SUBMISSION TO THE VICTORIAN OMBUDSMAN’S INVESTIGATION INTO THE HANDLING OF WORKERS COMPENSATION CLAIMS

Improving the mental health of the community
1. About the Victorian Branch of the RANZCP

The RANZCP is a membership organisation responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP currently has more than 5500 members, including more than 4000 fully qualified psychiatrists and around 1400 members who are training to qualify as psychiatrists. The Victorian Branch currently has over 1300 members.

2. The Faculty of Forensic Psychiatry

The RANZCP has a number of Faculties. The Faculty of Forensic Psychiatry (FFP) is a body of expert psychiatrists that promotes the highest standards in professional practice, training and research pertaining to forensic psychiatry.

Forensic psychiatry is a psychiatric subspecialty relating to the law and the assessment of mental health in the civil and criminal justice system.

The Victorian FFP aims to:
- promote the objectives of the RANZCP relating to forensic psychiatry
- advise on training in forensic psychiatry through the subcommittee of advanced training
- advance and disseminate research in forensic psychiatry
- contribute to and promote the highest standards of professional practice.

3. Victorian Ombudsman investigation – handling of workers compensation claims

On 5 November 2015, the Victorian Ombudsman announced an own-motion investigation into the handling of workers compensation claims in Victoria (the investigation).

The media release of the Victorian Ombudsman noted that ‘the investigation will focus on agents’ use of Independent Medical Examinations’.

As a significant number of Independent Medical Examiners (IMEs) are psychiatrists, the Victorian FFP considers it important to clarify the framework in which psychiatrist IMEs practice.

Therefore, our submission is intended to:
- clarify the professional background of IMEs in psychiatry and to advise on the various codes of ethics and codes of conduct required to be followed
- make clear the process by which IMEs endeavour to maintain their professional standards including compliance with the Continuing Professional Development (CPD) program of the RANZCP
- highlight the various checks and balances in the system to ensure that claimants are treated fairly and that they have some means of redress if the work of the IME is substandard.

4. Code of Ethics

Psychiatrists must be accredited by the RANZCP before they can practice. All psychiatrists are obliged to behave in accordance with the RANZCP Code of Ethics (refer Attachment One).

The principles in the RANZCP Code of Ethics are as follows:
1. Psychiatrists shall respect the essential humanity and dignity of every patient.
2. Psychiatrists shall not exploit patients.
3. Psychiatrists shall provide the best attainable psychiatric care for their patients.
4. Psychiatrists shall strive to maintain confidentiality of patients and their families.
5. Psychiatrists shall seek valid consent from their patients before undertaking any procedure or treatment.
6. Psychiatrists shall not misuse their professional knowledge and skills.
7. Psychiatrists involved in clinical research shall comply with ethical principles embodied in national and international guidelines.
8. Psychiatrists shall continue to develop, maintain, and share their professional knowledge and skills with medical colleagues, trainees and students, as well as with other relevant health professionals and patients and their families.
9. Psychiatrists have a duty to attend to the health and well-being of their colleagues, including trainees and students.
10. Psychiatrists shall uphold the integrity of the medical profession.
11. Psychiatrists shall work to improve mental health services and promote community awareness of mental illness and its treatment and prevention, and reduce the effects of stigma and discrimination.

The Victorian FFP regards principles 1, 2 and 6 to be of central importance for IMEs:

1. Psychiatrists shall respect the essential humanity and dignity of every patient.
2. Psychiatrists shall not exploit patients.
6. Psychiatrists shall not misuse their professional knowledge and skills.

5. Continuing Professional Development Program

The College has a well-established CPD program.

CPD is a process of self-assessment, self-directed, lifelong learning that complements formal undergraduate and postgraduate education and training. It enables psychiatrists to acquire new knowledge and skills as well as to maintain and improve their standards across all areas of their practice. It is essential in order to demonstrate fitness to practice and thus be revalidated. Included in the CPD program are:

- peer-review groups
- practice visits
- supervision
- practice development and review
- research
- a variety of learning activities including Accredited Online Modules.

The RANZCP helps psychiatrists in this process in a variety of ways:

- providing guidance and setting standards for CPD
- providing a CPD submission program that collects CPD activity and CPD peer group membership and, when the standard is met, issues a certificate of good standing for CPD
- developing a range of accessible online training modules through CPD online
- making available a range of journals that specifically aims to support psychiatrists in their clinical development
Members of the FFP meet monthly in peer-review groups and for presentations with regard to forensic psychiatry as part of their CPD obligations.

6. **Professional Practice Guideline 11: Developing reports and conducting independent medical examinations in medico-legal settings**

In addition to the College Code of Ethics, members of the FPP are also obliged to follow Professional Practice Guideline 11: Developing reports and conducting independent medical examinations in medico-legal settings (refer Attachment Two).

A highly relevant section in the context of the investigation is:

6.6 **An independent medical examination conducted by a psychiatrist is a human interaction between a medical professional and an individual who may be suffering from a mental illness. The examination does involve a doctor patient relationship and it is essential that psychiatrists maintain a professional manner, listen carefully and demonstrate neutrality and courtesy throughout the interaction. The principle of duty of care applies through medico-legal assessments.**

7. **Victorian WorkCover Authority Handbook for IMEs**

All IMEs who provide reports at the request of claims agents must agree to follow the procedures outlined in The Victorian WorkCover Authority Handbook for IMEs (the Handbook) (refer Attachment Three).

