

## Legislative Council

Wednesday, 23 June 2010, Page 381

### INDEPENDENT MEDICAL EXAMINERS

**The Hon. A. BRESSINGTON** (17:35): I move:

That this council—

1. Calls on the Minister for Industrial Relations to initiate an inquiry into—
  - (a) The improper use of interstate independent medical examiners , including allegations of—
    - i. the use of interstate independent medical examiners in preference to South Australian medical practitioners who are suitably qualified and available;
    - ii. interstate independent medical examiners being engaged by claims managers because they are likely to provide a report more favourable to the claims manager ' s interests; and
    - iii. interstate independent medical examiners engaging in unorthodox practices designed to intimidate injured workers;
  - (b) The allegation that Employers Mutual Limited, case managers, is intentionally deterring South Australian medical practitioners from working as independent medical examiners by, amongst other things, paying them less than that paid to interstate independent medical examiners and by delaying payment for work completed;
  - (c) The allegations that Employers Mutual Limited and other claims managers are 'doctor shopping' by engaging multiple independent medical examiners until a report considered favourable is received;
  - (d) The number of independent medical examinations conducted by interstate independent medical examiners each year over the last four years; and
  - (e) The number of independent medical examinations conducted and how many injured workers have been required by their case managers to have an assessment by an independent medical examiner each year over the last four years.
2. Requests the minister to table the report on the findings of this inquiry.

I move this motion in response to feedback I have received from numerous constituents and professionals about the use of interstate doctors as independent medical examiners (IMEs). For members who are not familiar, claims managers are able to require an injured worker to attend an appointment with a medical specialist for a so-called independent medical examination. The claims manager may or may not provide the medical specialist with the injured worker's claim file or other medical reports that have been undertaken. The medical specialist will be asked to answer one or more questions relating to the existence and management of the injured worker's medical condition.

The subsequent report of the medical practitioner, provided it complies with the relevant guidelines, can then be used to determine the injured worker's entitlements and in any relevant legal proceedings. An injured worker must attend the independent medical examination, for failure to do so would be considered a breach of the obligation of mutuality

and could result potentially in the discontinuance of weekly payments under section 36(1) of the Workers Rehabilitation and Compensation Act 1986. There is no specific provision in the Workers Rehabilitation and Compensation Act dealing with IMEs and, as such, there is no limitation on the justification for the number of independent medical examinations that a case manager can require an injured worker to attend.

As I mentioned at the outset, numerous allegations have been made, both publicly and to me personally, concerning the improper use of interstate IMEs. These range from the use of interstate IMEs over South Australian medical practitioners to perceived doctor shopping by claims managers for a favourable report, to intentionally deterring South Australian doctors from working as IMEs.

While I would prefer to establish a select committee to inquire into these allegations and believe that this would be a more appropriate forum for such an inquiry, I know that the prospect of establishing such a committee would probably be slim. Instead, I am asking the Legislative Council to call upon the minister responsible for the WorkCover system to conduct a thorough and fair inquiry or investigation and report the findings back to this parliament.

In so doing, I have endeavoured to capture each allegation made in the terms of reference for the minister's inquiry, and it is these that I will now address. First, it has been alleged that some claims managers, particularly within Employers Mutual Limited, have developed a preference for interstate IMEs. As was detailed in a recent *Sunday Mail* article, this comes at considerable expense.

According to WorkCover's Independent Medical Examiner's Agreement (Schedule of Fees), an IME is able to claim a maximum of \$439.50 per hour for travelling to conduct an examination. When travelling from interstate—particularly New South Wales and Queensland (as some do)—this fee soon mounts up. Rosemary McKenzie-Ferguson, founder of the Work Injured Resource Connection, queried in that article:

If [the surgeon] flew down [from Queensland] it would take at least five hours travelling time at a cost of \$2,200, so you have to question why a local orthopaedic surgeon couldn't be found to do the same job.

Further to this, it has been alleged to me by both legal and medical practitioners that some interstate IMEs have a reputation for being pro WorkCover; that is, they are more likely to provide a report that is favourable to the claims manager's interests and hence detrimental to the injured workers.

Given that claims managers are able to be selective in who they engage to conduct an independent medical examination, and the significant payments available (particularly to interstate IMEs), one can see that there is indeed the potential for the independence of medical examiners to come into doubt.

This allegation was reinforced by comments made by the President of the South Australian branch of the Australian Medical Association, Dr Andrew Lavender. In the *Sunday Mail* article, Dr Lavender described fly-in IMEs as 'hired guns' and went on to say that claims managers are 'trying to seek someone who, instead of giving an independent opinion, is giving the opinion that they [as in claims managers] want'.

Dr Lavender again repeated his concerns on FIVEaa the following day. I make the point that when the President of the local Australian Medical Association is willing to go public with such concerns they should be taken seriously.

Additionally, as I was going to detail in a question that I was going to ask the minister today on industrial relations, constituents have alleged that specific interstate IMEs are engaging in what can only be described as threatening and intimidating conduct.

One injured worker who suffers work-related post-traumatic stress disorder spoke of being yelled at for daring to take notes during the interview, had a finger pointed at him and dug into his chest in a threatening manner and then was told that his aggressive behaviour was unacceptable and that the interview would be terminated if he did not stop taking notes.

