



Ombudsman Tasmania

Investigation into a public interest disclosure about the Department of Health and Tasmanian Health Service's management of workers compensation claims

9 November 2020

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Summary

My office received a disclosure regarding the alleged mismanagement of workers compensation claims by the Department of Health (the Department) and the Tasmanian Health Service (THS). The disclosure raised concerns about a number of issues, including:

- failure to comply with the statutory requirements of the *Workers Rehabilitation and Compensation Act 1988* (the Act) due to a lack of knowledge amongst staff;
- long delays and inadequate communication between relevant stakeholders resulting in claims remaining active for long periods of time unnecessarily; and
- the claims management database crashing and losing data.

I determined that the protected disclosure was a public interest disclosure pursuant to the *Public Interest Disclosures Act 2002* (the PID Act) and so was required to investigate the actions of the Department and THS to determine whether they had engaged in serious or significant improper conduct.

As part of the investigation I engaged Mr Stephen Carey, former Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal, to perform a review of 15 workers compensation files identified as part of the disclosure.

Mr Carey's comprehensive review identified a number of issues that need to be addressed, but found no evidence of serious or significant maladministration. Mr Carey concluded that the main issues of concern were delay and the use of an inadequate IT system to manage workers compensation claims.

After considering all the material obtained from the discloser, the investigation and the content of Mr Carey's report, I concluded that there was no evidence that the Department and THS had engaged in serious or significant improper conduct. Mr Carey's report, however, highlighted areas for improvement and I make the following recommendations as a result:

Recommendations

1. The Department establishes a fit for purpose workers compensation management system by the end of 2020.
2. A regular internal file review process be implemented so staff members can discuss and collaborate on the effective management of workers compensation claims.

Introduction

1. The disclosure related to the management of workers compensation claims by the Department and THS. If a worker injures themselves at work, they are entitled to claim workers compensation and associated costs arising from the injury. The Department has a team that manages the assessment of these claims and deals with liability matters and THS used to have employees responsible for assisting workers to return to work. During the course of the investigation, these different areas were centralised into one team within the Department.
2. The disclosure raised concerns that the following issues were widespread in the management of workers compensation claims:
 - lack of understanding of the Act on the part of Liability Consultants who are staff members responsible for determining whether workers compensation claims are accepted or not and deal with more complicated liability matters;
 - failure to properly investigate whether injuries and medical conditions were work-related;
 - failure to act on medical evidence provided by independent medical practitioners;
 - lack of communication between the Department's Liability Consultants, THS staff, injured workers, and their supervisors;
 - claims remaining active for long periods which consequently led to some injured workers developing secondary psychological conditions;
 - closure of claims without paying the injured worker a whole person impairment payment, which is a statutory entitlement pursuant to s71 of the Act; and
 - the claims management database crashing and losing data on a regular basis.
3. I was satisfied that the disclosure was a protected disclosure under the PID Act. I then determined that the protected disclosure was a public interest disclosure. I am required by s 39 of the PID Act to investigate a public interest disclosure to determine whether there has been any improper conduct by a public officer or, as in this case, a public body.

Assessment of the Protected Disclosure

4. The Ombudsman can receive and investigate disclosures about public officers and public bodies, which include state service agencies¹ under the PID Act.
5. If a disclosure meets certain requirements, outlined below, it is a protected disclosure. This means that the discloser receives the protections in the PID Act, including protection from reprisal. I am then required by s30 to assess the information and evidence received as part of the protected disclosure to determine whether it is a public interest disclosure.
6. The disclosure was made in accordance with Part 2 of the PID Act and was a protected disclosure as:
 - it was made by a public officer;
 - it related to two public bodies (the Department and THS);
 - the discloser believed that the Department and THS had engaged in improper conduct;
 - the conduct was of a type that, if it had occurred, potentially fell within the definition of improper conduct, specifically maladministration;
 - the conduct occurred after 1 January 2001; and
 - it was made to the office of the Ombudsman.
7. The alleged maladministration needs to be serious or significant as determined in accordance with a guideline I have issued.² I was satisfied that it was serious or significant in this instance because:
 - a. the disclosure raised concerns about significant sums of money being wasted as a result of the alleged mismanagement of workers compensation claims;
 - b. the alleged mismanagement of claims was constituted by a course of conduct rather than an isolated incident; and
 - c. the allegations raised concerns about potential harm to workers due to mismanagement of workers compensation claims.
8. I determined that the protected disclosure was a public interest disclosure after having considered both the material the discloser provided and the information conveyed during

