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nth° degree
BEYOND ALL LIMITS

ASSESSMENT TRAINING LEARNING DEVELOPMENT

Approval Framework for Workplace Rehabilitation Providers

Provider Fee Structure

Response to the Consultation Paper,
February 2011

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1. Purpose

The purpose of this response to the WorkCover NSW Consultation Paper is to:

- i. Critically review the evidence for the proposed payment solutions in returning injured workers to productive and sustainable employment;
- ii. Propose a payment solution that should be adopted by WorkCover NSW and workplace rehabilitation providers;
- iii. Propose how provider travel should be charged; and
- iv. Propose a differential payment schedule or complexity rating.

2. Definitions

The following definitions and their respective abbreviations apply throughout the response.

Fee for service (FFS) Fees paid for the service delivered; where regard is given to the “service” not the outcome of the service.

Fixed fee (FF) A fee paid for a given unit of service irrespective of the time expended and methodology applied in providing that service.

Results Based Fee (RBF) A fee paid on the result (milestone or outcome) achieved; where the result is given primacy over the nature, scope, time and methodology of the service provided.

3. Background & context for fee regulation

The lowering of workers compensation premiums through timely and accurate premium collection, and monitoring and managing scheme costs is one of seven key result areas (KRAs) in the WorkCover NSW Corporate Plan. One of the key actions designed to achieve the KRA involves working with professional groups to “*establish an agreed schedule of fees, and performance reporting and management process*”¹.

Another KRA in the WorkCover NSW Plan is “*sustainable return to employment*”. Success in this regard is measured by the achievement of a series of targets, including but not limited to:

- i. Returning 86% of workers to employment within 12 weeks of injury;
- ii. Returning 96% of workers to employment within 52 weeks of injury;
- iii. Reducing the number of claims open more than 3 years by 5 %; and

¹ WorkCover NSW Corporate Plan, 2010-15.

- iv. Ensuring that 90% of workers who are unable to return to pre-injury employment have a return to employment plan².

WorkCover NSW views the regulation of fees for all professional groups, including workplace rehabilitation providers, as a means to ensure that the money paid by employers through premiums is used cost-effectively; that is any agreed schedule of fees will be structured to (a) establish consistent pricing expectations, (b) improve employment outcomes, and (c) appropriately remunerate providers for performance³.

Underpinning WorkCover NSW's initiative to regulate fees is the recognition that injured workers "*need time and high quality care*" to recover; and that those experiencing long-term work loss and disability "*should not languish in the system without effective support*".

Therefore, it stands to reason that any agreed fee structure should (a) support the provision of ethical and evidence-based services in accordance with the assessed needs of workers and employers, irrespective of the nature and scope of those needs, and (b) not deter any party from mobilising and providing those services. To do otherwise would bring the fee structure into conflict with WorkCover NSW's strategic agenda and the Conditions and Principles of Workplace Rehabilitation that are contained within the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers⁵.

4. Critical review of the payment options

Of the four payment options proposed on the consultation paper, *solution 1* is a RBF system; *solution 2* is a hybrid FF-FFS system; *solution 3* is a FFS system; and *solution 4* is a hybrid FFS-RBF system.

In its own literature review of 21 papers related to RBF and FFS systems, WorkCover NSW assessed that the papers:

- i. Were based on employment programs outside workers compensation schemes;
- ii. Were limited to payment systems for placing the unemployed in suitable work; and
- iii. Were inconclusive with respect to the relative effectiveness of RBF and FFS systems on employment outcomes⁶.

Essentially, WorkCover NSW has identified issues with the validity of the available studies, and then goes on to assert that "*a number of articles did report improved service effectiveness*

² Ibid.

³ WorkCover NSW. *Consultation paper, Approval framework for workplace rehabilitation providers: Workplace rehabilitation provider fee structure*, February 2011, p.4

⁴ WorkCover NSW, op.cit. n.1 at p.4

⁵ Heads of Workers Compensation Authorities, *Nationally Consistent Framework for Workplace Rehabilitation Providers*, 2010.

⁶ WorkCover NSW, op. cit. n.3

and cost efficiencies when adopting a milestone and outcome approach”⁷. One is left to assume that the evidence in those papers is sufficiently compelling to devise solutions 1 and 4. The rationale, however, for solution 2 with its fixed fees for specific services is neither evident nor compelling in the consultation paper, although it represents a payment system that many providers have negotiated with scheme agents in recent years as a means to compete on price as opposed to service efficacy. Therefore, it would seem that this solution is included because it represents a current practice in the industry. Solution 3 is included as it represents the status quo, albeit with a gazetted fixed FFS.

