Response to the Report of the Victorian Ombudsman-Worksafe 2: Follow-Up Investigation into the Management of Complex Workers Compensation Claims

I have noted with interest this follow-up investigation having taken into account both the initial report published in 2016 and the further report in 2019. In particular the section entitled:

Oversight of the IME System (page 189)

This section discusses appointments of IMEs, feedback regarding the new selection criteria, quality assurance issues and changes since the 2016 investigation.

I think that there is a fundamental flaw in the IME system that leads to inadequate reports and an apparent vacuum with regard to measures to improve quality.

The assumption made by WorkSafe is that the selection criteria, induction and service standards are adequate. These include:

- a minimum of eight hours direct clinical care each week in the IME specialty
- a minimum of five years full time work experience as a practitioner in that specialty
- having the necessary insurance
- being registered with AHPRA

The successful applicants must then participate in an induction process that includes:

- legislative obligations, reporting expectations
- information regarding worksafe policies
- “training in relation to conduct”
- agreement to meet service standards

The IME service standards state that report should:

- contain reasons for all opinions expressed
- opinion should accord with examination findings
- no advocacy and/or biased
- Independent/impartial and avoid value judgements or personal comments
- be written in plain English
- provide an accurate diagnosis based on references to a detailed and accurate history and appropriate and thorough clinical determination
- present and evidence based approach to evaluating symptoms and clinical findings
- note where there is insufficient clinical confirmation to make a diagnosis
- contain only relevant information

The skill set of medical postgraduates is not sufficient to do the work of an IME effectively. Regrettably few colleges provide training in the work of an IME. IMEs have to learn” on the job”.

Training should include the following:

- an understanding of the scheme
- the interview process
- preparation of a report
- providing an appropriate opinion
- responding to questions asked by the referring source.

Most medical practitioners who commenced this work did not have adequate training and indeed there is no systematic training process provided. Ironically all IMEs are required to do training in impairment assessment. None are required to be trained in doing an assessment. It is the view of the IME that an adequate course of training should equip prospective IMEs with the skill set to do the work required. Such a training program should include a didactic course, mentoring and the opportunity for further training as required.

The importance of training is both with regard to new IMEs being able to function effectively in that role from the beginning but it also provides an avenue by which IMEs whose reports are thought to be problematic can be provided with further assistance to improve their level of skills.

Many prospective IMEs accept that such a training program would need to be self-funded.

The implication is that the work of an IME is a subspecialty. The type of training described above would be both generic to all craft groups but also have specific components for various specialties.

These comments should be considered in the context of our assessment of Recommendation 14, it now reads as follows:

> **Recommendation 14** (page 227)
>
> Provide guidance and/or training to IMEs regarding:
>
> a. What constitutes “material changes” in a worker’s condition since a previous Medical Panel examined them and provided an opinion.
>
> b. How surveillance material should be considered when forming an opinion about a worker’s work capacity.

Recommendation 14 should be reworded:

> **Recommendation 14 (amended)**
>
> Accredit suitable training courses in conjunction with the relevant medical colleges.
>
> Current IMEs should be “grandfathered” but encouraged to participate in such courses.
>
> New IMEs should undertake training as part of their induction to become IMEs
>
> Such training courses should provide for retraining for IMEs about whom concerns have been expressed.
>
> Such training courses should have flexibility to respond to particular concerns including:
>
> a. What constitutes “material changes” in a worker’s condition since a previous Medical Panel examined them and provided an opinion.
>
> b. How surveillance material should be considered when forming an opinion about a worker’s work capacity.

Surveillance material such as videos should be seen together with the claimant to provide the claimant with an opportunity to explain the behaviour observed and to confirm that the person in the video is the claimant. It is considered that for an IME to change their opinion on the basis of surveillance material without providing the claimant to comment is unfair.

Other Issues

There are other issues in this document of concern. The report notes that in paragraph 615 WorkSafe wrote:

> *Worksafe notes that it did undertake significant external consultation including through the IME Clinical Reference Group, a presentation to the AMA WorkCover/TAC committee, the establishment of a working group with representatives from the College of Surgeons and consultation with various medical faculties and peak bodies in relation to the IME criteria.*

The AMA WorkCover/TAC committee did not consider presentation to the committee as consultation particularly as the committee were told the issue of a minimum of eight hours "direct clinical care each week" would not be discussed.

The AMA WorkCover/TAC committee also had concerns about this requirement as it seemed to ignore that all colleges have compulsory Continuing Professional Development that is required annually for medical practitioners to retain their registration with AHPRA. It is thought that the process of successful completion of CPD annually is a much more effective tool for determining ongoing clinical competence rather than a minimum of eight hours direct clinical care each week as this, in and of itself, does not imply competence.

Complexity

The ombudsman's report is a "Follow-Up Investigation into the Management of Complex Workers Compensation Claims".

Complex workers compensation claims, by definition are - complex!

Complex claims are usually associated with more documentation and an extended interview time. This is particularly the case with regard to complex claims involving alleged mental health issues.