While I do not suggest that this is an issue because of the use of interstate IMEs, it is possible to link such conduct to the allegation that some interstate IMEs are pro WorkCover, and as such I think it appropriate that the minister inquire into these allegations in this context.

I have also asked the minister to inquire into the allegation that some claims managers are intentionally deterring South Australian medical practitioners from acting as IMEs by paying less than that provided for in the schedule of fees and by delaying payments.

These allegations have been made to me by a South Australian medical practitioner who, citing this and the burdensome paperwork involved, now refuses to treat or assess injured workers. Dr Lavender, again on FIVEaa, also queried whether the increase in the use of interstate IMEs was 'because we just can't find doctors in South Australia willing to provide the WorkCover services'.

As I detailed earlier, there is no restriction on the number of independent medical examination reports a case manager can request. This has led to some injured workers being required to see multiple IMEs (as many as seven or eight, and in some cases more), and subsequently allegations that case managers are in effect doctor shopping for a favourable report.

I believe that it was the Hon. John Darley on FIVEaa who claimed that one of his constituents was required to undergo no fewer than 50 independent medical examinations, and that on one day he had three booked—one after another.

As I have come to learn, claims managers rarely operate in the best interests of the injured worker and, given that significant reliance is placed upon IME reports, it is not inconceivable that, if dissatisfied with one report, claims managers will simply request another. This, of course, ties in with the allegation that claims managers have a preference for some IMEs who are known to write unfavourable reports for injured workers.

It is for this reason that I have also asked the minister to report on the number of injured workers required by the case manager to see an IME and also how many independent medical examinations have been conducted each year over the last four years. This is so that we can also gain an understanding of the prevalence of their use. I have also asked the minister to report on the number of assessments conducted by interstate IMEs in the same period.

The WorkCover system is just one of the scourges that this parliament has inflicted on the sick and vulnerable of this state: people who have gone to work in good faith, been injured through no fault of their own and who are from there on treated like criminals. They are victims turned into villains and destined to live a subhuman life of deprivation, pain and suffering just to save a few bucks. We introduced the most horrid and inhumane legislation in this place in 2008, one of the shames of the state, all in the name of reducing the unfunded liability that had blown out to almost \$1 billion at that time.

Most of us in this place were aware that the unfunded liability came about because of the tail of injured workers who were kept trapped on the system rather than redeemed, and redeemed in a way where they would live their lives with relative ease. We also know that the unfunded

liability figure was rubbery to say the least, basing that calculation mainly on the number of injured workers on the scheme and then calculating how much it would cost to pay them all out until they reached the age of 65, which for most injured workers is a highly unlikely prospect.

So, in fact, WorkCover created the problem. Then the government and media stirred up the fear campaign of another State Bank disaster scenario which caused a reaction of the public calling for someone to fix this, which led to the government putting forward the solution of punishing injured workers to stop a financial disaster. This is commonly known as 'problem, reaction, solution', a technique used to give the impression that the government is coming to the rescue when in fact this technique allows the manipulation of the situation to put in place its preferred solution.

We all pretty much know that the solution put forward was never intended to deal with the plight of injured workers caught up in a system that is allowed to crucify them because no amendments to give injured workers a reasonable appeal process were acceptable to either of the major parties. We can all guess that the solution was in fact to appease big business and let them off the hook while the corporation spent who knows how much on promoting its so-called return-to-work successes with patronising advertising and someone learning how to use a saw, for God's sake. This would be laughable if it were not so tragic.

I understand that no government can afford to pay out millions of dollars in redemption payments and have the fees for business so high that no-one can afford to invest in this state but I also understand that no government can afford to abandon the sick and vulnerable and not suffer a backlash, something that will take more than re-engaging and reconnecting with the community to fix. The only thing that will fix this government's standing in the eyes of the people of this state is to commit to putting people back together instead of crushing them with the systems we legislate for.

Now we have claims that even the independent medical examinations are fraudulent in some cases, so any hope that an injured worker may have had with an honest medical practitioner could well have been circumvented. This begs the question: what kind of medical practitioner would write a report that damned a person to a life of deprivation and hardship to please a corporation and use bullying and intimidating behaviour as well? What kind of corrupt and indifferent network has WorkCover Corporation managed to establish nationally if these allegations are true and why would we as legislators turn a blind eye and a deaf ear to such claims?

With the legislation that we introduced in 2008, we made very sure that if any injured workers were going to appeal against the decisions that were made, it was highly likely (in fact, legislated for) that their payments would be stopped until that dispute was resolved. We have a system now where they cannot appeal. We have many allegations that IMEs are writing reports in the best interests of the claims managers and there is no way that these injured workers can counter any of that.

If we in this place are happy with this state of affairs for injured workers then again I say: shame on us. As I stated, I would prefer to air these allegations before a select committee. However, failing this, I think it is appropriate that the minister inquire into the matters referred to above and report the findings. If it is found that there is indeed something very wrong with the current approach to the use of IMEs, it would then be for the minister or indeed this parliament to take steps to rein in any identified abuse. I commend this motion to the house.

Debate adjourned on motion of Hon. T.J. Stephens.