¹ Section 4(1)(b) of the PID Act.

² Guideline No. 1 /2010 - *Public Interest Disclosures Act 2002* guidelines and standards for the purpose of determining whether improper conduct is serious or significant – accessible at www.ombudsman.tas.gov.au.

their interview with two of my investigation officers. I was satisfied that this tended to show that the Department and THS had engaged in maladministration, which is included in the definition of improper conduct in s3(1) the PID Act.

9. As noted, I have a duty to investigate a public interest disclosure under s39 of the PID Act. Section 40 outlines matters that do not have to be investigated but it was not applicable in this case. Part 6 of the PID Act sets out my powers and responsibilities in relation to the investigation of a disclosed matter.

Relevant Legislation

In addition to the PID Act, I also considered the *Workers Compensation and Rehabilitation Act 1988*.

Methodology and initial investigation

10. In accordance with s46 of the PID Act, on 6 June 2019 I wrote to the Honourable Michael Ferguson MP, the then Minister for Health, and the Secretary of the Department of Health notifying them of my intention to investigate the disclosed matter.
11. I also requested of the Secretary that I be provided with relevant material including internal workers compensation policies and procedures, details of training for staff, past audits conducted by WorkSafe Tasmania - including all relevant correspondence between the Department and WorkSafe - and details of any complaints received since 1 January 2018 about the management of workers compensation claims.
12. I wrote to the Chief Executive Officer of WorkSafe Tasmania and also obtained copies of relevant audits and correspondence. Two of my investigation officers met with WorkSafe staff to gain an overview of their role and function under the workers compensation legislation. Its audit of public bodies appears to have commenced relatively recently, and there does not appear to be a legislative requirement that public bodies, such as the Department of Health, be audited unlike private employers or insurers.
13. The audits are focused on ensuring that employers comply with their legislative obligations under the Workers Compensation legislation. Worksafe audits do not consider all of the issues raised in the disclosure but the limited number of audits conducted by Worksafe did confirm the outcome of the subsequent review we conducted, as discussed below.
14. Two of my officers performed a preliminary review of some workers compensation files identified by the discloser. Given the complexity of the files and the subject matter I decided to engage a consultant, expert in workers compensation, to conduct a targeted review of 15 files. The purpose of engaging such an expert was to ascertain whether any of the systemic issues raised in the disclosure could be substantiated. The disclosure

tended to show, rather than showed, that the public bodies had engaged in maladministration and so the review was considered an effective means to quickly establish an evidence base for determining whether a more fulsome investigation was required.

15. I engaged Mr Stephen Carey, former Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal, to perform the review.
16. I wrote to the Secretary of the Department and requested copies of 15 workers compensation files identified as part of the disclosure. My investigation officers also obtained access to relevant documentation for those files held by JLT³ but Mr Carey ultimately did not need to consider that material.
17. I wrote to the Department of Treasury and Finance to request information such as the contractual documentation between the Crown and JLT, and recent actuary reports on the Risk Management Fund and workers compensation claims.

