

30 November 2016

The Hon Shayne Mallard MLC  
Chair, Legislative Council Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Chair,

**Re: Response to the first review of the New South Wales workers compensation scheme**

EML wishes to thank the NSW Legislative Council Standing Committee on Law and Justice ("the Committee") for its letter dated 10 November 2016, inviting EML to provide a response to the first review of the State's workers compensation scheme.

EML has been supporting employers and workers in NSW for more than 100 years. As an appointed claims agent for icare workers insurance and icare self-insurance, we are committed to doing our utmost to maintain the highest standards of service, care and support for workers who need our help.

As part of EML's strong focus on values and service, we encourage claimants to escalate concerns via our dedicated customer feedback channels so that they can be addressed in detail. However, we understand some attendees at the recent public hearings may have had concerns about aspects of EML's management of their claims.

EML has reviewed in full all statements made during the recent enquiry, and the attached report takes care to respond to issues raised. In some instances, we are unable to respond directly where comments related to claims that are still active and receiving weekly benefits.

EML recognises that the people we support may also have lodged claims with life insurers for different types of personal injury claims, such as income protection and total and permanent disability. Whilst we always do our utmost to support our customers, it is important that the Committee appreciates the differing responsibilities of claims agents such as EML and life insurers.

We understand that many of the people we support are suffering trauma as a result of their injury. Over the past six years, EML has invested heavily in scientific research initiatives into psychological harm, to ensure we provide the best care and most effective treatments possible. Our collaboration with the Black Dog Institute, Phoenix Australia, Beyond Blue and numerous Australian universities and Scheme partners has delivered a series of pioneering world firsts in the treatment of support of workers suffering from psychological injury. We are immensely proud of this record, and are committed to continuing to support the welfare of our customers with our best practice claims management framework.

We wish to thank the Chair and his committee for their thoroughness during these proceedings.

Regards,



Mark Coyne  
Chief Executive

## **Response to the first review of the New South Wales workers compensation scheme**

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## 1. Surveillance Practices

Public hearing transcript references:

- pp. 27-29 (4 November 2016)
- pp. 9, 26, 27, 47-60 (7 November 2016)

- 1.1 EML has strict protocols in place for the authorisation and approval of surveillance activity. For case managers, authorisation for surveillance is subject to EML's internal *Surveillance Guidelines*. The *EML Claims Authorisation Framework* ("the Framework") states that approval for any type of surveillance for any case may only be provided with justification.
- 1.2 In early 2016, following an internal review of the Framework, EML's management team undertook a review of the conduct of investigators. This culminated in an EML developing strict protocols for surveillance providers.
  - (i) Service Level Agreements (SLAs) for all EML surveillance providers were renewed in September 2016. A condition for renewal was that each service provider agreed to abide by EML's newly developed Code of Conduct for Surveillance Providers.
  - (ii) Other measures that have been employed at EML in relation to the conduct of surveillance service providers include reducing the number of hours of surveillance that may be requested, and educating EML's case managers about options other than surveillance that can be used to obtain evidence as well as the importance of privacy settings where desktop surveillance is undertaken.
- 1.3 EML requires all surveillance providers to operate in accordance with the highest standards of practice, including conforming to EML's *Privacy and Information Security Essentials* protocol, which requires providers to safeguard the privacy and security of information collected.
- 1.4 EML implemented this protocol in 2014 at the request of its Board, to improve privacy and data handling to minimise the risk of privacy data breaches. EML was the first scheme agent in NSW to voluntarily implement such a protocol. We understand that icare now requires all scheme agents to operate at this standard.