There are a number of areas of this Handbook that are of particular relevance with regard to this investigation, including the following:

**Bias**

As an IME you are being engaged by the requesting agent not as their agent (even though they are paying you), nor to act as the claimant’s personal doctor, but to provide a fully independent professional medical assessment of the case.

6.2. **It is very important that an independent medical examination and its associated report are just that, i.e. independent and impartial. Note also that it is not the role of an IME to determine or comment on liability, but to provide a medical opinion to assist others in their determination of liability.**

6.3. Bias, either consciously or subconsciously, most commonly arises from one of three sources:

**Taking the injured worker’s “side”**

6.4. This may occur because:
6.4.1. You feel sympathetic to the claimant’s circumstances;
6.4.2. Because you accept at face value what the claimant tells you about their workplace, their accident, and the consequences of the accident; or
6.4.3. Because of a professional commitment to “act in the best interests of “your patient”.”
6.5. These factors may be compounded by the usual working presumption doctors quite correctly normally operate within: that their patients tell the truth about their injuries/illnesses – a presumption which may not be justified in circumstances where the patient stands to benefit from being less than forthcoming with the truth.

**Taking the requesting agent’s “side”**

6.6. This may be due to the natural tendency one has to provide a sympathetic service to the person or organisation paying for the service (particularly in a fee for-service culture), or it may be due to a more or less well informed suspicion of some WorkCover claimants and the nature of some of their injuries and/or claims.

6.7. However, the content of your reports must always be in accordance with the terms of your Agreement, which explicitly requires that the opinions you provide in your report be quite independent of the Authority, authorised agents, or self-insurers.

**Service Standards**

Service standards applicable to independent medical examinations are as follows:

1. Appointments:
   1.2 On date of appointment, injured workers will not be kept waiting for an unreasonable period of time.

2. Conduct of examinations:
   2.1 Injured workers attending Independent Medical Examinations will be interviewed and examined with care, consideration and courtesy.
   2.2 Independent Medical Examinations will be conducted in accordance with recognised professional standards and applicable law.
   2.3 The length of the independent medical examination will be sufficient to make a fair and comprehensive examination of the injured worker with a view to answering the questions asked by the Report Requestor.
   2.4 The Independent Medical Examiner should ask the Report Requestor to contact the injured worker’s treating practitioner where clarification of an issue is required. If the Independent Medical Examiner makes direct contact with the injured worker’s treating practitioner, the Independent Medical Examiner must obtain the injured worker’s consent in writing before contacting the treating practitioner.

Claimants who have concerns about the way they have been dealt with by the IMEs or who have concerns about the content or opinions expressed in the report have several avenues to pursue in making a complaint. These include:
- the Victorian WorkCover Authority
- the Health Services Commissioner
- the Medical Board of Victoria (part of the Australian Health Practitioner Regulation Agency).

8. **The Independence of Medical Examiners**

IMEs are not beholden to either plaintiffs or defendants, their task is to provide an independent report to assist the court or tribunal. This is highlighted by the Civil Procedure Act 2010 (Vic) (the Act), which sets out requirements for expert witnesses in civil proceedings.

The main purpose of the Act, which came into effect on 1 January 2011, is to reform and modernise the laws, practice, procedure and processes in relation to civil proceedings in the Supreme Court, the County Court and the Magistrates’ Court and to provide for an overarching purpose in relation to the
conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

To achieve that purpose, the Act outlines a number of overarching obligations, which are:

- to act honestly
- to cooperate in the conduct of civil proceedings, with the parties and the court
- not to engage in conduct that is misleading or deceptive or likely to mislead or deceive.
- to narrow the issues in dispute
- to ensure costs are reasonable and proportionate (being proportionate to the complexity or importance of the issues in dispute, and the amount in dispute)
- to use reasonable endeavours to act promptly, and minimise delay.

In addition, each person to whom the overarching obligations apply has a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved.

In particular, the Victorian FFP notes that psychiatrists preparing a medicolegal report are required to confirm – in their report - that they have accepted the requirements of the Act.

The Victorian FFP considers that practitioners who fall short of these standards should be sanctioned.

9. Conclusion

The Victorian FFP believes that the ethical guidelines and the relevant codes of conduct are central to maintaining the integrity of the system of medicolegal assessment.

The process of medicolegal assessment is also vital for the correct operation of benevolent schemes such as WorkSafe and the Transport Accident Commission.

We believe that our obligation is to treat claimants with respect, dignity and courtesy. We believe it is also our obligation to provide a comprehensive report responding to questions that are asked to assist courts and tribunals that is unbiased. It is our obligation to provide an independent expert opinion and we endeavour to do this.

In any system, there must be appropriate checks and balances to make sure abuses of power are less likely and if they do occur there is a capacity to quickly recognise and redress the situation and in suitable situations provide appropriate sanctions.

As highlighted above, psychiatrist IMEs are obliged to:

- follow a code of ethics
- certify on each report that the requirements for expert witnesses of the Act have been followed
- conform with the Victorian WorkCover authority Handbook for Independent Medical Examinations that provides for independent review of reports
- attend monthly peer review meetings

Further, we note that:

- potentially every IME may be subject to court appearance and cross examination
• claimants have several avenues to register complaints with regard to their assessment by an IME
• IMEs may be subject to significant sanctions if they do not meet appropriate standards e.g. of the Act.

Therefore, taking into account all the above, the Victorian FFP believes that there are appropriate and adequate checks and balances with regard to the current system of IMEs involving psychiatrists.