Mr Carey's review

18. Mr Carey provided a detailed report of his review of the workers compensation files. He also had access to the investigation material obtained as a result of the disclosure, which I have broadly outlined above. Two of my investigation officers and Mr Carey also met with Department staff to discuss the structure and process of THS' handling of workers compensation claims prior to the finalisation of his report.
19. The findings of Mr Carey's review were that:
 - there were no blatant examples of deliberate noncompliance with the Act, except in one case where a worker had not been advised that their claim had been accepted as they had already returned to work and the employer had indicated that the claim would not be disputed;
 - there were one or two examples of staff appearing to not understand the foundational factual basis to support a s 86(1)(c) certificate, but other than this it did not appear that staff lacked sufficient understanding of the Act
 - an appropriate process was used to determine liability, and while someone else might have made a different decision, it was open to the Liability Consultants to make the decisions they did in the circumstances;

³ Jardine Lloyd Thompson Pty Ltd is retained on a contract basis for claims administration of the Tasmanian Risk Management Fund, the Tasmanian Government's self-insurance fund.

- there were some examples of delays seeking or acting upon independent medical advice, but this appeared to be caused by procedural issues rather than being deliberate;
- it was difficult to determine whether there was a lack of communication between the Department's Liability Consultants and THS staff, because the files did not appear to contain full records of all telephone and email communications;
- delays occurred for a range of reasons, including while awaiting advice from treating medical practitioners, the Solicitor-General, Return to Work Coordinators, employers, and the Department generally, and not simply as a result of inaction by Liability Consultants;
- there were no examples of claims being closed without the worker receiving their statutory entitlement to a s 71 payment; and
- it was clear that there is an urgent need for an update to the IT systems used by the Department and THS to manage workers compensation claims, and THS staff agreed with this.

20. The conclusion from Mr Carey's report can be found at Attachment A. I have determined that it is not appropriate to disclose the full report in the interest of protecting the identity of the discloser.

21. Mr Carey's conclusions, along with other information obtained during my investigation such as the WorkSafe audit results, provided sufficient evidence for me to determine that the public interest disclosure did not demonstrate improper conduct. Issues were identified, however, which I discuss below.

Solicitor-General

22. One issue Mr Carey raised in his conclusions related to delays, and the role of the Solicitor-General's office. The Solicitor-General provides legal advice to State Service agencies on the handling of workers compensation matters and represents the State of Tasmania in any matters before the Workers Rehabilitation and Compensation Tribunal.

23. I wrote to the Solicitor-General to afford him the opportunity to comment on Mr Carey's finding that some delays had been caused by the significant time taken to obtain advice from his office.

24. In response, the Solicitor-General advised that his staff have a very heavy workload, and that delays had been caused by limited resources rather than staff performance issues. Reference was also made to the officers and employees of the Department who are

responsible for the administration of its workers compensation claims. The Solicitor-General said:

Like every agency in the State Service, they manage their workers compensation claims with relatively few resources. If one member of their team goes on leave (which they are entitled to do and which has occurred a number of times recently) we experience difficulty in obtaining instructions while other employees at the department attempt to pick up the absent employee's workload. It would not be fair to attribute this to a delay on their part. It is part of the exigencies of their employment and the resources available to the department to administer the claims. It appears to me that Mr Carey's report is necessarily confined to one section of the agency, and does not address the wider resourcing problem that it may be experiencing. This means that, once empirically observed, the question of delay can only be dealt with at a very high level of abstraction.

25. The workers compensation pilot project was also discussed with the Solicitor-General. This project began in 2016/2017 and it was funded by a number of agencies to enable the Department of Justice to create two legal practitioner positions in the litigation section of the Solicitor-General's office. Their time was devoted to reducing long tail workers compensation claims. The Solicitor-General indicated that it became an ongoing program run by two full time permanent legal practitioners in 2018/2019 as a result of its success. The Solicitor-General's annual report for the 2018-2019 financial year shows, for example, that 348 workers compensation files were opened during the year but 920 were closed, clearly demonstrating a significant improvement in the closure of files across the State Service. The Solicitor-General advised:

We have consistently pointed out that workers compensation is an area that requires constant attention by agencies. It is the largest single area of civil litigation for the State and, for obvious reasons, presents an indelible legal risk for the State. Within resource constraints, we attempt to ensure that cases are dealt with economically and efficiently. However, the scale and bulk of our workers compensation practice dictates that it is resource intensive, both for our office and instructing agencies.