### Police and emergency services

- 1.5 Workers compensation insurance for police and emergency services workers is provided by the NSW Self Insurance Corporation ("SICorp") through the Treasury Management Fund ("TMF"), administered by icare self insurance. EML was appointed as the claims manager for the TMF portfolio effective 1 January 2011.
- 1.6 EML is unable to respond to individual statements made by injured workers; to do so would risk breaching customer privacy protections. However, we are able to respond to general issues raised in connection with surveillance.
- 1.7 Over the last 12 months, EML has managed more than 11,000 claims within the TMF portfolio. Approximately 3.5 per cent of these claims have undergone covert surveillance.
- 1.8 Of claims that have been subject to surveillance, approximately two thirds are conducted with respect to a lump sum Whole Person Impairment ("WPI") or Work Injury Damages ("WID") payment claim:
  - (i) Surveillance may occur when assessing a WPI claim if there is a significant disparity between the worker's and insurer's view of the worker's level of

- impairment. Surveillance contributes to the body of evidence used to determine the worker's functional capacity as part of the claim process.
- (ii) Surveillance may be conducted during a WID claim to verify conflicting reports about an injured person's capacity to work in the future. To be eligible to pursue a WID claim, a worker must first achieve a WPI rating of at least 15 per cent. Then, the individual's functional capacity will determine the amount the worker is entitled to receive (in addition to other factors).

- 1.9 In the remaining one third of cases, surveillance has been used to resolve conflicting reports about a worker's capacity or activities (e.g. to confirm capacity or determine current working arrangements). Information gathered from surveillance is used in conjunction with information from other sources to ascertain the capacity, current earnings or employment status of the worker.
- 1.10 As a claims agent, EML is wholly transparent with icare self insurance about its surveillance practices.
- 1.11 The superannuation death and disability scheme for injured NSW police officers is underwritten by private life insurers. EML is aware that the surveillance practices of life insurance companies are not subject to the same rigours as workers compensation schemes. An injured NSW police officer may have concurrent claims with EML and their private life insurer, which may create confusion as to which organisation is conducting surveillance.

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## 2. Work Capacity

Public hearing transcript references:

- pp. 2, 4-11, 39 (4 November)
- pp. 3, 43 (7 November)

### Background: Work capacity decisions and the 2012 reforms

- 2.1 The 2012 reforms introduced the concepts of 'work capacity assessments' and 'work capacity decisions'. Under the legislation, scheme agents can make work capacity decisions based on the following:
  - the worker's current work capacity, being their ability to return to work in suitable employment;
  - what constitutes suitable employment for the worker;
  - how much the worker can earn in suitable employment;
  - the worker's pre-injury average weekly earnings ("PIAWE") or current weekly earnings;
  - whether the worker is, as a result of injury, unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment; and
  - any other decision that affects a worker's entitlement to weekly payments of compensation on the basis of any decision referred to in the above bullet points.
- 2.2 These requirements applied to all new claims notified from 1 October 2012 and for all claims in existence before 1 October 2012 which were transitioned to the new legislation from 1 January 2013.
- 2.3 Under Section 44A of the *Workers Compensation Act 1987*, WorkCover was given authority to develop guidelines in relation to work capacity assessments. This section also required that insurers conduct work capacity assessments in accordance with any such guidelines.
- 2.4 The *WorkCover Work Capacity Guidelines* ("the Guidelines") were introduced on 27 September 2012, and amended on 8 August 2013 and 4 October 2013.
- 2.5 The Guidelines prescribed the specific standards and requirements in relation to the following matters:
  - communication of the work capacity decision; and
  - written requirements.
- 2.6 The Guidelines are designed to maintain common procedure and fairness for workers across the scheme, although they do contribute to the complexity and length of work capacity decision notices.
- 2.7 EML commenced transitioning existing claims to the 2012 legislation in early 2013. Existing claims often involved complex medical and factual histories such that, to meet the requirements of the Guidelines, notices about the reasons for a decision were often lengthy and complex.
  - (i) Furthermore, many of the terms and concepts set out in the notices were unfamiliar to injured workers and required explanation. The Guidelines required scheme agents to explain the reforms in plain language, further extending the length of notices.
  - (ii) The Guidelines also required insurers to explain the operation and definition of all relevant new matters, such as pre-injury average weekly earnings,

medical entitlements, suitable employment, entitlement periods and the review process, again extending the length and complexity of notices.

