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Hon John Mansfield AM QC
Independent Review of the
Return to Work Act 2014

15/2/18

Dear Judge Mansfield,

Re: IMEGSA and Dr John Meegan submission to Independent Review of the Return to Work Act 2014

Thank you for the opportunity to present my submission regarding the RTW Act 2014 Review and for extension of the deadline by a week due to my personal circumstances with my father passing away last week.

I have as a result had to scramble and hurry at the last minute to submit therefore so please forgive me if this appears something of a draft. I am happy to provide whatever further details and clarification you might need.

IMEGSA is an incorporated body representing impairment assessors in the scheme and which was rekindled for a number of reasons including some significant unhappiness with the scheme by assessors, it's impact on assessors and our patients and as it was felt the AMA was not representative of this key group in the scheme.

IMEGSA has met several times in recent months and sought input verbally and in writing from it's members regarding their concerns. These relate broadly to (1) issues about the RTW Act and (2) issues related to gazetted fees.

Issues raised for submission in no particular order include:

- The RTWSA submission to the Review which you provided with your invitation to submit is heavily focused on statistics and savings under the scheme. The very great human cost to workers significantly disadvantaged by the scheme has largely been overlooked. Workers rights and entitlements have been significantly eroded and the fact that workers now have poor or very limited cover and further that this is not acceptable is reflected for

example by the campaign of SAPOL and other worker representative groups in protest. EBAs to address this have only led to discrimination between worker groups in terms of their entitlements.

- The balance of rights between workers and employers which is at the heart of Workers Compensation legislation since their first enactment in Prussia over 100 years ago has been lost and the scheme is now very heavily in favour of employers.
- There is little or no pressure on employers in the scheme. Injured workers find they are racing against the clock with their injury with much anxiety over the cooperation of employers and where their injury leaves them with ongoing pain, suffering, disability and impact on their families with limited cover for treatment and lost income and a harsh system for impairment assessment that even in cases of significant ongoing pain and significant loss of function may provide no compensation at all.
- Although convenient the use of AMA5 and RTWSA assessment guidelines to determine threshold of entitlement for lump sum payments or lifetime support as objective and reliable is illusory. Assessments are not necessarily more objective or illusory but are certainly more time consuming, complex and stressful not infrequently to a ridiculous level.
- It has been established scientifically that AMA5 has little or no validity with proxy assessments of impairment and with poor reliability/reproducibility.
- This is of even greater concern with thresholds of entitlement , "the one off assessment" and the concept of AMA5 of assessment "on the day seen" in other words with variability on different days conceded but no opportunity to assess this with a one off assessment.
- Of great concern has been from the outset of the scheme the lack of engagement with assessors. RTWSA has held a couple of consultation meetings with assessors but otherwise consultation with RTWSA and any dialogue with the Minister or his advisors or opportunity for meaningful input or change has proved very difficult or impossible.
- It has been held that the Act's requirement for a Review at 3 years has been used as an excuse for "a moratorium on change" or for that matter any dialogue or input. It has seemed that the democratic process for input to this radical new scheme has been missing. Whilst the Review is welcomed we contend it is insufficient to only consult with key stakeholders every 3 years over a period of several weeks. This lack of responsiveness has been a criticism it should be noted of the responsible Minister over his many portfolios.
- The Minister did under the Act set up a Ministerial Advisory Committee of key stakeholders but we are advised by participants that this has been dysfunctional, often without a quorum of attendees and never once attended or appearing to be supported by the Minister or his advisors!
- Whilst the emphasis on early rehabilitation and RTW under the new scheme as therapeutic is welcome and can not be argued against as per the extensive literature and AFOEM(RACP) document "Health Benefits of Work", in

treating patients this emphasis can deteriorate quickly (and under probable incentive payments to RTW consultants) into pressure, intimidation and bullying of the worker and their treating doctor. The treating doctors advice can be overlooked, ridiculed or bypassed if it does not suit the agenda of RTW at all costs. This can be to the detriment of the patient and can make treating such patients very difficult. "RTW ASAP in all circumstances and at any cost" is not always the most beneficial path.