26. Mr Carey suggested in his review that a monthly meeting between Liability Consultants and legal practitioners would be an effective way to monitor cases. The Solicitor-General indicated that this unfortunately would not be possible given his office's current funding arrangements.
27. Issues to do with funding and resourcing of his office are largely outside the Solicitor-General's control. His recent annual reports make it clear that this is an ongoing issue. It presents a false economy to restrict funding with respect to the management of workers compensation claims as delays in the provision of legal advice only add to the costs of those claims. This can sometimes involve a significant amount of money if a worker is

being paid and receiving medical benefits for an injury that potentially may not be the State's responsibility. Similarly, if expensive independent medical examination reports become stale due to delay, new reports may need to be obtained which can cost thousands of dollars.

28. Timely provision of legal advice is also important in terms of the State being a model litigant. Delays in the provision of advice can result in considerable uncertainty for workers regarding the status of their claim.
29. There would be merit in the government reviewing whether an expansion of the workers compensation program in the Solicitor-General's office would result in savings on the State's overall expenditure on workers compensation.
30. In response to a draft copy of this report the Solicitor-General indicated that he agreed with the suggestion in the above paragraph.

IT system

31. One of the major issues raised and confirmed by the investigation is the inadequate IT system used by the Department for workers compensation claims. Whilst not demonstrative of maladministration that is serious or significant, it is an issue that appears to be having an impact on the effective management of claims.
32. All workers compensation files have an access database coversheet, and documentation is then stored in shared drives. The discloser outlined that if multiple people are accessing the same file at the same time the system can crash and information can be lost. Mr Carey noted in his report:

Given this is a multimillion ongoing liability for the Department it is unacceptable that staff are forced to rely upon a mixture of ongoing and separate IT systems that are not designed for the purpose required...

33. These separate IT systems included those referenced above as well as the payroll system, the Department's Human Relations system, individuals' notes and spreadsheets and the JLT claims administration system.
34. Mr Carey further noted :

A contemporary workers compensation file management system would assist in avoiding many of the issues identified in the file audit. I have no doubt that delays and oversights could be addressed by mapping simple key points to allow specific timelines to be established for a claim, red flags at set dates eg expiry of treatment plan or certified period of incapacity, highlighting of diagnosis changes, over expenditure on medical or other treatment costs, and simple resubmits. There is surely much more that could be achieved that would mean all members of the

“team” had ready access to a file’s history, current processes in place eg treatment or RTW and conversation notes and correspondence to any relevant person involved in a claim.

35. I understand the Department has engaged a project officer to investigate the introduction of an IT system for the corporate services area. The Department should ensure that the project at least results in a fit-for-purpose workers compensation management system. If claims can be managed and monitored more effectively and efficiently, benefits would be likely to be seen not only in cost savings but more importantly on workers’ wellbeing. “Workers” here include not only the injured workers but also the staff working with them.

Recommendation I

- The Department establishes a fit for purpose workers compensation management system by the end of 2020.
36. The Department advised that it agreed with this recommendation. It confirmed that work has progressed in relation to the sourcing, development and implementation of a replacement electronic workers compensation claims case management system. It is planned that this will be implemented in late 2020. The Department also advised that it is preparing a business case for the procurement of a new Human Resource Information System, which will include improvements in both Work, Health and Safety and workers compensation capabilities.
37. In response to a draft copy of this report the Deputy Secretary, Policy, Purchasing, Performance and Reform, advised that whilst work has progressed on a replacement electronic workers compensation claims case management system, the timeline for implementation has been delayed. I was advised that this is due to a number of factors including, but not limited to, the impacts of COVID-19 and absences of key systems personnel from the workplace. The Deputy Secretary said that implementation of an interim electronic workers compensation claims case management system is now due to occur within the first quarter of 2021, while a larger project to implement a holistic Human Resource Information System (inclusive of workers compensation case management) is underway.
38. This was a reasonable response and I will follow up on the progress of the implementation of the new system in mid-2021.