- 2.8 The 2012 reforms also introduced a new process for managing disputes about work capacity decisions.
- (i) Workers can first request an Internal Review of the decision by their insurer, then proceed to a Merit Review by the relevant Authority (originally WorkCover, now the State Insurance Regulatory Authority ["SIRA"]), then seek a Procedural Review by the WorkCover Independent Review Office (now the Workers Compensation Review Office ["WIRO"]). This new process involved separate guidelines for Internal Reviews and Merit Reviews.
  - (ii) Procedural Reviews consider the procedures undertaken by insurers as well as the content of their work capacity decision notices to ensure that they comply with any relevant guidelines. As a result, Procedural Review outcomes provide significant guidance for scheme agents and insurers about the sort of content that should be included for a notice to be valid. WIRO decisions are published regularly, and as this occurs, EML continues to enhance its work capacity decision notices to ensure they consider the WIRO's interpretation of concepts in the legislation and Guidelines.

### **Ongoing evolution of NSW's workers compensation legislation**

- 2.9 Legislative reforms occurred again in 2014 and 2015, adding further complexities to the work capacity decision notification process due to changes in entitlements and definitions. For example, there have been four legislative amendments to 'medical entitlements' since 2012, with each amendment requiring alterations to the content of notices.
- 2.10 The ongoing development of our understanding of legislative concepts and their practical application has also contributed to the complexity of notices. For example our interpretation and understanding of PIAWE and suitable employment has evolved significantly over time, thanks to Merit Review decisions and WIRO outcomes. EML continually enhances its work capacity decision process and notice template as a result of these developments.
- 2.11 In 2015, EML undertook a significant review of our standard letters sent to customers, including work capacity decision notices. The aim of this was to twofold: to simplify notices so that reasons for decisions are clear and concise; and to ensure the notices continue to comply with the complex requirements of the Guidelines.
- 2.12 In 2016, SIRA released guidelines for claiming workers compensation ("SIRA Guidelines"). The SIRA Guidelines replaced the previous Guidelines for work capacity decisions set out by WorkCover, as well as guidelines for Internal Reviews Merit Reviews.
- 2.13 Section B1.3 of the SIRA Guidelines currently sets out the requirements for work capacity decision notices. While there are minor differences (including relaxing some requirements) compared to the WorkCover Guidelines, we are yet to fully witness the potential impact of these changes, including how they will be interpreted during the review process and whether requirements for notices are simplified.
- 2.14 EML continues to review our work capacity letters and investigate ways to simplify and enhance their quality and consistency. In addition, EML has developed a collaborative network with icare to support consistency and best practice in the scheme, with regular discussions and workshops taking place involving all scheme agents. We have found icare to be very proactive in this regard.
- 2.15 We acknowledge that the work capacity assessment process can be lengthy for customers, with significant time and effort required to engage all relevant stakeholders and collect all necessary evidence.

- (i) In addition, the process is also delayed by the fair notice period, whereby customers wait almost three weeks for work capacity decisions to be finalised and communicated.
- (ii) Customers then wait for a notice period of three months (plus postage extensions) for decisions to take effect.
- (iii) There are also considerable delays experienced by customers during the review process, which can occasionally delay the effect of a decision for months.

2.16 We acknowledge that these delays can have unintended negative impacts on a customer's motivation, capacity, and relationship with stakeholders including EML, and that these customers often need additional support and assistance during these times.

### **Supporting our non-English speaking customers**

2.17 EML always ensures an interpreter or English speaking family member is used in communicating work capacity decisions to non-English speaking customers. However, we recognise that there may be a need for a more consistently effective approach. In particular, this would be beneficial during the work capacity assessment process, and when communicating the decisions in writing.