In paragraph 689 WorkSafe wrote:

> *…in April 2019, WorkSafe increased the fee for psychiatric IMEs by 25% and made other changes to the fee structure such as providing a higher fee if there were more than 20 pages of reading material.*

This is the actual fee schedule for psychiatrists.

Psychiatrist

Item number	Service description	Fee	GST	Total (inc GST)
PCT100	**First examination and report** - Inclusive of conducting the examination, report	$1,131.02	$113.10	$1,244.12

Item number	Service description	Fee	GST	Total (inc GST)
	writing, reading time and any incidentals (such as postage, photography and faxing services). - Diagnostic tests (such as x-rays) carried out as a necessary part of the examination are not included in the first examination and report item code and will be reimbursed in accordance with WorkSafe policies, the relevant Medicare Benefit Schedule item code and the WorkSafe's Reimbursement Rates for Medical Practitioners.			
PCT150	**Subsequent examination and report** - Applies where a WorkSafe Agent requests a report within 12 months of the first examination and report for the same claim.	$678.61	$67.86	$746.47

Psychiatrist - Loadings additional to examination and report fee are subject to prior written approval from the WorkSafe Agent.

Item number	Service description	Fee	GST	Total (inc GST)
PCT200	**Report reading** - Flat rate for reading of all reports that accumulatively are greater than 20 pages. - This fee is payable once only per claim per WorkSafe Agent report request.	$49.72	$4.97	$54.69
PCT201	**Report reading** - Flat rate for reading of all reports 101 - 200 pages - This fee is payable once only per claim per WorkSafe Agent report request.	$124.29	$12.43	$136.72
PCT202	**Report reading** - Flat rate for reading of all reports 201+ pages - This fee is payable once only per claim per WorkSafe Agent report request.	$207.15	$20.72	$227.87
PCT250	**Urgent examination and report** - Urgent request by a WorkSafe Agent to complete initial or subsequent exam and provide the report to the Agent within two business days.	$127.80	$12.78	$140.58
PCT300	**Work site visit** - Request by a WorkSafe Agent to complete a worksite visit and provide a report to the Agent. - Inclusive of work site visit, report writing, reading time and any incidentals.	$1,107.48	$110.75	$1,218.23
PCT350	**Travel to and from assessment (at Agent's request) per hour** - Calculated in 15 minutes blocks. - Travel only paid when travelling to a location other than IMEs nominated practice location/s. - Travel for multiple assessments in the one	$459.47	$45.95	$505.41

Item number	Service description	Fee	GST	Total (inc GST)
	location should be charged on a pro-rata basis for each claim.			
PCT400	**Audiovisual viewing** - Flat rate for the viewing of all audiovisual material. - This fee is payable once only per claim per WorkSafe Agent report request.	$287.21	$28.72	$315.93
PCT450	**Supplementary report** - Applies where a WorkSafe Agent provides information additional to that initially provided or to answer additional questions not initially asked and the IME has previously examined an injured worker in the past 12 months. - An IME is not required to conduct a re-examination (or re-contact) the injured worker in order to provide the additional information.	$367.68	$36.77	$404.44
PCT500	**Interim report** - Request by a WorkSafe Agent to provide information prior to receiving the IME final written report - The advice from the IME may be provided verbally (i.e. by telephone) or in writing (i.e. fax)	$76.71	$7.67	$84.38
PCT550	**Non-attendance on day of appointment** - Non-attendance fee is applicable where an IME appointment is cancelled by the WorkSafe Agent on the day of the appointment or where the injured worker does not attend.	$383.01	$38.30	$421.31
PCT551	**Cancellation by Agent within 48 hours of appointment**	$191.51	$19.15	$210.66
PCT600	**Psychiatrist - examination conducted video conference** - This item is payable in addition to other applicable items in this fee schedule for a Psychiatric IME. - The fee will only be payable where provision of the examination via videoconference is requested by worksafe.	$282.29	$28.23	$310.52
IEO400	Assessment of Impairment as requested by Agent using AMA2Guide**	$210.53	$21.05	$231.58

** This service is only paid when requested to be performed under special circumstances by the WorkSafe Agent or Self-insurer.

The AMA draws the Ombudsman's attention to Item PCT100. This is the standard fee for all reports no matter the degree of complexity. Sometimes complexity does not emerge until the interview is underway. The requirement of WorkSafe is –

Loadings additional to examination and report fee are subject to prior written approval from the WorkSafe Agent.

This requirement does not allow for the emergence of complexity during the interview. This is a one size fits all approach. By contrast the Transport Accident Commission fee schedule allows for a fee range depending on the level of complexity of the claim. The AMA strongly urges that such a fee range be introduced.

A proxy for complexity is likely to be the extent of the documentation. It is likely that more than 200 pages of documentation indicates that this is probably a complex claim. It is likely that an interview using the services of an interpreter will extend the interview time significantly. This is not catered for by this fee schedule.

Feedback from IME psychiatrists is that although the fee increase is helpful it remains rigid and the fee level are still below that of most other states.