File management

39. Mr Carey recommended that the Department initiate a regular internal file review:

I would recommend that the earliest attention be given to establishing an internal file review process. Staff in this area are required to work autonomously and this can be a weakness as only one point of view or opinion is considered at various key points during the management of a file. The value of open discussion amongst peers as to the status and intention in respect of a particular claim cannot be underestimated. This is especially so if a legal officer is involved.

40. This suggestion was positively received by Department staff when put to them.

Recommendation 2

- A regular internal file review process be implemented so staff members can discuss and collaborate on the effective management of workers compensation claims.

41. In response to a draft copy of this report the Deputy Secretary outlined the steps taken to implement this recommendation. Scheduled meetings for internal file reviews have been instigated. The Deputy Secretary also noted that the consolidation of the Injury Management functions under one team will assist with consistency in practice and culture and the areas noted in my report will provide the team with opportunities for continuous improvement.

The public sector and workers compensation

42. Mr Carey made some comments more broadly regarding the management of workers compensation in the State Service:

Given that I have mentioned on a number of occasions the fact that the State of Tasmania is the employer of State Service officers it might be opportune for detailed consideration being given to creating a central authority that dealt with key aspects of workers compensation claims management and administration on behalf of the State Service. With annual costs in the tens of millions and an increase in premiums at 14.9% this financial year vastly greater than comparable private sector premiums perhaps it is time to reconsider how Government deals with this area. A central Authority would ensure consistency of consideration of claims, best practice across the entire Service in claims management and administration and significantly widen RTW [Return to Work] options.

43. The Department advised in response to Mr Carey's conclusions that it considered there was merit in discussing these broader observations and recommendations with the State Service Management Office, Department of Premier and Cabinet.

Conclusion

44. I have found, as a result of my investigation, that the Department has not engaged in improper conduct, specifically serious or significant maladministration. Mr Carey's review

of 15 files did not uncover any evidence of malfeasance or mismanagement of workers compensation claims, but rather primarily highlighted constraints that have arisen as a result of under-resourcing. There is, however, room for improvement in the administration of workers compensation claims by the Department based on Mr Carey's conclusion. The Department has responded positively to the recommendations made in this report to address those issues.

45. The impending introduction of a fit-for-purpose workers compensation IT system will be a significant tool in assisting staff to more effectively manage workers compensation claims. The remaining small, but practical, recommendation should assist to improve the service provided to injured workers through greater consistency and review of the work being undertaken.
46. I am hopeful that the broader comments made by Mr Carey regarding the public sector management of workers compensation claims are considered with a view to improving the management and recovery of injured public servants. Recent reports interstate⁴ have reinforced what should be self-evident; the management of workers compensation claims is an area that can have a significant human impact. It is critical that when potential improvements can be achieved, that they are pursued with purpose.
47. I wish to extend my sincere thanks to the discloser for raising their concerns with my office and the cooperation and assistance of the Department staff with my investigation.



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OMBUDSMAN

9 November 2020

⁴ For example, the Victorian Ombudsman's reports regarding workers compensation, the most recent being 'WorkSafe2: Follow-up investigation into the management of complex workers compensation claims' which can be found at www.ombudsman.vic.gov.au/our-impact/investigation-reports/worksafe2-follow-up-investigation-into-the-management-of-complex-workers-compensation-claims.

