe

To perform medical examinations

To guide decisions about work-related injury claims

To ensure injured workers receive the right treatments and benefits

WORKER

WORKER

LEGAL FRAMEWORK

WORKER (BIO-PSYCHO- SOCIAL MODEL)

1. HISTORY
2. CLINICAL EXAMINATION
3. MEDICAL INVESTIGATIONS
4. OTHER MEDICAL INFO (CLINICAL NOTES, OTHER REPORTS, REFERRALS, ETC.)

WORK (BIO-PSYCHO-SOCIAL)

1. POSITION DESCRIPTION

2. TASK ANALYSIS

3. WORKPLACE ASSESSMENT

4. PREVIOUS INJURIES, ILLNESSES, RECORDS/ REPORTS OF PERFORMANCE, DISCIPLINARY MATTERS, DRUG AND ALCOHOL ETC.

FEDERAL AND STATE LEGISLATIONS SUCH AS:

1. OCCUPATIONAL HEALTH AND SAFETY
2. ACCIDENT AND COMPENSATION
3. PRIVACY / CONFIDENTIALITY
4. DISABILITY AND DISCRIMINATION

EMPLOYER'S POLICY AND PROCEDURES SUCH AS:

1. INJURY MANAGEMENT AND RTW
2. DRUG AND ALCOHOL

CLAIMS MANAGEMENT STRATEGIES FOR DIFFICULT CLAIMS

- **Avenues to progress & resolve difficult claims**
- **Return to work non-compliance**
- **No reduction in current weekly earnings**
- **Managing excessive / ineffective treatment**

Elias Mavros
Manager, Eligibility & Dispute Resolution
25 October 2017

AVENUES TO PROGRESS & RESOLVE DIFFICULT CLAIMS

- **Grounds for reviewing and terminating claim entitlements**
- **Return to work non-compliance**
- **Managing conflicting medical evidence / differing medical opinions**

RETURN TO WORK NON-COMPLIANCE

- **What is return to work non-compliance and how should it be utilised**
- **What are a workers obligations whilst they are receiving workers compensation entitlements**
- **The notion of reasonableness & what constitutes non-compliance**
- **How is the return to work non-compliance process applied**
- **Information required to apply a non compliance determination**

NO REDUCTION IN CURRENT WEEKLY EARNINGS

- **What is a no reduction in current weekly earnings ('CWE's')**
- **What impact does a no reduction in CWE's determination have on worker entitlements**
- **When can a no reduction in CWE's determination be made and when is it appropriate to do so**

MANAGING EXCESSIVE / INEFFECTIVE TREATMENT

- **When can liability for medical and like treatment be denied / rejected**
- **What information is required to deny / reject a medical treatment request**
- **What strategies should be utilised to address ineffective / excessive medical treatment**



Panel Discussion



- Belinda Scott facilitator
- Panel members:
 - Simon Booth, Aegis Risk Management Services
 - David Carroll, Bodycare Workplace Solutions
 - Annabel Rees, Businessary
 - Paul York, Surefact
 - Dr Majid Rahgozar, UHG
 - Elias Mavros, CGU



Thanks to our Partners for Today:



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