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BURNIE CITY COUNCIL

Assistant Commissioner
Workers' Compensation
and OHS Productivity
Commission
PO Box 80
BELCONNEN ACT 2616

Dear Commissioner

SUBMISSION TO INQUIRY INTO NATIONAL WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

I welcome the opportunity to provide a small insight into some of the dilemmas and difficulties facing employers, employees and the medical profession in a complex and legalistic environment.

This brief submission is narrow in its context and specifically relates to the element of the inquiry investigating early intervention and rehabilitation. The following submission derives from a geographical regional perspective, and in particular the medical management of workers compensation issues in those areas. It has some connection to matters of dispute resolution in the early stages.

Summary

There is room for consideration of the potential for conflicts of interest for Doctors in current workers compensation processes. It could be contended that the potential for conflicts of interest arise more so in regional and remote areas and relate to professional diagnosis by Doctors vs inappropriate judgement of the cause, and the potential for financial gain by adopting particular approaches to workers compensation matters.

The no fault system effectively means that a Doctor accepts without question the employee's statements of how the injury occurred, irrespective of other potential realities. Whilst this is important in protecting both the employee and respecting the medical diagnosis it can lead to protracted disputes, and places the employer and insurer

in an adversarial position with the Doctor and the employee, and can mitigate against effective early rehabilitation of the employee.

In regional areas in particular, where choice and competition are limited for the employee for medical services, and limited for the Doctor for market share of patients for a viable medical practice the potential for conflict is exacerbated. That is, employees become very aware of the

liberal or conservative approach Doctors have in relation to sick leave certificates, and workers compensation assessments and have been known to use them to affect outcomes in their favour. Doctors gain from this approach by patient loyalty.

This could be minimised through the development of a common framework to guide Doctors to be consistent within the town/State/Nation on how a potential "claim" is handled from the moment the employee seeks assessment. It is understood that Doctors currently must go through training to be registered as a Workers Compensation Assessor for medical purposes, however the monitoring and effectiveness of this is limited from the writers experience (and is in need of desperate review). A proposed framework might still use the no fault philosophy as the underpinning principle, however, there may be certain injury types where a more detailed framework would require particular action by the assessing Doctor. Some objectives that might be useful would be to ensure:

- Doctors are confined to diagnosing the condition, but not judging the cause when matters relate to a disease (stress in particular). In these instances, there should be the potential for the Doctor to comment that it "may or may not relate to work". This would minimise the "validation" of the employee perception of the cause but validate their medical condition (it generally empowers employees to see their doctor write "as a result of harassment at work"). Injuries (physical) are less problematical.

- Doctor’s are provided with sufficient consultation time to make a thorough investigation into an employee’s background at the time of presentation, particularly in the case of stress claims, where predispositions can be an influence. This first contact is crucial. Having enough time to gain enough information to assist in understanding the background and issues is important.

- A set of questions might guide the Doctor through a process to identify the employee’s capacity to undertake limited/light duties for limited/minimal periods at the employer site or otherwise. This should be done if possible very shortly after the initial assessment of the employee and with the Rehabilitation Provider to commence the building of the relationship irrespective of liability.

- The Rehabilitation Provider should be immediately involved with the employee, irrespective of liability. The burden of cost for this should be justified with a far

greater capacity to get independent assistance involved at the first step to returning the employee to work of some sort and thereby reduce the burden on public systems for support and increase the potential for full and fast recovery of the employee.

- Provide consistent approach across the medical profession and to employees and employers alike when assessing injuries, particularly those relating to diseases (as defined by the workers compensation legislation.

- Eliminate unethical practices.

Background

Burnie is a small regional "City" in the North West of Tasmania with a population of approximately 18,500. The Municipality has a very high unemployment rate, and is still recovering from the radical change in the early 1990's of the extraction of major industries (employers) from the area. The old culture still pervades many current workplaces, with common artefacts around employee behaviour toward sick leave and workers compensation.

The following details relate to experiences as an HR Manager for the City Council. The Council's experience with the more complex allegations of stress and anxiety has precipitated this response. Below is a summary of themes from cases where the action of the Doctors prove interesting for:

- Their capacity to influence the employee's perceptions and bolster employee feelings of justification and validation of allegations against the employer - irrespective of reality.