Attachment A

Extract of Stephen Carey's audit report - conclusion

As to the general allegations made by the notifier my view based upon the audit of nominated files, consideration of relevant documents and information and discussion with relevant staff is as follows;

- Not adhering to the Workers Rehabilitation and Compensation Act,

No blatant examples were found as to where the Act was deliberately not adhered to save for the example where advice was not given to a worker that a claim was accepted where the employer determined that it would not be disputed. Although this strictly not a requirement it could be argued to not be within the spirit or intent of the Act. The reason provided was that by time 84 days had been reached the worker was back at work and it was thought appropriate to not highlight to the worker the claim was accepted. There was one example of not adhering to S81A timelines due to oversight and Employer bore the prejudice, and a number of occasions that there was the suggestion that the Employer did not take reasonable steps to return an injured worker to suitable employment or provide appropriate rehabilitation services. The actual processes set out in the Act to be used in the administration of claims are periodically audited by WorkSafe and any significant matters I assume would be identified by that process.

- Liability Consultants have lack of understanding of the *Workers Rehabilitation and Compensation Act*,

There were one or two examples where the liability staff did not understand the foundational factual basis to support a s86 (1)(c) certificate ie acceptance by the certifying doctor that there had originally been a work injury. There was also one file where I do not believe that there was a realisation of action that could be taken to require a worker to attend for a medical examination. Other than this I did not have the impression that the staff did not understand various aspects of the Act. There were issues as to timeliness of some actions, considerations of fact and law, and reconsideration of changing circumstances but this reflected on timely or considered application of knowledge rather than lack of same.

- Not investigating claims to determine whether work is the cause let alone the major or most significant contributing factor, s25(1)(a)or(b),

Each file considered indicated that there had been a process to garner either factual or medical evidence before determining the attitude as to liability. In most cases this appeared to be an appropriate process. The decision made on some of those investigations may well have been different if another person considered the matter but these were value calls. One or two cases arguably should not have been accepted but they were confusing

scenarios as to aggravations or factual matters. The impression is that the liability test s25(1)(a) or (b) was considered for claims it just arguably may not have been correctly applied in one or two matters.

- Not acting on medical evidence provided by independent medical practitioners,

There were examples of delay in seeking advice upon or acting upon opinions of independent medical practitioners. This was not deliberately ignoring such opinions rather failings in the processes used to administer files. Some examples provided by the notifier of this were found to be wrong, or were justified by advice of OSG [Office of the Solicitor-General], or did not provide a proper basis for action given the weight of medical evidence to the contrary.

- Lack of communication between the Department of Health Liability Consultants, the injured workers and their supervisors and THS staff.

This is difficult to determine as the file details provided to me I suspect did not provide an accurate or complete record of telephone or email contacts. On some files audited there was a clear record of contact with Supervisors and business units during the investigation of a pending file. A dedicated IT support system would no doubt assist in recording all appropriate contacts. Ongoing contact during the administration of a claim whether it is accepted or disputed appears to be a shared role of both the liability consultant and the Injury management coordinator. The existing internal structure should detail more specifically the expectations of these claims officers in this regard.

- Longevity of claims -- workers then develop secondary psych conditions and rather than assisting the workers more monies are expended to provide psychological assistance,

The examples of where this may have been the case were due to the performance of others not just the liability consultants, eg treating medical practitioners, OSG, Return to Work coordinators, relevant workplaces for RTW [Return to Work] and the Department generally in failed RTW endeavours.

- Claims being closed without paying the injured worker their statutory entitlement of a Section 71 payment. This is a whole person impairment payment paid to a worker who has suffered a permanent impairment,

No examples of this identified in file audit. Would have thought that periodic audits of departmental files by WorkCover that looked at processes and compliance with the Act would identify such matters.

- The current workers compensation claims are managed via an Access Database. This database continually crashes and losses data.

The staff involved agree that there is an urgent need for an update in the IT support system in the management and administration of workers compensation claims. Given this is a multimillion ongoing liability for the Department it is unacceptable that staff are forced to rely upon a mixture of ongoing and separate IT systems that are not designed for the purpose required, ie an Access data base, the payroll system, Empower the HR system, the Intranet "O" Drive, the JLT claims administration system and individual note records.

