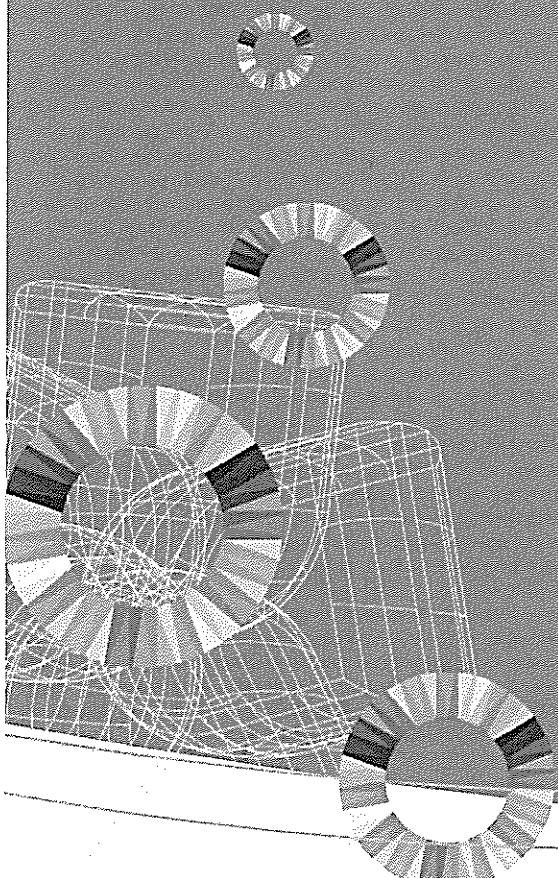


# Deakin University Industry Engagement Centre for Personal Injury

South Australia Summit Conference

15–17 November 2010



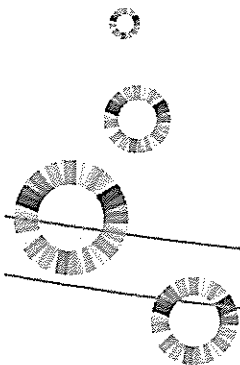
**DEAKINPRIME**  
corporate education

Published by DeakinPrime  
Deakin University Melbourne City Centre  
Level 3, 550 Bourke Street  
Melbourne Victoria 3000

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# Executive summary

A "Summit Conference" was convened by the Deakin University Industry Engagement Centre for Personal Injury in Adelaide on 15-17 November, 2010. It should be noted that the initiative was not commissioned by any governmental entity, although WorkCover did participate and assist in nominating some attendees. The purpose of the discussions was to break down the tendency of the various "stakeholders" in the personal injury sector to be limited in their interactions and information flow to those within their particular area of competence and only communicate with other "silos" when the imperatives of regulation or economics demand. DeakinPrime believes that by fostering full and open communications and breaking down the "silos" better outcomes, especially for the injured person and their employer, can be realised. At a larger scale, these discussions, when held across Australia, will provide a picture of the current functioning of the sector from the point of view of the people who are working in it, employers and the injured and formerly injured. It is hoped that this national perspective can define regularities that have not been previously perceived, and help inform research, training and national policy debate.

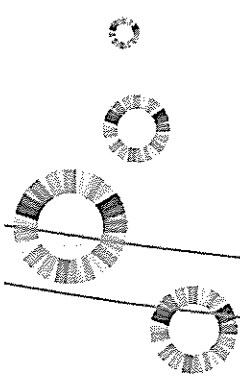
The Summit Conference yielded a number of positive outcomes. Specific suggestions for new initiatives were aired at the Summit. These initiatives include the creation of an accredited qualification for rehabilitation specialists. This qualification would allow agents and medical providers to ascertain those members of the profession that are committed to the use of current, evidence-based practices, continuous education and improvement and cost-effective service.

Similarly, a specialty recognition for those General Practitioners who wish to distinguish themselves as having an interest and desire to treat injured people could be provided, both to relieve those who don't prefer that work from the obligation to take it to maintain relations with the remainder of the injured person's family and to allow those GPs that enjoy this work to get referrals and to create the opportunity to seek appropriate compensation for specialised work.

DeakinPrime is already engaged with WorkCover to develop and deliver high quality education and qualifications for claims managers in South Australia, similar in scope to that currently developed and delivered as a Certificate IV VET qualification in Victoria and New South Wales. Members of the participant group were enlisted for the technical advisory committee assisting in that development.

Five guided discussions were facilitated, involving 40 participants (24 separate individuals, some attending multiple sessions) encompassing a broad range of subjects and covering the entire scope of an injured person's claim, with a particular focus on communications and information flow issues. Participants were invited to contribute to the discussion through an iterative grassroots engagement process designed to allow a full range of opinions to be expressed with a minimum of interference from the agenda of established political and professional entities.

There were a number of important ideas that were expressed in multiple meetings by multiple participants. It should be explicitly noted that these were the views of the persons that self-selected to attend. The opinions expressed have neither been independently verified, nor substantively edited, in accord with the representations made to participants. The primary significance of the opinions expressed lies in the extent to which they represent the perceptions of the people working in the field that were recommended as Summit participants by their peers. It is important to note that the views expressed did not distinguish between those issues that arose under the former administration and those that have arisen under the new WorkCover administration.



They include:

- Restoration of function is the key outcome for the system, but it is not one that is currently reflected very often in practice.
- Case management practices appear to be impacted by economic drivers (including some incentives that participants believe emanate from the agent contract), lack of education amongst the claims managers (linked with the burnout/turnover problem), and failure of appropriate inputs for information, including appropriate feedback loops.
- Process and paperwork overshadows a focus on outcomes. Metrics are too focused on processes rather than on outcomes.
- Information feedback loops are often lacking in the workers' compensation system and many different participants in the system seem to be adversely impacted by a lack of information necessary for effective utilisation of professional competencies.
- The distinction between "client(s)" and "customer(s)" is not often fully considered, nor well handled. This issue is particularly relevant to the relations between the agent, the statutory authority and the stakeholders.
- More collaboration amongst professionals, workers, and employers would get better outcomes. Rehabilitation professionals and claims managers would both benefit from increased training and professionalism.
- The political pendulum swings, but the same issues keep recurring regardless of who is in power. This suggests that the problems are less about politics than about a failure to set the basic systemic structure in a way that is aligned with the needs of the injured. Nonetheless, the issue of the statutory framework changing with changes of government was seen by most groups as adding undesirable instability to the system and creating demands on various stakeholders that were not strongly related to appropriate systemic outcomes.

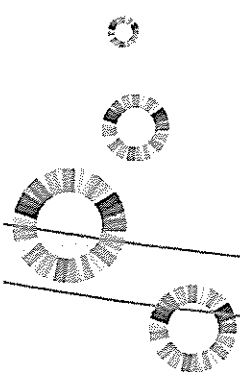
Various specific action items will follow the meeting, including reporting to statutory authorities, development of specific qualifications and courses to assist in fulfilling the identified educational needs and facilitation of continued communications, including development of the missing feedback loops, between system stakeholders.