4.1 On the evidence for RBF systems

The potential benefits of RBF systems are said to include (a) an increased emphasis on valued outcomes, (b) an increased accountability, (c) greater efficiency and effectiveness, and (d) greater client choice and satisfaction⁸. Those potential benefits, however, do not necessarily generalise to the WorkCover NSW scheme, first, because of problems with the construct validity and external validity of the studies referenced and, second, because those potential benefits rest on an assumption that there are insufficient mechanisms to ensure value, accountability, efficiencies, effectiveness, choice and satisfaction under the present arrangements for workplace rehabilitation services.

4.1.1 Problems with construct and external validity

The evidence for RBF systems in improving service efficiencies and service effectiveness along with provider accountability and client satisfaction is hardly compelling. The problems lie in the construct and external validity of the studies.

First of all, the majority of papers that support RBF over FFS systems are of non-experimental design with conclusions based largely on anecdote and prediction⁹. For example, it has been claimed that the Australian government’s continued use performance based funding arrangements and improving employment outcomes are indicative of the success of its disability employment services¹⁰. The Department of Education, Employment and Workplace Relations (DEEWR) has yet to construct and publish an evaluation of the disability employment scheme, including an analysis of the significance (if any) of the improvements in outcomes, and the factors contributing to outcomes achieved. In the absence of such a study, it is not possible to generalise the “results” of the DEEWR scheme to WorkCover NSW, especially given that the economic (dis)incentives for program and employment participation differ largely between the schemes.

⁷ Ibid.

⁸ Ibid at p.9

⁹ McGrew JH, Johannesen JK, Griss ME, Born DL, & Katuin C. Performance-based funding of supported employment: A multi-site controlled trial, *Journal of Vocational Rehabilitation*, vol. 23, 2005, p.82

¹⁰ WorkCover NSW, op. cit. n.3 at p.10

Second, the studies advocating for RBF over FFS systems are, at once, inconclusive and non-transferable to other contexts for the following three reasons:

A. *The client cohorts selected do not have like characteristics to those in personal injury schemes*

Of the few experimental studies available, the results are limited to the provision of supported employment services in non-medicalised supported employment schemes by non-professional employment specialists for long-term unemployed clients with severe mental health disorders, including schizophrenia and mood disorders, and developmental disabilities¹¹.

B. *The service providers engaged do not have like characteristics to those in personal injury schemes*

For instance, the Oklahoma “milestones” program engaged non-for-profit service providers (whose alternative funding sources were not disclosed) to deliver employment services for persons with developmental disabilities. The principal objectives of the milestones program were to (a) increase the accountability, and (b) retain the autonomy of those organisations¹². Unlike workplace rehabilitation providers who operate under the present National Approval Framework, the non-for-profit providers in this program had previously operated under a completely autonomous and unaccountable system, which compelled the Oklahoma DRS to introduce the “milestones” contracting system in order to “weed out ineffective or inefficient nonprofits”¹³. Furthermore, the study emphasised a distinct disregard for a principled, ethical means of providing services, encouraging providers to exercise complete freedom over how employment outcomes are achieved¹⁴.

C. *The outcomes attained are neither desirable nor sustainable in a personal injury scheme*

In a multi-site comparison of RBF and FFS systems for returning severely mentally ill people to employment, the authors claim that participants in a RBF program are more likely to (a) attain employment earlier and (b) sustain it for up to 9 months¹⁵. With respect to attainment of employment, close analysis of the study reveals a small but significant 3.8 week difference between the groups on the time to commencement of employment. However, the authors have not adequately probed into the possible reasons for the difference. For example, the propensity of RBF program providers to report the achievement of the milestone due to the

¹¹ McGrew et al, op. cit. n.9; also see Gates IB, Klein SW, Akabas SH, Myers R, Schwager M and Kaelin-Kee J. Performance-based contracting: Turning vocational policy into jobs, *Administration and Policy in Mental Health*, 31, 2004, pp.219-239.

¹² Frumkin P. *Managing for outcomes: Milestone contracting in Oklahoma*, January 2001.

¹³ Ibid, at p.19. The study argued that the FFS system only encouraged non-for-profit providers to accept people who could not work, extend services provided for 2 to 3 years irrespective of need in order to pad out their budgets.