- RTW consultants despite repeated requests not to do so, often intrude themselves into the patient-doctor consultation, "gate-crashing" or "piggy backing" on clinical time . There should be a written policy regulation that requires a separate meeting with the doctor and patient about RTW so as not to interfere with and undermine the important clinical time patients need.
- Although RTWSA provides data for a fall in dispute numbers many disputes continue to occur especially over rejected claims and the horrifically complicated impairment assessment process.
- Impairment assessments are very complex especially when multiple injuries and prior injuries are taken into account yet the fee gazetted for assessors cuts out at 3 areas assessed. After that assessors are required to assess whatever number of body areas is requested up to any number at no extra fee! This is despite the process being very onerous, stressful lad time-consuming and having to comply to the extent of passing a detailed audit with detailed reasons given at every stage and further with the assessor accountable potentially in great detail for their assessment as an expert witness in the SAET.
- This also has flow on effects for assessment of multiple injuries under the same gazetted fees for CTP claims under MVA legislation which can also require answering of multiple further complex questions in addition, at no extra fee.
- If the auditor deems the assessor's PIA non compliant there is no real process for the assessor to disagree. Further the PIA does not have to be paid for unless it is compliant. This can mean the assessor can be effectively be held to ransom or intimidated re changing an assessment to suit an auditor.
- There is no process to monitor or audit the auditor themselves who can often make mistakes too in this very complex process has been disovered when such matters are at the SAET
- AMA5 and the RTWSA impairment guidelines stress that assessors are independent and accredited and can use benevolence and their clinical judgement in applying the guides. However the audit process in practice can at times appear to lack respect for the best attempts of the assessor to get the assessment right and for their judgement and benevolence. The auditors at times stray into giving opinions or attempting to direct the outcome in a way that is not appropriate. This compromised the independence of the assessor.
- The RTW Act also introduced IMAs who were appointed by a multipartite committee and then the Minister and who can be called on by SAET judges to assist in disputes. The gazetted fees for IMAs however now are 10 years out

of date and not designed for appropriate to the private practice setting of the assessments. This seriously financially disadvantages an IMA assessor for more doing what is more complex work within a dispute. Requests to address this to regulators have been completely ignored. IMA examiners sometimes refuse complex cases as a result such is the seriousness of this financial disadvantage.

- IMAs have been hardly used by the SAET in any event. What their ongoing role in the scheme is should be questioned.
- IMA examiners and impairment assessors have repeatedly given up days of their own time for training, accreditation and exams only to have little or no utilization at all in many cases.
- As workers can choose their assessor for impairment only a small number of assessors see nearly all assessments done, usually on the advice of their solicitor or union
- Not doing many or any impairment assessments, further, erodes the skills of those accredited to do them.
- Reduction in claims is one thing but the fear of economic uncertainty for the injured created by the system is cruel & the limited support provided by the scheme is seen by many injured workers as not worth the effort. It is suspected this in itself has driven claim numbers down as has the economic situation in the State with workers concerned about their job security.
- 2nd opinion services put forward in the Act have potential to cut across and undermine the ordinary referral processes for treating specialists who are otherwise available in the normal way to assist patients referred to them. Insurers and employers further complain they do not have access anyway to detailed information from such 2nd opinion assessments. There has been comment these 2nd opinion are not being utilized often anyway and their continued role in the scheme should be questioned.
- There has been a very large drop in numbers of patients seen with compensable injury by impairment assessors and treating doctors so that sustaining a practice dedicated to this area has become very difficult or impossible. Some practitioners have even ceased working in this area. Many practitioners refuse to treat workers compensation patient also simply due to the added time consuming layers of complexity and difficulty. The role of treating GPs and specialists should be strongly supported in the scheme.
- Although likely outside your terms of reference the nature and effects of the RTW Act are not consistent with Labor SA's own policy document in the area of compensation and rehabilitation for work injury
- There is self congratulatory flavor to the RTWSA submission to the Review on the Act
- It is somewhat dismissive of the great difficulties imposed on recovery & RTW for injured workers and their loss of rights and entitlements.
- It is not always possible for a full recovery and a significant minority of injured workers have ongoing very significant problems and yet are nowhere near the very high and very difficult to achieve 30% impairment threshold

for “catastrophic injury”