# Background

Deakin University, through DeakinPrime, its corporate education division, first became involved in the personal injury sector in 2007 through engagement with the Personal Injury Education Foundation and the suite of qualifications and post-graduate programs that are run under its banner. DeakinPrime has also developed a suite of VET skills based training programs for claims management staff in the Victorian and NSW jurisdictions, and is currently developing similar training for premium and credit officers in Victoria. In August, 2010 DeakinPrime created the Industry Engagement Centre for Personal Injury to expand the scope of stakeholder involvement and address the full range of professional development needs in the industry sector.

The first project of the Industry Engagement Centre for Personal Injury (IEC PI) recognised that the various professionals in the sector are often functionally separated from one another in terms of professional interaction, information flow and expectations. Occasions when stakeholders were invited to interact were often undertaken under circumstances where the parties may have felt constrained to represent their economic interests rather than their common interest in the welfare of the injured. It became apparent that the creation of a different type of dialogue was actively desired and had potential for great utility. IEC PI "Summit Conferences" were conceived to facilitate this style of interaction, and the WorkCover Authority in South Australia raised its hand as a volunteer for the first of these experiences. The WorkCover staff both actively embraced the opportunity to obtain this kind of feedback, and provided significant assistance in identifying the appropriate people that should be invited. The success of this project, both in South Australia and across Australia was significantly advanced by the courage of the WorkCover administration in helping us make this first event a success.

The process of developing the listing of invitees was unique, given the unique nature of the intended consultation. It would have been possible to utilise the common strategy of contacting the leadership of the peak professional body for each stakeholder group and ask that they nominate a representative. There was a fear that such a process would emulate, to too great an extent, stakeholder consultation processes previously undertaken, and that participation and interest might be limited. As a result, individual professional contacts of the IEC PI staff were contacted and they, in turn, nominated others with whom they were familiar for IEC PI staff to contact. Meetings with those persons were then established, on an "exploratory trip" to the jurisdiction, to interest them in the concept and enlist them to provide yet another level of nominees for participation. Each of the prospective participants was provided with a statement of the program, appended to this report as Appendix A.



The process in South Australia netted approximately 60 invitees for our inaugural "Summit", held on 15-17 November, 2010. Of those 60 invitees 24 participated actively, and approximately another 10 were unable to attend due to short notice and pre-existing commitments, but asked to be informed concerning the outcome and are kept on the participants' list for future activity. Three categories of desired participants were unrepresented in the discussions. They were medical doctors, legal advocates for the injured or the employer and agent, and the insurance agent. These three categories were "missed" in the sense that other participants commented on their absence and expressed disappointment at their absence. The other participants included mental health and rehabilitation specialists, various allied health professionals, representatives of employers and injured people, academics and representatives of various governmental entities, including WorkCover, SafeWork Australia and The Department of Further Education, Employment, Science and Technology.

The structure of the Summits was conceived as a series of discussions engaging different points in the injury recovery and prevention process: Medical and allied health care, rehabilitation, return to work and behavioural health, claims management and dispute resolution, and occupational health and safety. A copy of the Agenda for the Summit Conference is appended as Appendix B. The same agenda of open ended questions concerning information flow, communications and collaboration was available to each group. The final session was an attempt to summarise and set the stage for follow up action in the jurisdiction.

**It should be explicitly noted that the views expressed and reported were the views of the persons that self-selected to attend. The opinions expressed have neither been independently verified, nor substantively edited, in accord with the representations made to participants. The primary significance of the opinions expressed lies in the extent to which they represent the perceptions of the people working in the field that were recommended as Summit participants by their peers. It is important to note that the views expressed did not distinguish between those issues that arose under the former administration and those that have arisen under the new WorkCover administration.**

24 participants, spanning a wide range of roles within the sector participated. Many attended multiple sessions, such that there were over 40 participants in the sessions altogether. There were no representatives from the sole agent in this jurisdiction, Employers Mutual Limited ("EML"). Similarly, there were no representatives of the legal profession, other than the WorkCover Ombudsman, despite multiple invitations having been issued to all representative groups. There were also no General Practitioners or specialist medical doctors in attendance, but few participants in these categories were identified to us during the iterative process. These absences were noted and commented upon by participants. It is not known whether the invitation process created any conditions that impacted upon the diversity or nature of the opinions expressed.

# Discussion of Medical Care and Allied Health issues

The discussion amongst the medical and allied health professionals was far reaching and broad in scope. It was suggested that many GPs were not particularly interested in or comfortable with the various factors that make treatment of injured workers difficult: unfamiliarity with the specific injuries or the literature about the latest information concerning effective treatment, particularly with regard to chronic pain; dealing with the sole insurance agent; delays in payment; reporting requirements; and legal requirements.

There was a suggestion that chronic pain should be recognised as a separate condition, independently compensable. The reasoning given is that neuroscience has now identified objective changes in the neural networks of subjects who experience chronic pain, and therefore it should be recognised as an objective separate condition even if the causes of chronic pain are not always identifiable.

Rehabilitation was regarded as a difficult area in the monopoly insurance agency environment, with perceived delays in referral, demands for work fitness assessments instead of rehabilitation work and excessive paperwork regarded as particular challenges. The status of rehabilitation specialists as contractors to WorkCover, rather than independent practitioners, was seen as allowing the profession to be co-opted by the agent into a role that was not beneficial.

Education of patients by all providers in the medical and allied health care fields was regarded by the participants as a priority, but there was some disagreement as to whether the education should be provided to health care professionals who should be given the time and payment to educate the patients, or whether the education should be provided directly to the injured workers. At the same time, there was a recognition that the rehabilitation specialty currently suffers from a lack of focus and some issues with over-utilisation. These issues were regarded as "fixable".

The group called for a basic paradigm shift, saying that they believed that "patching" the present system hadn't worked for some time. There was recognition that there had been a significant restructuring in 2008, but the participants expressed some scepticism regarding whether the changes would hold, if a new government were elected. In particular, the issue of the resilience of changes made with regard to redemptions was questioned. Participants recognised that the issue had significant impact on worker and advocate expectations that may be reflected in current claim behaviour. "The pendulum swings, but the same issues keep recurring" was a thought that was repeated several times. The desirability of empowerment of workers to participate in their care and break out of the "medical model" of passive receipt of health care was a consensus position, as was the use of best treatment practices, based upon research about what is effective. There was a general feeling among those present that the limitation of practice to those GPs (and the specialists to whom they refer) that choose to accept additional specialised training and agree to coordinate efforts with other health care professionals was desirable. With respect to information flow, the group reached several points of consensus: The prescribed medical certificate was a particular problem area, largely because of inexperience and lack of knowledge about workplace conditions and demands. The group recommended a work injury specialisation, with a multi-disciplinary educational focus, such that the properly trained practitioner should be familiar with areas of practice outside his or her own specialty. Finally, there was consensus that vocational rehabilitation specialists must be part of the treatment team, not just left to come in after the other practitioners have done their work.