¹⁴ Ibid. The study quotes the sentiments of funding bodies, eg: “All we care about is: are you meeting the parameters of our contract in terms of outcomes? You figure out how you’re going to do it.” It goes on to state that the service delivery process is turned into “an opaque, if not black, box from which outcomes are generated”.

¹⁵ McGrew et al, op. cit. n.9

relationship of receiving payment with reporting is not considered. With respect to employment outcomes, the participants attained low-paying (<US\$7.50 per hour), unskilled part-time employment (between 21.5-22.5 hours per week) in largely non-competitive sectors of the labour market.

The authors' claim that sustainable employment is more likely under RBF is undermined by the drop-out rate, which was most substantial in the FFS program (36% vs 20%), leaving the study with an exceptionally small sample (64 RBF; 26 FFS) – too small for generalising conclusions within and across programs and contexts. This compelled the authors to undertake a predictive probability analysis to judge the likelihood of sustaining employment. In effect, the statistically manufactured results favour the RBF over the FFS program.

Furthermore, the authors have not analysed the impact of the risk factors that they have identified on the attainment and sustainability of employment. For example, the FFS group had a higher incidence of inpatient treatment for substance abuse whilst the RBF group had higher incidence of non-specific physical conditions.

The study also reveals that there was little change achieved by both groups in dependence on benefits – a key outcome measure in a personal injury scheme. Finally, the FFS group attained better clinical outcomes that are valued in psychiatric rehabilitation, due to the greater propensity of the FFS providers to engage with medical and related services.

4.2 Problems with the conceptual basis for RBF systems

There are two principal conceptual problems with RBF systems:

- i. The shifting of responsibility for outcomes and risk to service providers; and
- ii. The inverse relationship of provider remuneration with needs, risks and scope of service.

4.2.1 Shifting responsibility for outcomes and risk

Returning injured workers to productive and sustainable employment is a multifactorial outcome influenced by multiple interest groups. Under the present FFS system, purchasers of services are responsible for identifying worker needs and risks, and mobilising necessary services to assist them with assessing and addressing those needs and risks. Providers are responsible for undertaking rigorous assessment and service planning in partnership with purchasers and recipients of services to ensure that the services implemented are necessary, cost-effective and, therefore, valued. Outcomes are attained through a collaborative approach in which services and costs are a function of need, risk and agreed pathway to the desired outcome. The pathway to the outcome may be blocked or constrained by social and environmental factors outside of the provider's sphere of influence but within the domain of the purchasers, and in the case of different employer services, new employers. Under such

circumstances, the purchaser and/or new employer becomes the responsible party for managing factors affecting the outcome.

In contrast, by enabling purchasers to shift the responsibility for the outcome to the provider, RBF systems impose economic risks on the provider which are multiplied when the purchaser or new employer is not equipped or inclined to appropriately manage the needs and risks for which they are responsible. Under a RBF system such as the one proposed under solution 1, or a hybrid FFS-RBF system like solution 4, provider remuneration for achieving milestones and/or outcomes will depend heavily on the effectiveness of the decisions and actions of others. Put simply, RBF systems penalise providers for the ineffective actions or omissions of others. Conversely, they also reward providers for the effective actions or omissions of others.

4.2.2 Inverse relationship of provider remuneration with needs, risks and scope of service

This conceptual problem is best explained by examining a series of case studies¹⁶.

Case study A describes the outcome achieved through the provision of same employer services (SES) and the remuneration that would apply under each of the proposed payment solutions. Services were matched to the prevailing needs and the risk of further work loss. The figures show that, in such cases, providers would be remunerated substantially higher under the RBF system (solution 1) and the hybrid FFS-RBF system (solution 4).

¹⁶ The data and information contained in each case study was gathered during a case file review undertaken as part of a workplace rehabilitation provider's annual self evaluation in April 2011. The provider is located in Sydney NSW.

Case example A: Same employer services

48 year old male mechanical engineer with persistent musculoskeletal pain in (R) shoulder, > 12 months.

Supported by an engaged employer (pharmaceutical manufacturer) with a well-established and employee supported OHS and RTW program, including dedicated, highly credentialed and competent SHE manager/RTW coordinator. Previous efforts to RTW were unsustainable.

Delay from onset of injury to referral: > 12 months.

