

29 November 2019

Dr. Petrina Casey  
Director, Health Strategy  
State Insurance Regulatory Authority

Dear Dr. Casey

### HEALTHCARE COSTS FOR NSW CTP & WC SCHEMES

The ALA understands that there is to be an ongoing discussion regarding the costs of healthcare in the NSW personal injury schemes. The ALA looks forward to being part of that discussion.

The preliminary comments from the ALA are as follows:

#### **The problem has not yet been fully diagnosed**

Having reviewed the EY report of 11 September 2019, there is still a shortage of detail as to exactly how and where the blowouts in healthcare costs are arising. It is noted the report indicates that the top three subcategories of expenditure are physiotherapy services (\$10m), specialist surgeons (\$6m) and specialist attendances (\$5m) over the period January 2018 to March 2019 within the WC scheme. There is no more granular analysis.

With particular reference to surgical costs and specialist attendances, it is unclear whether increases in costs are being driven by more surgery and more appointments or higher charges for the surgery and the appointments.

The ALA's opening submission is that much greater detail is needed in diagnosing "the problem" before proper consideration can be given to possible solutions.

### **More treatment is not necessarily undesirable**

One of the aims of changes to the motor accidents scheme brought about by the Motor Accident Injuries Act 2017 is to encourage more early treatment for motor accident victims. This was extolled as a virtue of the new scheme.

The Ernst and Young study does not identify that there is inappropriate treatment, mistreatment or overcharging occurring. There needs to be specific identification of just where additional medical costs are being incurred before it can be established whether the additional costs are in fact undesirable or are a sign of the WC and CTP schemes successfully achieving better and earlier treatment and better health outcomes.

### **Driving quality doctors out of the system**

One of the ALA's primary concerns is that any response to further restrict surgical fees in New South Wales will result in the best quality doctors refusing to conduct surgery in WC and CTP cases. The following is extracted from a medico-legal report in motor vehicle accident claim by [REDACTED].

*"[The claimant] advised that Dr. X had recommended [REDACTED] surgery and that he would have undergone this in the initial period, however, the insurance company would only pay the scheduled AMA fee and Dr. X would not undertake the surgery at this cost. He [the claimant] stated they [the insurer] had suggested he see another surgeon, but as Dr. X had previously been involved in management of a previous fracture with good result, [the claimant] did not wish to consult an alternate surgeon."*

The best doctors refusing to treat compensation cases is a negative outcome.

### **Issues for further consideration**

With regards possible explanations for medical costs blowouts in the NSW CTP scheme, the ALA raises the following topics for exploration/discussion:

- (a) Are GPs' costs being driven by the need for a claimant to attend every 28 days to get a certificate of fitness? Should there be the capacity for certificates to run for longer periods when there is unlikely to be any change in the injured person's capacity for work?
- (b) Are the WC and CTP schemes obtaining value for money from the rehabilitation providers engaged by insurers? It seems as if more is being spent on workplace rehabilitation, with no observable gain in return to work rates.
- (c) Is the requirement for pre-approval of treatment putting an upward pressure on total costs? If doctors are writing more and lengthier reports to justify recommended treatment, then the costs of the approval are added on to the scheme costs.

- (d) The costs of radiology have not been addressed in any detail in the EY report. Is there increasing use of radiology and how do the costs of radiological investigations compare with other jurisdictions?
- (e) Is there a consequence of linking entitlements (including the right to treatment) to whole person impairment, within the workers compensation scheme? The ALA has repeatedly called for reversal of the 2012 amendments that link treatment rights to WPI. The ALA is concerned that injured workers may consider bringing forward surgical treatment because of artificial cut-offs within the workers compensation legislation.

For example, Section 59A of the Workers Compensation Act 1987 restricts the number of years that a worker can receive medical benefits unless their impairment is greater than 20%. Doctors may well give the advice that an operation (such as a knee replacement for a degenerative knee condition triggered by a work accident) should be delayed as long as possible. However, the workers compensation system incentivises the worker to bring the surgery costs forward in order that it can be paid for within the compensable period. There is the risk that this results in earlier and unnecessary expenditure and less than ideal surgical outcomes.

The ALA would be pleased to be a part of ongoing discussions around medical costs within the workers compensation and CTP schemes. However, much more detailed information identifying the exact nature and scope of the costs blowout is required. The ALA is particularly keen to ensure that there are not knee-jerk reactions and arbitrary solutions without fully thinking through the potential ramifications.

If lowering the recoverable rate for surgical costs leads to the best qualified doctors avoiding CTP and WC claims, then the real losers are the injured who can no longer access the best available treatment.

The ALA looks forward to further consultation once more information is available with regards the nature and scope of the issue.

Yours faithfully

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**ANDREW STONE SC**  
**ALA State President**