The development of a multidisciplinary Masters of Rehabilitation Science program was enthusiastically discussed. The specialty was seen as giving the profession some much-needed credibility and allowing other practitioners some mechanism for making judgments about who is well-qualified. The group felt that special attention should be given in the curriculum to holistic approaches to pain management, workers' compensation law, and workplace engineering.

There was consensus amongst participants that case managers and the insurance agent do not really understand the roles of others in the system, and they must be better trained to align their expectations with the competencies, and best utilisation of the professional resources that exist. Collaboration amongst professionals should be demanded by case managers, not intentionally or inadvertently discouraged, as several participants believe is now the case. Education of the injured worker with regard to, *inter alia* their health choices, the health value of work and the relative impact of disability upon their future life, is a critical part of that collaboration, as the points of contact between the injury treatment professionals and the worker are limited, and the worker must have the tools to carry on during interim periods.

There was a substantial level of concern expressed that more members of the general medical community were not in attendance. This observation led to a discussion of communications linkage failures between the medical community and the rest of the system. It was observed that the medical community has a pivotal role in the return of the injured to their lives, but operates in what the group perceived as an almost total informational vacuum. Other health care providers and allied health professionals do not share information with them. The insurance agent does not communicate with them except for information connected with billing, questioning treatment necessity and contesting claim liability. Employers do not seek the feedback after an incident that would help them avoid similar mishaps in the future, unless they feel they have a specific tangible interest. Workers, through their unions, are often thought to mix together in a confused and unhelpful way in industrial relations issues and safety issues, seeking to use the latter to gain advantage in the former. The factual basis of these assertions was not discussed further, but the parties clearly perceive the operational reality in South Australia in this manner. An observation that was particularly strongly held was that information feedback from the medical service provider to the worker was also often absent. There was also an expressed view that the impact of changes in government on variations in regulation of health care was problematic, in that it inappropriately added to the environment where the difficulties of keeping up with and complying with regulatory requirements made working with injured workers less satisfying and remunerative.

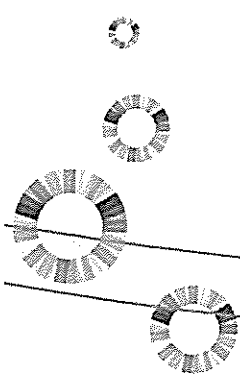
# Discussion of Occupational Health and Safety issues

There was a strong sense amongst the Occupational Health and Safety session participants that collaboration amongst professionals was absolutely necessary to advance beyond the present limitations. OH&S cannot be something that is done "on Tuesday mornings", but must be incorporated into the environment continuously. There are, however, several perceived environmental factors that create critical differences between various OH&S functional operations:

1. Organisational definition of who has "responsibility" for OH&S varies considerably. Where the responsibility is centralised, or contracted from the outside, it is often too separated from the operational level ("the shop floor") to be really effective.
2. Size matters. Smaller employers cannot devote the resources for in-house expertise and manpower to do effective primary and secondary prevention or activities designed to minimise the impact of similar incidents in the future. The economics of the safety consulting industry, with its current pricing structure, are prohibitive with regard to many smaller businesses. Resources are currently aimed almost exclusively at the larger businesses that have the money to spend on OH&S. The message that OH&S investment has a positive return on investment is not getting to the "small side" of town. Scheme level fixes do not trickle down to small business
3. Issues arising from cultural expectations and economic pressures that often are experienced by immigrants were widely seen to create differing expectations about OH&S practices, in both worker and employer populations. Some employers were seen to take advantage of people that they perceived as more "disposable" and certain populations were seen as being more tolerant of accepting the risk of disabling injury because of an environment where their economic options were limited. Safety is not always valued as highly as it should be when the population is disadvantaged or vulnerable.
4. Industry qualification to external safety standards can be an effective motivator for proper practice, but it must trickle down to the small business level to really have an impact.

Several other issues were noted that had relevance to scheme operations:

1. The qualifications required for OH&S personnel must be clarified and some confidence in the ability to find competent consultation must be created.
2. Use of metrics has an impact. Lost time Injury Frequency Rate is a measure that is not particularly informative, is subject to manipulation, and impacts different company sizes differently.
3. Employer incentives are important. "Burning cost" pricing on insurance can make an employer more aware of the impact of their practices. The current reality is that there is no feedback loop effectively operating to bring OH&S learning back to the people who most need the information to operationalise the lessons to be learned from prior accidents. They include: employers (other than self-insurers, who are actively seeking such feedback) workers, rehabilitation and medical personnel (who could be informed about the safe practices that could be developed and modifications of the workspace that are available) or others.



4. A non-enforcement consulting protocol would be helpful. Agent based consultation would be useful, as would WorkCover based consultation. It was suggested that the current separation of responsibility between SafeWork Australia and WorkCover (that does not have primary responsibility for safety issues) resulted in some potential gaps in services and role that a collaboration between the entities might address. It was also noted that SafeWork Australia was underfunded for this activity and that all possibilities had not been fully explored.

Education was seen as a key issue by the participants. Education must be combined with regulation, however, it was agreed that any regulatory intervention implies that a failure has occurred. Small businesses need basic education about the most common issues that they have and the best way to eliminate their most frequently encountered hazards. Workers, especially young and immigrant workers need basic training on how to avoid injury and what to do if they are confronted with a dangerous situation in the workplace. Industry based safety initiatives are good, but the current segregation of responsibility for these at SafeWork Australia was viewed as not beneficial, albeit the real problem may be under-resourcing of that entity. Colleges, RTOs and insurance agents should also have some responsibility for training. GPs are not seen as particularly interested in return to work, so their involvement in safety, while important, is seen as a hard sell.

Communications issues include the creation of economic incentives for employers, better communication of the message of the moral obligation to create a safe workplace, and development of workplace champions to foster feedback between employers and workers. Information about near misses is as important as accident information. Feedback from rehabilitation consultants is critical to safe return to work. Unions, trade and professional associations need to step up to help deliver the message, and some participants expressed the view that it used to be helpful to have multiple agents because competition forced the agents to compete regarding provision of safety services.

Success in safety is hard to define and measure, as a "one size fits all" metric is neither accurate nor useful. Success is relative to the starting place and evolves over time. It's part of an overall management system, not just "loss control". One mechanism that shows promise is a measurement of institutional culture and objective examination of responses to an incident.