Worker returned to pre-injury duties (no wage loss) after 16-weeks of workplace rehabilitation, including (a) needs assessment, (b) workplace assessment and development of RTW plan, workplace assessment report totalling 4.5 hours, and (c) services to implement, monitor, evaluate and revise RTW plan until goal achieved.

Employment sustained for 13 weeks.

Total cost of service: 20 hrs @ \$156.00 p/hr (plus. GST) = \$3,432.00

Total duration: 16 weeks plan plus 13 weeks durable employment = 29 weeks.

Payment solution	Services	Fees	Comparison with FFS
1: Milestone and outcome	Assessment: RTW plan: Commence suitable employment: RTW milestone: Employment durable for 13 weeks: Sub total: GST: Total payment:	\$650.00 \$500.00 \$350.00 \$1,000.00 \$2,500.00 \$5,000.00 \$500.00 \$5,500.00	Rewards provider for relatively low effort for a relatively low risk case. Scheme pays >\$2,000.00 more than required.
2: Fixed fees for specific services and FFS	Workplace assessment, RTW plan: 15.5 hours of services @ \$156.00 p/hr: Sub total: GST: Total payment:	\$545.00 \$2,418.00 \$2,963.00 \$296.30 \$3,259.30	Fixed fee element does not allow for variance in work environments and needs. Otherwise, payment is commensurate with the solution 3.
3: Fee for service	20 hours @ \$156.00 p/hr: GST: Total payment:	\$3,120.00 \$312.00 \$3,432.00	NA
4: Reduced FFS plus outcome payment	20 hours @ \$124.80 p/hr: Employment placement fee: Employment durability outcome: Sub total GST: Total payment:	\$2,496.00 \$300.00 \$900.00 \$3,696.00 \$369.60 \$4,065.60	Provider rewarded for relatively low effort for a relatively low risk case. Scheme pays >\$500.00 more than required.

Case study B describes the outcome achieved through the provision of SES for a relatively higher risk case. Agreed services were delivered according to prevailing needs and the myriad risk factors for work loss, with the worker ultimately returning to sustainable employment without wage loss. The figures show that, in such cases, despite achieving the desired outcome providers would be substantially penalised under the RBF system (solution 1); less so under the hybrid FFS-RBF system (solution 4). Solution 2 (FF-FFS) pays more than FFS alone.

Case example B: Same employer services

41 year old male professional driver with persistent low back pain > 5 months; secondary anxiety-depression, secondary illicit substance abuse dependence on narcotic analgesia, and protracted withdrawal from employment due to workplace conflict.

Employed in transport industry with a dedicated off-site RTW coordinator; supervisor disengaged. Recent history of disputation about causation of injury and fitness for employment. Agent had suspended payments with intention to decline claim.

An application to resolve a dispute lodged was with the Workers Compensation Commission. AMS assessment and arbitration supported the worker. Agent and employer directed to re-commence payments and provide workplace rehabilitation. Recurrent disputes between the worker and the employer/agent re compliance with injury management obligations.

Delay from onset of injury to referral: > 5 months

Worker returned to pre-injury duties (no wage loss) after 116-weeks of workplace rehabilitation, including (a) needs assessment, (b) initial workplace assessment and development of RTW plan, and workplace assessment report (3 hrs), (c) 1 additional workplace assessment (2.5 hrs), (d) a functional assessment (4 hrs) and a review functional assessment (2.5 hrs), (e) services to assess and aid management of secondary health problems, (d) services to aid management of disputed matters related to RTW, and (f) services to implement, monitor, evaluate and revise graded RTW plans until goal achieved.

Employment sustained for 13 weeks.

Total cost of service: 120 hrs @ \$156.00 p/hr (plus. GST) = \$20, 592.00

Total duration: 103 week plan plus 13 weeks durable employment = 116 weeks.

Payment solution	Services	Fees	Comparison with FFS
1: Milestone and outcome	Assessment:	\$650.00	Provider penalised for high effort to achieve the desired outcome for a high risk case. Total fee equates to \$45.83 p/hr.
	RTW plan:	\$500.00	
	Commence suitable employment:	\$350.00	
	RTW milestone:	\$1,000.00	
	Employment durable for 13 weeks:	\$2,500.00	
	Sub total:	\$5,000.00	
	GST:	\$500.00	
	Total payment:	\$5,500.00	