The most significant issue identified with the audit of these files concerns the level of delay at nearly every stage of the administration and management of workers compensation files. Given the generic nature of some of the causes of these delays and the increasing costs of claims across the State Service I suspect some of these causes could be common across the State Service. Some specific matters identified:

- Delays in the provision of detailed information required from business units (e.g. witness statements or factual detail) when requested by Liability staff when considering the initial attitude to liability for a claim.
- Delays in arranging and securing appointments for independent medical examinations. There is involvement required by the Injury management consultant, Liability consultant, OSG, JLT. Each step and input by each player can add weeks or months to this process. It was explained to me that resource limitations (manpower) within OSG, Liability consultants and IMC's contribute to this.
- Delays in considering action or acting upon opinions gained from IME's. On occasion there are delays possibly as a result of work priorities by Liability consultants but in nearly all cases inordinate delays in obtaining advice from the OSG (delays of several months were not uncommon).
- Delays in formally referring matters to the Tribunal once again delay can start at the initiation of the action, consideration or drafting by OSG and formal referral by JLT.
- In a number of files there was identified delay in authorising or arranging recommended medical treatment. I was unable to discern why this was so as there appeared to be no issue taken as to challenging such recommendations , perhaps once again no clear responsibility provided for within the internal process , oversight or priority of other matters at the relevant time.
- A number of files indicated a poor outcome from ineffectual or failed RTW endeavours. One file in particular led to scathing criticism from the treating medical specialist as to the creation of a much more serious mental illness due to the failings of the RTW recommendations. The delay in RTW of those workers who are fit for suitable or alternate duties was a marked contributor to prolonging claims therefore costs and in contributing to why cases eventually had to be resolved by significant lump sum payments based on ongoing incapacity. Too much emphasis is placed upon the pre injury business

unit being responsible for returning the injured worker back to that business unit therefore limiting employment options. RTW should be an issue for the entire Agency if not the State Service as a whole given that the State of Tasmania is the employer and as such has the Employer responsibilities under the Act. In relation to the relevant period considered in this review the RTW process for THS employees was confined to the THS with little ability for DoH [Department of Health] to influence the process. I am informed that plans are in place to bring THS formally into DoH with a common HR system and that such a change will open up a wider range of options for RTW.

Notwithstanding changes that have been made to Duty statements and report lines for Liability consultants and Injury management coordinators and discussion as to how the structure and processes are intended to work, I am not confident that there is clarity in how matters progress, who has the primary responsibility at certain action points and how differences of opinion or differences about how a matter is to be managed are quickly resolved. Liability consultants have responsibility for determining the issue of initial liability but there is an "expectation" that any apparent issues identified by the IMC and/or the business unit are outlined to be considered by the Liability consultant. Given the IMC is located in the relevant region and one assumes has a good professional relationship with Business unit managers there ought be some formal process that ensures this initial information is provided at the outset. This would allow Liability consultants to best utilise their time on those matters requiring a more formal factual investigation and/or IME. When a system of feedback from the Liability Consultant to the IMC as to the decision to accept or dispute a claim is included IMC's would have more "ownership" in the files they will be administering or managing.

The Liability consultants are responsible for administering "complex" claims. This is described as including all claims that have been disputed together with accepted files that are referred to them by an IMC either for recommended action eg IME or for OSG advice. IMC's have the day to day administration of accepted claims, their role being to oversee treatment, rehab and RTW. Once a course of treatment is approved accounts for this go to JLT for payment. Medical certificates for incapacity are referred by IMC's to the Payroll office to ensure weekly payments are made. It is apparent from the files audited that on a number of occasions insufficient attention was given to the need to take intervention action on a file rather than allowing the status quo. IMC's must have the clear role to do such things as to query if treatment options or periods are justifiable, whether certified incapacity is dragging on, or whether other non-work matters have started to contribute to incapacity. Liability consultants need to properly consider such referrals to them by IMCs and there needs to be a process for resolution of differences of opinion if they persist. Such a system incorporating the matters above would drive the team culture that is being sought and give confidence to IMCs to more actively oversee a file. Upon perusal of these files I was not left with the feeling that someone actively managed in detail all matters concerning a file rather than merely complying with a generalised process. There is an indication of separation of responsibilities ie once a matter is referred to a Liability consultant it is their responsibility, when it is referred