The biggest challenges lie in bridging the gap between the needs and approaches of large and small business. Identification of high risk industries and high risk employers within those industries would be helpful. This inherent situation is currently complicated by the fact that WorkCover has largely vacated the field leaving an understaffed SafeWork Australia to handle the entire load. Expectations are not aligned and neither are resources.

Some other operational level ideas that were considered included:

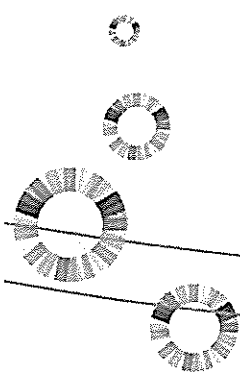
- Mentoring programs that passed on hard won safety understanding to the newer people coming into and managing work places.
- Intergenerational training, using the "Passport to Safety" program as a model.
- Information concerning the top five hazards (that cause 80% or more of the injuries) developed from the data in WorkCover or SafeWork Australia hands, non-enforcement governmental consultancy concerning elimination of those risks, and development of a "toolbox" for small employers concerning those risks.

# Discussion of Rehabilitation, Return to Work and Behavioural Health issues

The participants felt that the discrepancy of power between the rehabilitation professionals, WorkCover and agent that services the claims, creates some dynamics that are not helpful. WorkCover merely licenses the rehabilitation providers. The agent controls referrals to the providers, and participants felt that the agent uses that economic leverage to control the services provided by the rehabilitation providers with an eye towards its achievement of its contract objectives, and not with the best interests of the injured worker in mind. These opinions were not independently factually verified, but were strongly expressed by the participants:

- The worker is often not heard in the system and has no power to shape the handling of their own claim. This, in turn, creates a situation where the worker's sense of loss of control is exacerbated, and may contribute to secondary psychological injury.
- There is no balance between claims management, compensation and rehabilitation concerns. The claims management side completely controls the activities of the rehabilitation specialists. These specialists are substantially co-opted into doing work fitness assessments, which is a claims issue not a rehabilitation issue. Moreover, the agent demands that the most senior and experienced people do this task, which is not what they really want to be doing, nor is it the highest priority and best use of their time. The rehabilitation industry has economically adjusted to respond to this demand and the current situation is one where the rehabilitation industry would have to re-adjust to start really doing its job again.
- The claims agents don't really know what to ask for from rehabilitation providers, or what they really want or need.
- There was some discussion of the measures of success in rehabilitation. More people returning to work quicker was the quick and obvious metric, but others were advanced, including movement of injured people in a positive (however defined) manner, creation of higher levels of knowledge in the injured about their prospects, including an appreciation of the difference between hurt and harm, and the informed (emphasis was placed on this term) achievement of the worker's desired outcome.

Issues of what works in rehabilitation were discussed. When there is a focus on restoration of function, then the rehabilitation specialist can be effective. But this means spending time on rehabilitation work, not on paperwork that has no impact on the restoration of function, and not upon evaluations aimed at managing the claim by using work fitness assessments to cut off claims before people were given the services from which they could benefit. The flow of information was viewed as being tremendously important in this



context. The "medical model" of passive receipt of medical services is perceived as a serious impediment to rehabilitation, and correction of this requires both a change in the way we educate workers and the way that professionals communicate with one another.

A classic example of this is the medical certificate. Communications between the worker, employer, general practitioner and rehabilitation specialist should be occurring before the certificate is issued. Once the certificate is out, then the expectations of all the parties change, and it becomes much harder to re-engage the worker prior to the point where they have been out of work so long that rehabilitation chances are much diminished. There was also a discussion of the place of trust and confidentiality in rehabilitation.

The major blockers and challenges to effective rehabilitation are the failures of the injury compensation system with regard to understanding and correct utilisation of rehabilitation services. More specifically, the participants felt like the entire industry needed significant education as to the various products and services that could be provided by rehabilitation specialists, the things to ask for, the information that is really needed and the outcomes that they should expect. Failure to have this functional understanding is seen to lead to failures of imagination in understanding the role of rehabilitation. Rehabilitation is viewed by participants, not as a separate service apart from the rest of the compensation and return to work efforts, but rather as an integral part of the entire recovery process. This issue is exacerbated by the perception that there is no ready feedback mechanism for any other professionals to get information about the rehabilitation process or its outcomes. The politicisation of workers' compensation policy, reflected by changes in the statutory framework that often accompany changes in government, was regarded by participants as problematic.. Politically motivated changes are believed by participants to result in instability and disruption of the system from the point of view of service providers, who are required to adjust their operations to respond to new requirements. Diminished expectations concerning the longevity of attempts to reform the process at a statutory level (e.g. redemptions) were also seen as creating blocker to progress. The participants also noted that many of the current issues were ones that were created in the past, and that the current administration was making significant effort to address them in a thoughtful and useful manner.

The participants expressed a strong consensus on the need for WorkCover recognition of the perceived issue that delays in referral for proper rehabilitation services, done out of a desire to save money on those cases that would resolve without any intervention, may be actually costing the system money by allowing the workers who are not thriving to become entrenched in disability behaviours that are not necessarily solely caused by their physical condition. The well-documented phenomenon of delay in return to work decreasing the probability that the worker will ever return to their old life, may not be properly understood and the implications of that research with regard to early intervention may not be applied to the degree desirable.

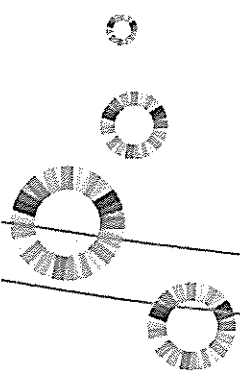
Agent control of rehabilitation services triage is blamed for poor outcomes for several reasons. Participants believe that there are knowledge and information gaps that keep agents from recognising the cases that could benefit from assessments at the outset of the cases in ways that have prevented them from progressing from easy interventions to difficult recovery efforts. The agents, in turn, may not get consistent input from the GPs who may be trying to substitute their general understanding of medicine for the focused knowledge about injury recovery and rehabilitation. Even when referrals are obtained in a timely way from GPs, with realistic expectations, participants believe that rehabilitationists are sometimes overruled in their professional judgments about the appropriate course of action by case managers. Instead, case managers are seen to have channelled the utilisation of rehabilitationists into work fitness assessments, which are not rehabilitation work at all. There was a strong consensus amongst those present that these factors contributed to an environment where accountability for the outcomes of rehabilitation was dissociated from authority to control rehabilitation access in a way that made the profession artificially ineffective.