2: Fixed fees for specific services and FFS	Workplace assessment, RTW plan: Additional workplace assessment : Functional assessment Review functional assessment 108 hours of services @ \$156.00 p/hr: Sub total: GST: Total payment:	\$545.00 \$390.00 \$620.00 \$390.00 \$16,848.00 \$18,793.00 \$1,879.30 \$20,672.30	Fee is commensurate with solution 3.
3: Fee for service	120 hours @ \$156.00 p/hr: GST: Total payment:	\$18,720.00 \$1,872.00 \$20,592.00	NA
4: Reduced FFS plus outcome payment	120 hours @ \$124.80 p/hr: Employment placement fee: Employment durability outcome: Sub total GST: Total payment:	\$14,976.00 \$300.00 \$900.00 \$16,176.00 \$1,617.60 \$17,793.60	Provider is penalised \$2,800.00 despite achieving the desired outcome. Placement and durability fees do not compensate provider for the high effort expended to address worker and employer needs.

Case study C describes the outcome achieved through the provision of different employer services (DES). Agreed services were delivered according to prevailing needs and the risk factors for protracted unemployment, with the worker ultimately returning to sustainable employment with some wage loss. The figures show that, in such cases, providers would be penalised under the RBF system (solutions 1A and 1B). Relative to those payment solutions, providers would incur small penalties under the FF-FFS system (solution 2) and the FFS-RBF system (solution 4).

Case example C: Different employer services

53 year old female assistant in nursing with persistent musculoskeletal pain > 18 months resulting from rotator cuff tear and surgical repair; no longer capable of performing the inherent requirements of her job. Worker has received domestic assistance and is now independent at home.

Employed in aged care industry with a dedicated and supportive RTW coordinator and management team. Employer's efforts to provide suitable and sustainable employment have been exhausted. Worker's employment due to be terminated when rehabilitation provider engaged to undertake a vocational assessment and services to place worker in alternative employment.

Delay from onset of injury to referral: > 18 months

Worker gained a new role with a new employer via a job placement strategy that included vocational assessment, functional assessment formal retraining, a work trial (including workplace assessment and RTW plan), and supported job seeking activities. Sustained employment for 13 weeks.

Income is now approximately 85% of her probable earnings.

Total cost of service: 52 hrs @ \$156.00 p/hr (plus. GST) = \$8,923.20

Total duration: 42 week plan plus 13 weeks durable employment = 55 weeks.

Payment solution	Services	Fees	Comparison with FFS
1A: Milestone and outcome	Assessment: RTW plan: Retraining milestone: Work trial milestone Employment placement: Employment durable for 13 weeks: Sub total: GST: Total payment:	\$800.00 \$500.00 \$800.00 \$1,000.00 \$700.00 \$2,150.00 \$5,950.00 \$595.00 \$7,845.00	Provider is penalised \$1,100.00 for not achieving job placement commensurate with probable earnings, despite the job being suitable and sustainable.
1B: Milestone and outcome	Assessment: RTW plan: Service milestones (x 5): Employment placement: Employment durable for 13 weeks: Sub total: GST: Total payment:	\$800.00 \$200.00 \$2,025.00 \$600.00 \$2000.00 \$5,625.00 \$562.50 \$6,190.50	Provider is penalised \$2,700.00 for not achieving job placement commensurate with probable earnings, despite the job being suitable and sustainable.

2: Fixed fees for specific services and FFS	Vocational assessment: Workplace assessment, RTW plan: Functional assessment: 38 hours of services @ \$156.00 p/hr: Sub total: GST: Total payment:	\$930.00 \$545.00 \$620.00 \$5,928.00 \$8,023.00 \$802.30 \$8,825.30	Fixed fee elements result in a small loss incurred by provider.
3: Fee for service	52 hours @ \$156.00 p/hr: GST: Total payment:	\$8,112.00 \$811.20 \$8,923.20	NA
4: Reduced FFS plus outcome payment	52 hours @ \$124.80 p/hr: Employment placement fee: Employment durability outcome: Sub total GST: Total payment:	\$6,480.60 \$400.00 \$900.00 \$7,780.60 \$778.06 \$8,558.66	Small loss incurred by provider. Placement and durability fees provide no incentive in this instance.

Finally, case study D describes the outcome achieved through the provision of DES for a relatively higher risk case. Agreed services were delivered according to prevailing needs and the myriad risk factors for protracted unemployment, with the worker ultimately returning to employment without wage loss, but not sustaining that employment. The figures show that, in such cases, providers would be heavily penalised under the RBF system (solutions 1A and 1B), and less so under the hybrid solution 4. Relative to those payment solutions, providers would incur a small penalty under the FF-FFS system (solution 2).