- The concept of “catastrophic injury” by a threshold of AMA5 and RTWSA guidelines is somewhat absurd and arbitrary. The guidelines lack validity and reliability and were never intended to be used for assessment of fitness to work or as a proxy to this. This is stated clearly in the AMA5 guidelines.
- The costs of chronic injury which “disappear” from RTWSA’s balance sheet unde the scheme do not in reality disappear totally. They are simply shifted to the injured individual and their families and to some extent to federal systems such as medicare and the NDIS or in other words from employer/industry and insurer/regulator to worker and the taxpayer.
- Comparisons are often made between schemes in each state in relation to their costs and outcomes. However this seems to have just led to a “race to the bottom”. There is not necessarily a commitment to a basic minimum of support that all schemes should provide and agreement about a minimum levy for example. Further the debate some years ago about a National scheme to circumvent this seems now to be non existent.
- Employers are as a result able to ignore the real costs of injury and this may lead to reduced interest in OHS & proper support for RTW/injured
- The s18 obligation to provide suitable duties has been gutted by the Act and it’s interpretation at SAET sees it toothless due to financial support for a dispute against an employer/insurer in such cases being very limited to about $2,000. Funding for defence against a s18 action however is not limited!
- The concept of a single assessement of impairment is flawed and unfair
- Also draconian and completely illogical is the exclusion from impairment assessment of the treating doctor or any assessor who has had any contact by way of any other kind of assessment eg IME. The treating doctor often is best placed to undertake the assessment having the rapport and trust of the patient and knowledge of the details of their injuries. Treating doctors are not biased in their assessments and in fact there are multiple levels of protection against bias such as having to comply with AMA5 and IAGs, audit, expert witness codes of conduct and accountability in evidence at SAET under oath. Assessments are meant to be benevolent where possible so why exclude the treating doctor alleging they may ber biased/too benevolent?!
- Cancellation of attendance at dispute fees discourage doctors from dealing with workers compensation patients. Interstate and by previous agreement between the Law Society and AMA there was a fairer sliding scale for cancellations. Requests to address this have been ignored by RTWSA.
- Patient at PIAs are simply bewildered and stressed by the extraordinary complexity of many assessments under AMA5 and IAGs.
- as the assessor is heavily focused on the complexity and the compliance burde, focusing on the concerns of the patient is often not of relevance to the actual assessment and patients can be left feeling not listened to or harbouring ill feeling about an assessment. They may “shoot the messenger” when the assessor has no choice but to assign the impairment level dictated

by compliance with the system. There is no opportunity for example to assess pain and in most cases neither is there opportunity to assess loss of function/impact on life and ADLs

- The huge savings to the scheme in the order of billions of dollars has led to a massive and growing asset base when that money should be available to injured workers to assist outcomes or by way of improved compensation
- The scheme discriminates against psychiatric claims
- Many self insurers do not understand the complexities of system especially for example re impairment assessment
- The impairment guidleines give assessors NO flexibility re what is assessed. Only conditions listed in the referral can be assessed. Yet it is a near impossibility for referrers to get the referral right in many cases. This would require a magical transdisiplinary referrer who understands medicine and anatomy and the workers injuries and the ways this relates to the complexity of AMA5 and the RTWSA guidelines. Especially for complex PIAs I have repeatedly requested an IME be done first to direct the referrer as to what should be assessed and if necessary followed by a meeting to seek agreement on this with insurer and worker advocate. Those requests have been ignored and I regularly see incorrect referrals or referrals with critical information missing.
- RTW rates in the RTWSA submission appear to have improved relatively marginally compared to the huge cost to workers and loss of entitlements
- The “Reconnect” process can seem like a “disconnect” process! This is reflected by the fact only half of claimants at end of 2 years felt helped by it and many opted out
- Retraining being offered to assist RTW appears still to be very limited
- There are concerns that reform to the impairment assessment process to broaden it may include a “narrative” particularly as the process by which that would occur is not clear

Overall the many problems with the scheme and the great difficulties caused for patients in their treatment or assessment and the lack of responsiveness and opportunity for input and the very negative impact on doctors practices in this area have led to some despondency and outrage by doctors in the scheme.

I again apologise for the cookbook list of complaints which reflects the limited time frame I have had to submit particularly with my father passing away last week.

Due to time constraints I have simply outlined concerns of some other members by way of attachments.

I am grateful for the opportunity to have had input and I am happy to provide further clarification and information as necessary.

With the impending state election I am personally hopeful there will be a political

shift such the government is forced to address the harshness of the current scheme.

Yours Sincerely

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