At the same time, it was acknowledged that there was a problem with respect to GPs and agents having reasonable notice of which rehabilitation practitioners were effective and committed to utilisation of the most current and efficacious techniques in the industry. There was a strong consensus that an additional qualification should be developed and offered that will allow those rehabilitation specialists that are serious about distinguishing their practices to demonstrate their technical competency. In this context, at least one participant raised the question of why it is necessary to centralise (and therefore cut off from real contact with the injured person) the claims management function when it really only applies to the relatively few cases that fail to resolve in a timely manner. It was asserted that this amounts to approximately 5% of the total claim volume. Some participants questioned the value of outsourcing the claims management function in this context. No consensus on either of these issues appeared to have been established.

It was observed by several participants that there are numbers of missing feedback loops for information. Communications with the claims agents is felt to be unilateral, and too often predicated on a misuse of the rehabilitation resource for work fitness assessment instead of rehabilitation. There is no formal feedback loop to medical providers, and importantly, there is none to either employers or OH&S personnel who can make a difference in the modification of work places for the injured, or for workplace adjustments that would allow subsequent injuries to be avoided. It was also asked why, if restoration of earning capacity is one good measure of success in the system, is there virtually no feedback to the statutory authority that would allow that to be ascertained?

There was a discussion of "success" in rehabilitation. Participants felt that there was a misperception that less utilisation of rehabilitation necessarily equated with less overall systemic cost, because effective rehabilitation, delivered at the proper time in the claim, can prevent a portion of serious claims from becoming serious, therefore saving money over the long term. There was also a sentiment expressed that workers are not just claims, but are people with lives that they wish to restore. "Success" is defined currently, not by the standard of the injured worker, but by whoever is asking the question. Non-alignment of the definition of success with the circumstances in which services are being utilised is perceived as a very basic issue in the proper utilisation of rehabilitation services. The current claims management system appears to focus upon cost control and administrative compliance, and the interest of the worker in return to life is secondary, and not sufficiently considered. Different specialists in the current system speak different languages, and as a result the various players in the system get inconsistent messages, and workers are generally disadvantaged with regard to knowledge of what is required of them, or how to get the system to work for them. This creates a demand for lawyer involvement, which drives up systemic cost.

Restoration of function was declared to be the proper goal of rehabilitation. It requires proper coordination of services and proper metrics. There was much discussion of what constitutes "suitable" metrics for rehabilitation. No consensus for a single "right" measure was achieved, but there was some insight gained into a useful approach, by analogy to cattle farming. In cattle farming, good grass is a condition precedent and determinant of good cattle production, so measuring grass quality and height is important. In rehabilitation the outcome may be return to work, but the condition precedent and determinant of success is restoration of function. "Goal attainment scaling" was one metric that the group seemed to feel could be developed to assist in measuring restoration of function. This was feared to be a "hard sell" to employers, claims managers and even workers, but it is the direction the group felt was necessary.



To practise as a profession, rehabilitation specialists need to return to basic principles of rehabilitation, utilise empirically verified practices based on the most current medical and psychological evidence and reduce the amount of time, energy and spend on activity that is a claims management issue. Trust is critical in moving forward, and rehabilitation specialists must have access to the information needed to do their jobs. The participants believed that information flow is hampered by the dynamic between WorkCover and the agent, and this needs to be addressed. Obviously (to the group) a professional qualification such as the Masters of Rehabilitation Science, suggested by the Medical and Allied Health Care group, would assist in the professionalisation and recognition of the profession. More to the point, the professionalisation of the specialty was seen as necessary to forge a partnership with the medical treatment providers, echoing the same observation from those providers. It was recognised that there will have to be some cultural re-orientation within the rehabilitation industry, which has now responded to the agent's expectations and oriented around work fitness assessments. They will have to get back to a true rehabilitation mindset and practices to achieve the professionalisation of the specialty.

# Discussion of Claims Management and Dispute Resolution issues

The group felt that the proper outcome of a request for services or benefits must reflect the imperatives of the Act, but should also focus on restoration of function for the injured. The system, it was felt, is presently measuring processes, rather than outcomes and that leads to mistaken perceptions about the health of the system, and its proper orientation. Reduction of cost is okay as one objective, but a sole focus on that issue is not appropriate, nor is it likely to be effective if it engenders adversarial approaches. In this regard, the political influences on system policy and design were seen as disruptive.

The motivation set of claims managers was questioned and it was observed that workers' compensation was a different environment than other property-casualty lines of insurance. The third party beneficiary of the policy puts workers' compensation into a significantly different mode, and the lack of competition between insurance agents also creates an environment that differs in significant ways. To change the motivation set from where it is today, the group discussed several issues:

- Compensation that was aimed at achievement of rehabilitation goals rather than rewarding inability to work
- A system that maximises return on investment for employers with respect to safety practices and creation of return to work opportunities.
- Enhanced education for employers and workers with regard to their respective roles, benefits and responsibilities.
- Recruitment of claims managers based upon their "people skills" and training for them on their appropriate function, the proper metrics for their performance and most current knowledge of effective claims management practices.
- Changing the term "benefits" to "entitlements" to help change the mindset that the claims manager is giving the worker something above and beyond what they deserve.
- Consideration of structural features in the system, such as profitability based upon the cutting of services or reduction of agent administrative costs in a way that adversely impacts customer service.
- A consultative orientation that truly encourages discussion of key claim decisions with the employer and worker.

In this context success was defined by the group as movement toward confidence in the system through mobilisation of a diversity of inputs. It was felt this was possible because there is a very significant commonality of views on basic issues, despite the diversity of perspectives. To achieve positive change, participants felt that a systems management focus must be adopted with a continuing focus on ways to improve the system. The knowledge available from other jurisdictions, all over the world, must be absorbed and implemented to achieve progress.

This group also considered the value of outsourced claims management. Group members themselves expressed the need for caution not to overstate the negative sentiment. However, there were several concerns expressed by one or more participants:

- There is diversity in the environment but no competition to force the diverse employers (and their needs) to be addressed individually or directly.
- There is no opportunity for a “better deal” than that offered by the one agent, which may be part of what partly drives the relatively (to other states) large demand for self insurance as an alternative.
- There was some sentiment (but not unanimity) that the current outsourced claims management protocol emphasises compliance with process requirements rather than outcomes. At the same time there was consensus that the current crop of claims managers need more training and there may be issues involving knowledge, competency, and incentives to provide good service that create problems for service providers and poor outcomes for workers.
- There was recognition that this was a systemic and multilevel issue that exists in a feedback loop with claims manager turnover, where the identified problems lead to frustration, and burnout, and turnover leads to problems of training, competency and motivation. In this context, some participants asked if contract incentives were correctly aligned to obtain the best possible systemic outcome.
- Outsourcing was seen as leading to “plausible deniability” for WorkCover while at the same time providing the opportunity for accountability that may not be fully utilised.
- More efficient and effective restoration of workers to pre-injury functionality is the goal of the system, but saving money has become its focus.