Case example D: Different employer services

44 year old male residential services worker with primary psychological injury and musculoskeletal strain to neck/shoulder resulting from physical assault. Secondary alcohol abuse.

Employed in non-governmental human services organisation. Supported by a dedicated and supportive RTW coordinator. Line manager disengaged – conflict exists between manager and worker about fitness for employment and performance at work. Recurrent attempts to facilitate RTW on suitable duties have been ineffective. NTD has supported protracted absences from work.

Agent has suspended benefits on multiple occasions due to alleged non-compliance with injury management obligations. Suspensions not sustainable following conciliation.

Delay from onset of injury to referral: > 8 months

Worker returned to a similar role with a new employer via a job placement strategy that included vocational assessment, work trial (including workplace assessment and RTW plan), supported job seeking activities, and services to aid management of workplace conflict and agent-led disputation.

Employment attained was commensurate with probable earnings. Worker was not working at 13 week review and became dependent on benefits having left employment voluntarily. No further rehabilitation was sanctioned by agent/employer. Worker found to have obtained another, similar role several weeks later.

Total cost of service: 96 hrs @ \$156.00 p/hr (plus. GST) = \$16,473.60

Total duration: 82 week plan.

Payment solution	Services	Fees	Comparison with FFS
1A: Milestone and outcome	Assessment: RTW plan: Work trial milestone: Employment placement: Employment durable for 13 weeks: Sub total: GST: Total payment:	\$800.00 \$500.00 \$1,000.00 \$1,900.00 \$0.00 \$4,200.00 \$420.00 \$4,820.00	Provider penalised more than \$11,000.00 for worker's decision to leave the job. No incentive for provider to expend the necessary effort to help the worker obtain suitable employment.
1B: Milestone and outcome	Assessment: RTW plan: Service milestones (x 12): Employment placement: Employment durable for 13 weeks: Sub total: GST: Total payment:	\$800.00 \$200.00 \$3,600.00 \$1,000.00 \$0.00 \$5,600.00 \$560.00 \$6,160.00	Provider penalised more than \$10,000.00 for worker's decision to leave the job. No incentive for provider to expend the necessary effort to help the worker obtain suitable employment.

2: Fixed fees for specific services and FFS	Vocational assessment: \$930.00 Workplace assessment, RTW plan: \$545.00 85 hours of services @ \$156.00 p/hr: \$13,260.00 Sub total: \$14,735.00 GST: \$1,473.50 Total payment: \$16,208.50	Fixed fee element results in a \$200.00 loss for the provider.
Option 3: Fee for service	96 hours @ \$156.00 p/hr: \$14,976.00 GST: \$1,497.60 Total payment: \$16,473.60	NA
4: Reduced FFS plus outcome payment	96 hours @ \$124.80 p/hr: \$11,980.80 Employment placement fee: \$600.00 Employment durability outcome: \$0.00 Sub total: \$12,580.80 GST: \$1,258.08 Total payment: \$13,838.88	Placement fee does not compensate provider for the effort expended in placing the worker in suitable employment and optimising the worker's employment prospects.

The four case studies reveal that there is an inverse relationship between (a) provider remuneration and (b) the scope of services necessary to address worker/employer needs and the risks of long-term work loss and unemployment. In other words, under the RBF and hybrid FFS-RBF systems (solutions 1 and 4), providers are:

- i. Rewarded for the relatively lower effort required to achieve outcomes for relatively low needs, low risk cases; and
- ii. Penalised for the relatively higher effort required to achieve outcomes for high needs, high risk cases.

Providers stand to benefit economically under RBF systems providing their throughput is largely comprised of lower needs, lower risk cases. However, providers cannot expect to receive voluminous referrals for such cases unless there are greater incentives, if not mandates, introduced for employers and insurance agents to generate earlier referrals for workplace rehabilitation services. That said, earlier referral is not a panacea, in and of itself, to the present and emerging needs of injured workers and their employers, and the risk of long-term work loss and disability.