- (i) EML is currently working to enhance our processes and increase consistency in this regard through the following activities:
  - Increased use of interpreters to translate written communications: where an interpreter is used for discussions during a claim, EML is seeking to proactively have the notice translated. Presently, we offer this when verbally communicating a work capacity decision, and provide it when requested.
  - Increased use of case conferences: where we deliver a work capacity decision notice to a treatment provider (often a nominated treating doctor or psychologist) or during a teleconference in which the customer is present, EML is seeking to utilise the treatment provider to assist in explaining the outcome to the customer.

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### 3. Qualifications and training of EML case managers

Public hearing transcript references:

- pp. 5,8, 29 (7 November)

- 3.1 Unlike all other scheme agents, EML is a specialist workers compensation claims manager, not a general insurer. We have been managing workers insurance claims in NSW since 1910, engaging people from a range of backgrounds, including allied health and customer service fields, and investing heavily in their development.
- 3.2 As a specialist workers compensation claims manager, EML focuses purely on workers compensation case management, investing heavily in our case manager training programs.
- 3.3 EML aligns all training to state and jurisdictional regulatory and operational requirements.
- 3.4 EML has dedicated Learning and Development teams based in Sydney and Newcastle to design, develop and deliver learning solutions for all employees. EML adopt a blended approach to ensure we maximise effectiveness for different learners, provide technical knowledge complimented with workplace application and coaching. Within NSW there is a corporate team focused on management, leadership and professional skill education, together with a technical team focused exclusively on enhancing claims management skills and capability levels. All technical trainers have previous in-depth experience operating as Case Managers and also draw upon the expertise of subject matter experts in training design.
- 3.5 The dedicated Learning and Development function, working in conjunction with the Personal Injury Education Foundation ("PIEF") (see 3.13), are able to offer a range of learning program and qualifications to new and existing staff, including:
  - Cert III in Personal Injury (Claims Management)
  - Cert IV in Personal Injury (Claims Management)
  - Diploma in Personal Injury (Claims Management)
  - Graduate Certificate in Personal Injury Management
  - Master of Personal Injury Management.
- 3.6 All training programs at EML are designed to enhance the skills and capabilities of our case managers so that they can achieve successful return-to-work and health outcomes for people who have sustained workplace injuries. EML is focused on providing our case managers with the necessary skills to effectively negotiate outcomes with treatment providers, engage and utilise vocational rehabilitation providers in a cost effective and outcome focused manner, and manage treatment costs in line with evidence-based medicine models.
- 3.7 In addition to the working with treating providers to achieve positive outcomes, EML equips its case managers with the knowledge to effectively utilise independent medical assessments through targeted questioning techniques, to determine if injured workers have an ongoing entitlement to compensation in line with the legislation and regulations, in an ethical and fair manner.
- 3.8 All technical training programs provided by EML have an assessment component. This ensures that participants have successfully developed the required knowledge and skills to be able to apply their learnings, and identifies gaps for further development.



- 3.9 Higher level development is also provided to further equip our claims staff in areas such as corporate case management, motivational interviewing, case conferencing, face-to-face meetings and behavioural insights.
- 3.10 EML uses its Claims Competency Framework to confirm that claims manager competencies are established and to highlight individual development needs.
- 3.11 We also invest heavily in specialist support capability through the recruitment and development of key positions such as legal specialists and injury management specialists. We also have competency frameworks in place to guide structured learning paths for these roles. This approach ensures that we provide our client-facing claims staff with ready access to the necessary expertise to achieve their performance outcomes.
- 3.12 Below are some examples of specific learning programs that have been put in place by EML:

### **Case Manager in Training**

EML's Case Manager in Training ("CMIT") program is an industry leading initiative.

EML was the first NSW scheme agent to partner with PIEF to deliver a Certificate IV in Personal Injury (Claims Management) to claims staff who successfully completed the CMIT program. Our CMIT program runs for a period of eight weeks and involves extensive classroom-style training as well as practical training with a coach on the floor.