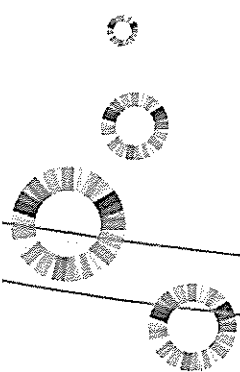
Dispute resolution was recognised by the group as having the capacity to create its own separate and distinguishable injuries and disability. To avoid dispute resolution, the best practice was to avoid disputes in the first place, to the extent that is possible. Service orientation, rather than cost cutting orientation was perceived as helpful in this regard. Realignment of the incentives in the agent contract was also believed to be a useful move with regard to creating a service orientation.. Conciliation now replaces mediation, but several participants expressed the view that this change formalized the process inappropriately, leading to the unintended consequence of a reduction in the opportunity to resolve cases informally.. The transfer to the legal system was viewed as a point of stress in the system that should be addressed, especially since the agent’s motivation about that transfer is, at best, mixed. The politicisation of the issue of redemptions was seen as a disruptive factor in the current operation of the system.

Finally the perceived misfiring of the consultative system was discussed. Several features were noted:

- The skill and desire to deliver “bad” news about benefits eligibility and similar issues to a worker is often lacking and there is no training on how to handle this critical task effectively.
- There is a lack of basic understanding/education regarding the obligations and entitlements under the Act. As a result, claims managers often act from a lack of a firm understanding about what the law requires and rely too heavily upon the on-the-job training of their supervisors, who may have been improperly trained themselves. Conversely, workers don’t have realistic expectations, and react to what they think happened in other cases they have heard about rather than upon expectations that are properly aligned with the law. These issues may be linked to turnover amongst the workforce.

- The system is currently set up as a “zero sum game” where one side winning comes at the expense of the other side losing. The better orientation would be to decide whether an entitlement decision was correct, and to look for solutions to the injury and disability presented rather than to “winning” or “losing”.
- There was discussion about the perception that some claims managers had a tendency to utilise the power inherent in the agent’s role to maximise the realisation of the agent’s own purposes. Instances of specific conduct were noted, and it was observed that such an approach was sometimes in conflict with the appropriate interests of the injured worker
- Customer service **MUST** be the orientation if the system is to avoid sinking into adversarial inefficiency that does not benefit the employers or workers.

The absence of representatives of the claims agent and the legal profession (except for the Ombudsman) were regarded as being detrimental to a full discussion of the issues.



# Issues and observations common to more than one group

There were several ideas to take away from the Summit that cut across multiple groups:

- Restoration of function is the key outcome for the system, but it is not one that is currently reflected very often in practice.
- Case management practices appear to be impacted by economic drivers (including some potentially problematic behaviours that have developed in the context of the agent contract) lack of education amongst the claims managers (linked with the burnout/turnover problem) and failure of appropriate inputs for information, including appropriate feedback loops.
- Process and paperwork overshadows a focus on outcomes. Metrics are widely seen to be too focused on processes rather than on outcomes.
- Information feedback loops are often lacking in the workers' compensation system and many different participants in the system seem to be adversely impacted by a lack of information necessary for effective utilisation of professional competencies.
- The distinction between "client(s)" and "customer(s)" is not often fully considered, nor well handled. This issue is particularly relevant to the relations between the agent, the statutory authority and the stakeholders.
- More collaboration amongst professionals, workers, and employers would get better outcomes. The groups raised several issues with regard to the agent inadvertently or intentionally discouraging appropriate collaboration by failing to authorise appropriate information sharing and collaboration between medical providers or between medical providers and rehabilitation specialists or occupational health and safety specialists.
- Rehabilitation professionals and claims managers would both benefit from increased training and professionalism.
- The political pendulum swings, but the same issues keep recurring regardless of who is in power. This suggests that the problems are less about politics than about a failure to set the basic systemic structure in a way that is aligned with the needs of the injured. Nonetheless, the issue of politicisation of policy decisions within the scheme was seen by most groups as adding undesirable instability to the system and creating demands on various stakeholders that were not strongly related to appropriate systemic outcomes.
- This was a unique event and opportunity.
- Deakin was successful in creating a safe and neutral space for discussion.
- The appeal to the desire to improve the system allowed participants to work from their highest values and potential, and when they did there was a remarkable amount of consensus.

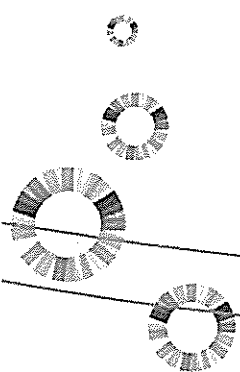
There was considerable discussion of why people, particularly representatives of the agent, doctors and lawyers didn't show up in numbers commensurate with the number of invitations sent. Several reasons were offered:

- Fear of being the subject of criticism.
- Issues revolving around loss of income associated with time spent in attendance.
- Lack of belief that tangible impact or outcomes would arise from the Summit.
- Insufficient lead time, advertising and minimal notice to allow busy people to clear their diaries.
- The tendency to take a critique of business operations as being personal.

Various action items to follow up from the Summit were discussed:

- Process mapping based upon the comments of participants, with feedback from the participants to check the accuracy.
- Engagement of the absent parties, particularly medical doctors, representatives of the insurance agent and lawyers.
- Communication of what was said here.
- Feedback from that communication to the participants.
- Support for this group, to increase their political traction and prevent the nominalisation of the input that was offered here. The group noted that a statutory review was already planned that offered an opportunity for their input.
- Provision of community sharing resources (online) for support of communications between participants.
- Development of a rehabilitation specialist qualification.
- Consideration of the development of a specialty certification for doctors who wished to self-select for participation on the recovery of injured workers.
- Encouragement for review of the contract between the agent and the statutory authority to minimise economic artefacts in the claims management process.
- Development and delivery of high quality education for SA claims managers and utilisation of the expertise of this group to inform the Technical Advisory Group developing the local curriculum.

The participants indicated that they appreciated the free and frank discussion and had not had similar discussions in the past. The manner in which the consultation was initiated and organised may have had beneficial impact on the outcomes. There was considerable surprise and encouragement resulting from the impressive range of the basic agreements shared by participants of widely differing perspectives. There has been an historical tendency for groups to express a concern and then stop, with no follow up. There was a feeling that this event had the potential to be different. There was significant disappointment concerning the important parties that did not to attend.



The participants felt that the system was “top down” in the sense that they believe that there has previously been an attempt from the statutory authority and the agent to impose a mechanistic order on what should be an organic system. This may be, in fact, merely a request for a more collaborative process than what has occurred historically. Because it is felt that there are no meaningful feedback loops between the parties, there is limited communications, so that in the past, well-intentioned attempts by the statutory authority to control the system often went other than intended, with no ability to do mid-course corrections or learn from mistakes.