4.3 RBF systems and provider behaviour

The case studies show that the proposed RBF and hybrid systems have the potential to impose existential risks to the commercial viability of workplace rehabilitation providers, especially those whose income and very existence depends on operating within the WorkCover NSW scheme. Those risks are even evident in the papers that support RBF over FFS systems. For

instance, in the multisite trial, RBF providers reported decreased incentive to work with RBF clients due to decreased productivity and returns. In turn, they focused on their FFS clients¹⁷. This suggests that RBF systems have operational and commercial impacts even for organisations that have multiple funding sources, deterring providers from the activities that have been associated with better employment outcomes¹⁸.

There is good agreement in the available studies that RBF systems, through imposing threats to commercial viability, increase the potential for provider behaviours that are intended to mitigate commercial risk, including creaming, parking and gaming¹⁹. Furthermore, they can impose competing interests whereby providers may, for purely commercial reasons, be compelled to break with the principles-driven approach to service delivery that is espoused by the National Approval Framework, including but not limited to reducing quality and continuous improvement activities²⁰.

Should a RBF system or a hybrid solution be adopted, providers are likely to engage in behaviours that not only compete with their own interests but with the interests of workers, employers and the scheme – thereby detaching provider services from the broader health and social objectives of their organisations and the WorkCover NSW scheme. To survive in the scheme, providers will be compelled to equip themselves with professional resources and infrastructure of lesser cost, capacity and quality in order to balance the imperatives of the National Approval Framework with their commercial interests.

5. What payment solution should be adopted by WorkCover NSW and workplace rehabilitation providers?

It is my assessment, grounded in the above analysis, that there is no compelling reason to support the introduction of a RBF or hybrid FFS-RBF system. To do otherwise would undermine the KRAs and activities enshrined in WorkCover NSW's Corporate Plan and the intent of the National Approval Framework for Workplace Rehabilitation Providers.

I unequivocally support the regulation of a FFS hourly rate, with the recognition that there are sufficient ethical, professional, government-regulated and consumer-led mechanisms already at work that place responsibilities and accountabilities on providers for achieving sustainable employment outcomes and improving the cost-effectiveness of their services.

¹⁷ McGrew et al, op. cit. n.9

¹⁸ Ibid. Those activities include (a) time in evaluation/assessment, (b) time spent in employment advocacy, (c) time at worksite, and (d) total person-to-person contact.

¹⁹ For a description of those behaviours see Frumkin, op. cit. n.12; Also see Hudson M, Phillips J, Ray k, Vegeris S and Davidson R. *The influence of outcome-based contracting on provider-led pathways to work*, Research Report No.638, Department for Work and Pensions, Norwich, 2010; Also see WorkCover NSW, op. cit. n.3.

²⁰ Ibid, Hudson et al, 2010; also see Armstrong D, Byrne Y, Patton L and Horack S, *Welfare to work in the United States: New York's experience of the prime provider model*, Research Report No.614, Department for Work and Pensions, Norwich, 2009.

The value of the FFS hourly rate, in principle, should be commensurate with (a) nature of the professional services that workplace rehabilitation providers supply, and (b) the legislative imperatives unique to this industry that require providers to govern, resource and continuously improve their services.

Accordingly, the FFS hourly rate should be of a higher value than the rate proposed under solution 3, which reflects the applicable rates for individual health professionals who (i) do not deliver services within the complex constructs of the workplace and labour market, and (ii) are not required to operate their businesses to the same level of sophistication prescribed by the National Approval Framework.

The FFS hourly rate should also apply to services delivered to severely injured workers.

6. How should provider travel be charged?

Travel time is incidental to the service being delivered and, in principle, the rate payable for should promote, not deter, workplace-based services; and nor should it reward providers for the otherwise unproductive time spent travelling, bearing in mind that providers have, and do take, the opportunity to make phone calls whilst travelling that attract a fee for service.

Accordingly, I propose that three options be considered:

- i. An hourly rate equivalent to the regulated FFS hourly rate, with a capping on the total time that can be charged for travel for the relevant service (eg: 2 hours for a return trip); or
- ii. An hourly rate of substantially lesser value than the regulated FFS hourly rate, with a capping on total time that can be charged, providing the FFS rate is agreed to be higher than \$156.00 p/hour (ex GST); or
- iii. A kilometre rate, subject to annual variation in the gazette.

7. Differential payment schedules

Differential payment schedules have been designed as a means to control unhelpful provider behaviour such as creaming, parking and gaming associated with RBF systems. In essence, they seek to encourage higher effort for relatively high needs, high risk cases by increasing the remuneration available for achieving sustainable employment outcomes in such cases. The total remuneration available is usually a function of time i.e. the duration of work loss or unemployment²¹.