back to IMC it is their responsibility. A shared role with more inclusiveness as to decisions made in respect to a file would drive the team culture.

Given that over recent years the number of workers compensation claims within the DoH/THS and the State Service as a whole continue to increase and the cost attributed to such files is also rising it is false economy to not provide adequate resources in the form of suitably qualified persons to administer and manage workers compensation files and to support them with the specialised IT environment to do their job.

This includes adequately staffing the OSG in order that they can provide timely advice that supports the ongoing and continuous attention to case management that is required but not currently being achieved.

A contemporary workers compensation file management system would assist in avoiding many of the issues identified in the file audit. I have no doubt that delays and oversights could be addressed by mapping simple key points to allow specific timelines to be established for a claim, red flags at set dates eg expiry of treatment plan or certified period of incapacity, highlighting of diagnosis changes, over expenditure on medical or other treatment costs, and simple resubmits. There is surely much more that could be achieved that would mean all members of the “team” had ready access to a file’s history, current processes in place eg treatment or RTW and conversation notes and correspondence to any relevant person involved in a claim.

I am not confident that workers compensation files within DoH/THS are being managed to the best possible level in efficiency and effectiveness. It is not simply a matter of pointing the finger at the staff involved. I have identified within the files audited a few incidences where arguably mistakes were made or opportunities for more decisive action were missed. The workers compensation liability is a significant risk that Government has and steps need to be taken to better mitigate that risk. Many of the matters highlighted in this review are in the form of generic issues and I suspect are to some degree replicated in other Agencies.

It seems obvious that if sufficient staff were available to administer and manage claims in a timely and accurate manner including the ability to obtain legal advice as and when required, and that there was an overarching supportive IT system then files would be more intensely managed, brought to a conclusion or resolution earlier therefore reducing costs. There would also be less likely to be a growth in “long tail” claims. Because of the historic growth in “long tail” claims i.e. those claims that have not been resolved in the earlier stage of the claim they remain open and drawing entitlements to the full statutory extent a specific program has been commenced in recent years to have the OSG attempt to bring these “long tail” files to a conclusion.

I would recommend that the earliest attention be given to establishing an internal file review process. Staff in this area are required to work autonomously and this can be a weakness as only one point of view or opinion is considered at various key points during the management

of a file. The value of open discussion amongst peers as to the status and intention in respect of a particular claim cannot be underestimated. This is especially so if a legal officer is involved.

Given that I have mentioned on a number of occasions the fact that the State of Tasmania is the employer of State Service officers it might be opportune for detailed consideration being given to creating a central authority that dealt with key aspects of workers compensation claims management and administration on behalf of the State Service. With annual costs in the tens of millions and an increase in premiums at 14.9% this financial year vastly greater than comparable private sector premiums perhaps it is time to reconsider how Government deals with this area. A central Authority would ensure consistency of consideration of claims, best practice across the entire Service in claims management and administration and significantly widen RTW options.

In so far as the primary issue raised by this notification is concerned, and noting that it is a finding for you to make, I did not consider that there was evidence of maladministration or the waste of public resources that was serious or significant. As set out there were some occasions where arguable errors were made or different decisions could have been made that may have altered the outcome on a file but this was in an environment that was busy, complex, where other players contributed to the problem, where some matters are time sensitive and priorities have to be set and where there was no IT management tool to assist.