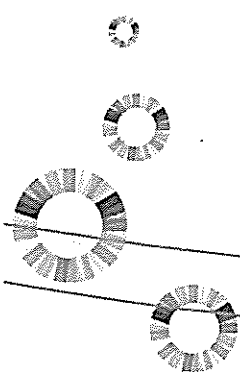
This exacerbates the impact of those unintentional consequences of economic decision making that are already in place, either because of the basic structure of outsourcing to a single agent, or because of the structure of the contractual relations between the agent and statutory authority. There was significant and continuing concern about the practices of the monopoly agent, but some caution must be expressed that the group did not really consider, and therefore did not support, a change in that basic structure and that the group did not have access to the agent’s perspective on these issues..

There was discussion of the WorkCover Board structure, and its perceived contribution to the dysfunction in the system. The Labour and Management Advisory Board structure, present in some U.S. jurisdictions (notably Wisconsin) was felt to be a better model than the current board, because it would create a better balance of viewpoints and force some compromise between a cost focus and a restoration of function or “return to life” focus. The perception of participants that the current board was “employer dominated” is noted, although subsequent checking indicates that the actual composition of the current Board is balanced as between employer and union representatives.

There was interest in sharing the key takeaways from each session. The conclusions stated are those of the group and the factual correctness of the assertions has not been independently verified.

## Medical and Allied Health session

- The “medical model” no longer reflects enlightened thinking in the medical community, but the structure of the current workers’ compensation system imbeds this model in to operational functioning.
- Knowledge about mind/body interaction is not being incorporated by providers in the system. Neuroplasticity notions must be utilised to fully understand the dynamics of disability.
- Pain is a separate definable condition, and old thinking about the objectivity of pain is based upon an outmoded model.
- There was a feeling that a paradigm shift is necessary. A specialist certification (Masters in Rehabilitation Science) was recommended. Rehabilitation people need a recognisable qualification that is credible and understood.
- There is little effective collaboration and inconsistent use of best practice.
- Collaboration between all the members of the treating team (GP, medical specialists, rehab specialists, allied health) at the earliest possible moment is necessary to see maximum outcome for the worker in terms of restoration of function.
- No feedback exists to the employer and the injured worker from virtually anyone. No feedback loop mechanism was identified in the system and it appears not to have been adequately considered. Employers and workers are treated as afterthoughts in a system where they are supposed to be the primary stakeholders.
- The course in Rehabilitation at University of SA is no longer offered. The Heads of Workers Compensation (HWC) group have mapped out a learning framework for the sector.
- No coordination exists between members of the treatment team, nor is there an understanding of who was responsible for what communication. The perception is that WorkCover SA does not believe it is their job to manage the communication.

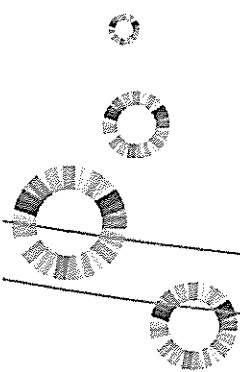


## Occupational Health and Safety session

- Economics is driving safety
- Size matters – “one size fits all” benchmarking is inherently flawed. LTIFR is a deceptive measure.
- The ROI message is not getting out.
- Mixing of OHS and IR issues presents a continuing issue that is skewing the debate.
- Education is hugely necessary. Creation of a continuous learning environment. e.g. safety message in the schools
- Recognition that OHS is not a stand-alone matter.
- Concern was expressed that there is no agreement concerning how one measures a change in attitudes to safety
- Confusion of roles and responsibilities characterises the operational environment
- There are multiple threads of discussion in OH&S: primary prevention of injuries and minimisation of the impact of those injuries that do occur. Conversation tends to gravitate to “primary prevention” rather than “impact minimisation” aspect. There is a constant struggle in the field to keep people on one single topic. Some people are focused on primary prevention. Some are focused on injury mitigation and some on secondary prevention. When talking with others the conversation often drifts to injury management, which is an information input, particularly for secondary prevention. The confusion about what subject is being discussed at any one time leads to difficulty in communicating a clear message.
- Enforcement was necessary, but any enforcement action is a sign of failure of the system in first instance.
- It would be beneficial for OHS to be connected to the rehabilitation side. The “front end” must talk to the “back end”. Claims managers to know what rehabilitationists do and vice versa.

## Rehabilitation, Return to Work and Behavioural Health session

- Systems skewed from recovery of function to claims management.
- Return to work is an outcome of "restoration of function", rather than a result of the claims management process.
- Recognition that the "medical model" of passive receipt of medical services was detrimental to restoration.
- Injured workers need to have knowledge to understand what decisions are being made regarding their treatment.
- Agent control of triage is problematic.
- Inconsistency with regard to quality of input from doctors.
- Front end assessment needs to be done much more frequently.
- Control of rehabilitation access is disassociated from rehabilitation need.
- One worker's experience: over ten years, the worker had 20 Claims Managers, although he never met one of them during that time.



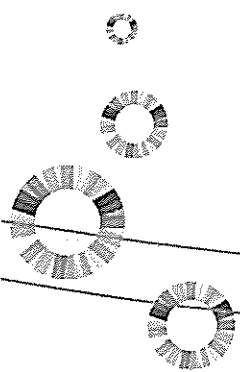
## Claims Administration and Dispute Resolution session

- Professionalism in the industry has to be better developed.
- Industry to start focusing more on “best practices” from evidence of what works.
- Focus on restoration and not claims management.
- More focus on rehab rather than medical. Medicalisation of claims is a significant problem contributing to the creation of needless disability.
- There must be more focus on timing of treatment. Triage delay from the agent really is hurting the worker and wasting money.
- Workers’ compensation is a different kind of insurance undertaking than other insurance lines. Wisdom from other insurance lines is misleading here.
- Performance based compensation for agents and providers should be considered.
- Education for claims managers, especially in people skills, is necessary.
- Using terminology such as “entitlements” rather than “benefits” would help claims managers adopt a more appropriate attitude.
- Contract management issues, particularly the inadvertent creation of economically based incentives.
- Systems not inherently defective but the implementation of systems is defective.
- Dispute resolution activity creates disability.

# Analysis

The Summit brought together a wide range of professionals from diverse perspectives. The major learnings were:

- Parties from different perspectives and different professional backgrounds can communicate effectively, partly because they share many common understandings, goals and values.
- Enhanced education to increase professionalism, skills and credibility would be desirable, at virtually all professional levels.
- Feedback loops in communications and information flow are less than optimal, leading to poorer outcomes than might be obtained with full and open communications.
- Compromised information flow amongst the service providers, workers and employers adversely impacts the ability of policymakers to have a desirable level of control over the system and its outcomes.
- Win-lose (zero-sum) solutions to the workers' compensation balance between cost and restoration of function are inherently unstable and create conflict. Solutions that are collaboratively sought and implemented are more likely to survive the test of time and politics.