- Placing themselves in a position of judgement of the cause of the disease at the time of diagnosis with limited information - which is against all principles of natural justice.

- Their apparent failure on many occasions to seek to return the employee to work in any capacity so as to progress further in a proactive manner.

- Their willingness to certify long periods of incapacity which allows the employee to collect salary and reinforces their perceptions of validity whilst the formal dispute processes continue.

- Their willingness to certify long periods of incapacity without requiring psychological counselling and improvement programs.

The following details support the above statements, and relate to specific cases which the Council has experienced.

1. The Doctor assesses the employee as suffering stress, depression and anxiety on the first visit as a "result of workplace harassment". This judgement was recorded on the certificate and made only on the basis of the employee's information (in fact in two cases, the first it was later deemed not worthy of investigation by the Anti-discrimination Commission and could have been followed through as a vexatious complaint, and the second, an internal investigation found the employee admitting contradictory positions. Both are being contested in the Workers Compensation Tribunal on the basis of reasonable administrative action, among other things).

   It is my view that this assessment by the Doctor prejudged the situation and the expression used by the Doctor for the cause of the disease on the certificate influenced and contributed to empowerment of the employees to pursue matters in a particular way.

2. In one case, the employee did not wish to participate in rehabilitation and informed the Doctor of such a view and made allegations they were being harassed by the Rehabilitation Provider (Provider). The Doctor then accused the Provider of harassment, again without seeking information from the Provider or recognising the provider's right to apply the law of the requirement of the employee to participate in rehabilitation.

   It is my view that this assessment further provided "perceived" justification and support for the employee to continue to behave in the manner in which they were. The Provider was merely making a phone call once per week to assess the employee's progress. It was arms length participation and very difficult to deem it harassment. There are other matters here about this particular Doctor's knowledge and application of relevant law.

3. In another case, the Doctor assessed the employee as being totally incapacitated for work, and over a 12-month period wrote out medical certificates for total incapacity for periods of 6, 8, 12, and 16 weeks. During these periods, the employee was not required to seek daily, or weekly psychological counselling, and the Doctor refused to ask the employee to participate in return to work programs (despite the employee being observed to be capable of other activities and the doctors assessment that the employee was improving).

   It is my view, that this approach is not proactive rehabilitation on behalf of the Doctor, as they didn't appear to assess the employee's capacity to do minimal

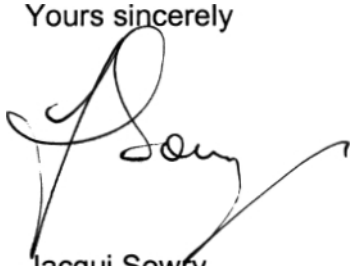
part time, or out placed work etc. There were no desensitising activities, no minimalist return to work programs involving one hour a day 2 days a week etc. It also appears the Doctor did not encourage proactive health improvement because there were no requirements for the employee to attend counselling or undertake activities that would assist their health improvement. Meanwhile, Council and its insurer were required to continue to pay full salary and benefits.

These specific situations are evidence of an inadequate system which asks Doctors to judge causes of disease without adequate information and the influence that those judgements may have on the employee can be notable. In addition, the lack of proactive rehabilitation immediately upon injury is detrimental to many cases, in terms of resolution of issues between the employee and employer if they exist, legal intervention, costs to the public medical services, costs to the employee and employer. The failure of the system to require Doctors to actively seek rehabilitation prior to the legal requirement of employers to do so after 14 days exacerbates potential negative outcomes.

Lets see a positive and proactive approach to injury/disease management that actually builds on the no fault system by:

- Changing the system so that Doctors do not prejudge who is at "fault" when assessing the employee in the first instance
- Allowing Employers to engage Rehabilitation Providers to commence working with the employee without admission of liability
- Requiring a more proactive approach by doctors in relation to employee rehabilitation. I trust that this information will be of use in highlighting, albeit operation and functional problems, inconsistencies and a lack of proactivity to ensure the integrity of the relationship between the employee and employer is maintained as far as the employment obligations are concerned and the Doctor's role in that process to monitor and improve the health of the employee.

Yours sincerely



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