The layering of an RBF system with a differential payment schedule such as the DEEWR system assumes that time is a reliable indicator of disadvantage, need and risk. Whilst this is

²¹ For an example of a differential payment system, see Department of Education Employment and Workplace Relations. *Administration of Job Network Outcome payments*, Audit Report No.17, 2008-09.

widely accepted, case study A demonstrates that this may not be true in all instances. That said, a schedule based on time would be a more efficient and dependable indicator of risk than any schedule based on the screening of worker characteristics; and it would become even more efficient for purchasers and providers when applied to a FFS system.

In my view, a well-designed differential payment system is one that provides an incentive for employers and insurance agents to engage necessary rehabilitation services earlier than what is customary practice in the scheme today²². That system should also support WorkCover NSW in achieving its sustainable employment KRAs. This could be done by introducing a differential FFS hourly rate based on the time since the onset of injury/illness. The example outlined in the table below would require employers/agents to pay a FFS hourly rate commensurate with relative risk of long-term work loss. I have refrained from arbitrarily proposing the values of the base and median rate, as these would be best determined in consultation with providers.

Sample differential payment system

Time since onset of injury/illness	Relatively risk of long-term work loss	Applicable FFS hourly rate
0-4 weeks	Low risk	Base rate
5-12 weeks	Medium-high risk	Median rate
>12 weeks	High risk	Maximum rate <small>equivalent to the gazetted FFS rate</small>

8. Statement of position adopted by nth°degree

8.1 Nth°Degree supports the regulation of a FFS hourly rate at a value higher than the rate of \$156.00 p/hour proposed under payment solution 3. The value of the hourly rate should be commensurate with:

- a) Nature of the professional services that workplace rehabilitation providers supply;
- b) The legislative imperatives unique to this industry that require them to govern, resource and continuously improve their services.

That hourly rate should apply to services delivered for severely injured workers.

8.2 It is the position of Nth°Degree that payments for provider travel should promote, not deter, workplace-based services; and nor should they reward providers for the otherwise

²² It is uncommon for a referral to be made to a rehabilitation provider within the first 12 weeks of the onset of injury/illness.

unproductive time spent travelling. Three payment options should be considered by WorkCover NSW in consultation with workplace rehabilitation providers:

- i. An hourly rate equivalent to the regulated FFS hourly rate, with a capping on the total time that can be charged for travel for the relevant service; or
- ii. An hourly rate of substantially lesser value than the regulated FFS hourly rate, with a capping on total time that can be charged, providing the FFS rate is agreed to be higher than \$156.00 p/hour (ex GST); or
- iii. A kilometre rate, subject to annual variation in the gazette.

8.3 It is the position of Nth°Degree that WorkCover NSW and workplace rehabilitation providers should consider introducing a differential FFS system that provides an incentive for employers and insurance agents to engage necessary rehabilitation services earlier than what is customary practice. That system should be:

- a) Aligned to WorkCover NSW's sustainable employment KRAs; and
- b) Linked to the time since the onset of injury/illness, which is an efficient and reliable indicator of disadvantage, need and the risk of long-term work loss.

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About the Author

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Jamie attained his degree in occupational therapy at the Cumberland College of Health Sciences in 1989. In 1994, he returned to the Faculty of Health Sciences, The University of Sydney, to undertake graduate studies in biomechanics, physiology and motor learning. Later, he attained a *Diploma of Training and Assessment Systems* where he honed his skills in curriculum development, and the design and administration of performance evaluation and auditing methodology. Jamie also attained the *Master of International Relations* from The Macquarie University, in which he majored in researching the politics and persistence of conflict.

Jamie has worked in the occupational health and injury management field since 1990 – first as an occupational rehabilitation practitioner and now as a sought after and respected consultant in health policy, program and professional development.

From 1999 to 2002, he was a senior officer with WorkCover NSW where he was engaged in the workers compensation scheme reform agenda, including:

- i. Dispute prevention and resolution reform;
- ii. Design and administration of insurer performance evaluation and auditing methods;
- iii. Instructional design and delivery of training programs for employers, insurers, unions and health practitioners; and
- iv. Development of service standards and guidelines for rehabilitation providers and health professionals, including cross-disciplinary competency standards.

In 2002, Jamie established *nth^odegree*, through which he works with organisations to improve health and productivity outcomes in an ever evolving industrial, social and political landscape.