# Future Directions

Specific suggestions for new initiatives were aired at the Summit. These initiatives include the creation of an accredited qualification for rehabilitation specialists. This qualification would allow agents and medical providers to ascertain those members of the profession that are committed to the use of current, evidence-based practices, continuous education and improvement and cost-effective service.

Similarly, a specialty recognition for those General Practitioners who wish to distinguish themselves as having an interest and desire to treat injured people could be provided, both to relieve those who don't prefer that work from the obligation to take it to maintain relations with the remainder of the injured person's family and to allow those GPs that enjoy this work to get referrals and to create the opportunity to seek appropriate compensation for specialised work.

DeakinPrime is already engaged with WorkCover to develop and deliver high quality education and qualifications for claims managers in South Australia, similar in scope to that currently developed and delivered as a Certificate IV VET qualification in Victoria and New South Wales. Members of the participant group were enlisted for the technical advisory committee assisting in that development.

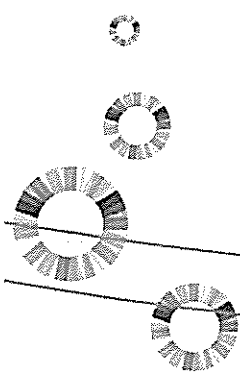
Engagement of the absent parties, particularly medical doctors, representatives of the insurance agent and lawyers was seen as a desirable development, and will be pursued to the extent that continued interaction with the participant group develops.

Support will be provided to this group on an ongoing basis, to assist them in building their political traction and prevent the marginalisation of the input that was offered here. The group noted that a statutory review was already planned that offered an opportunity for their input. Provision of community sharing resources (online) for support of communications between participants is planned and scheduled to come on-line within the current calendar quarter. One of the striking findings of the meeting was that the participants felt as if this kind of engagement and consultation was unique in their experience. DeakinPrime would be delighted to work with the WorkCover authority and/or the insurance agent to continue to assist in developing a useful interface with the stakeholders governed by the scheme.

# Appendix A

## Industry Engagement Centre Summit Conferences overview

This document was sent to all invitees to the SA Summit Conference. It was also handed out to attendees in each of the sessions.



# Industry Engagement Centre Summit Conferences

Conditions in personal injury treatment and compensation continue to unfold at what seems like an ever-increasing rate. Rising medical costs, changing demographics regarding the workforce, related changes in the nature and treatment of injuries, increased emphasis on return to work and pressure to reduce needless disability all create new needs for the understanding of the roles of all the stakeholders in the system. Without this critical knowledge, systems will under or over utilize professional services, costs will continue to escalate and injured persons will not get the systemic response necessary to fully return to productive life. For these reasons, personal injury professionals need to concern themselves with their continuing professional development, the quality and completeness of information supplied to the other stakeholders with whom they interact, and international best practices with regard to every aspect of personal injury intervention.

The first initiative of the Industry Engagement Centre for Personal Injury (IEC\_PI) is a series of nine Summit Conferences held in each of the states and territories and for the national schemes. Managers and others with strategic level understanding of the role of their profession in the personal injury sector will be the most valuable participants.

Summit Conferences will seek to bring together the widest available range of industry stakeholders to:

- share their concerns and needs
- express their views about what does and does not work for them in their respective schemes and/or their related field of work
- define workforce and professional development and education needs for themselves and for the stakeholders that utilise their services
- create a more open and inclusive dialogue amongst the stakeholders.

Participants will benefit in the following ways:

- By taking part in focused discussions involving a broader range of industry stakeholders than is usually engaged in one function. These discussions will allow DeakinPrime to structure the Industry Engagement Centre, and the programs that it develops, with the real needs of the stakeholders firmly in mind.
- By participating in a facilitated focus group environment, run by a neutral party, where the opportunity to express opinions. Each focus group will be directed primarily at the interests of an identified constituency, but others will be welcome to observe the proceedings and submit additional comments.
- By having direct input into the workforce and professional educational development of the industry.
- By being provided with a report on the information gained in the local Summit Conference and, if desired, with the report summarising the national initiative.

The Summit Conferences will lead to the following outcomes:

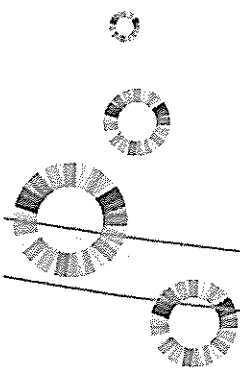
- Increased dialogue and networking amongst all the stakeholders in the personal injury sector
- Modifications to existing training programs to reflect more relevant and critical educational needs
- Development of new accredited training programs
- Development of specialty seminars, especially with respect to effective utilisation of the expertise of various stakeholders
- Consultations with respect to needs assessment, available resources, and modification of internal systems to best take advantage of the enhanced understanding of the roles and capabilities of other stakeholders and international best practices.

Participation in each local Summit Conference will be by invitation. However, invited participants are strongly encouraged to nominate additional parties to the IEC\_PI for inclusion. Local participants will be best situated to identify the necessary local parties to accomplish constructive change and the identification of such parties for inclusion will be greatly appreciated.

# Appendix B

## Agenda - Summit Conferences for SA

This document was sent to all invitees to the Summit Conference for SA. It was also handed out to attendees in each of the sessions.



# Summit Conference for South Australia

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## Sessions Monday 15 November 2010

9.00am – 12.30pm      Medicine and Allied Health  
1.30pm – 5.00pm      Occupational Health and Safety

## Tuesday 16 November 2010

9.00am – 12.30pm      Rehabilitation, Return to Work and Behavioural Health  
1.30pm – 5.00pm      Claims Administration and Dispute Resolution

## Wednesday 17 November 2010

9.00am – 12.30pm      Summation and Feedback

**Place**      Mercure Grosvenor Hotel Adelaide, 125 North Terrace, Adelaide

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## Agenda

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### Item

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#### Information

Who should know more about your proper function in the system?  
Does anyone in the industry seem to have mistaken information about your role or function?  
Who has information that you need for optimum functioning?

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#### Role

Are there ways in which you are under-utilised?  
Are there situations where you feel pressed into unsuitable roles?  
What is the best use of your time/energy/knowledge?

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#### Support and systemic improvement

Who are your natural allies?  
Who calls upon you to support them?  
Are there features of your environment that would you change to make things better?

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#### Blockers/Challenges

Are demands placed upon you that seem inappropriate?  
Is there anyone who interferes with you doing your job?  
What do you wish you could do better?

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Are there any other critical questions we are failing to ask?

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