To date, more than 200 case managers have benefitted from this highly practical vocational program. Under the terms of the arrangement PIEF act as the Registered Training Organisation (RTO) and EML internally develop, deliver and assess the required units of competency in line with ASQA standards.

### **Company Induction**

EML runs a comprehensive induction program for all new employees, which includes sessions delivered by the Chief Executive Officer and key Managers nationally. The program ensures all staff share a common and clear understanding of the industry, EML's culture and values, and the standards of behaviour expected of employees.

### **Recognition of Prior Learning Program**

In 2015 EML expanded its vocational qualification pathway through the implementation of a Certificate IV in Personal Injury (Claims Management) via Recognition of Prior Learning ("RPL"). Developed and offered in collaboration with PIEF, this program provides our experienced claims staff with a nationally recognised vocational qualification, based on their workers compensation knowledge and past EML work experience. To date 60 employees have participated within the program.

In order to be eligible, participating case managers must first meet the requirements of the Certificate IV in Personal Injury (Claims Management) by demonstrating their proficiency against 13 units of competency.

### **Management and Leadership Training**

EML invest heavily in the development of our leaders through internal and external programs and initiatives. We ensure our leaders have the necessary leadership skills and business acumen to understand key remuneration drivers and motivate their teams to achieve targets. We also hold an annual Leadership Conference, providing an opportunity for our leaders to come together in one place to collaborate and network.

EML has a National Leadership Program Framework which provides a progressive approach to the development of both management and leadership acumen. The Advanced Management and Leadership program has been designed in partnership with, and is delivered by, a leading Macquarie Graduate School of Management senior academic, and is principally aimed at creating well-rounded leaders with strong operational management and behavioural leadership acumen.

### **Professional Skills Training**

Additional external training is provided to staff operating in specialist areas of the business to ensure that benchmark operational standards are met across all domains. Examples include Prince2 project management, Lean Six Sigma, change management, etc.

### **Industry Qualifications**

EML is an active sponsor of staff that seek additional personal injury industry qualifications externally. Over the past four years, we have provided more than \$450,000 in funding for our employees to participate in industry-specific training. This includes Certificate IV in Claims Management (now offered internally), as well as the Diploma, Graduate Certificate, and Masters in Personal Injury Management.

### **Online Learning Management System (LMS)**

All staff have access to EML's online learning management system ("LMS"), which provides them with the ability to conduct competency assessments, identify priority development areas, align development plans, apply for training and learning programs, and track their learning and development progress.

### **E-Learning Platform**

EML is currently implementing an e-learning platform to more effectively deliver claims technical and compliance related training.

3.13 EML is a member of the Personal Injury Education Foundation ("PIEF").

- (i) The PIEF was established in 2006 by a consortium of Australian and New Zealand accident compensation regulators, insurers and claims management organisations with a shared vision to create leading educational programs, initiatives and events focused on improving the professionalism and capability of those working in the personal injury management industry.
- (ii) EML was a founding Member of the PIEF and has had continued active representation on its Board of Directors since inception. Our affiliation with the PIEF is critical to the continued development of EML's organisational capability as well as the ongoing development and professionalisation of the industry as a whole.
- (iii) Why we are a member?
  - As the lead industry education body, PIEF provides the foundation for EML's development approach and overall learning strategy. Operating as both an RTO and an instigator of vocational qualifications, PIEF works in close partnership with EML to align our trainee programs and technical learning solutions to drive organisational capability and enhance scheme performance.
  - The PIEF is specific to the personal injury industry and understands its specific challenges and complexities, including workers compensation, motor accidents, disability and accidents etc.
  - It provides a body for stakeholders who may otherwise be competitors in the marketplace to work collaboratively, utilising global best practice resources to develop outcomes.
  - The PIEF is committed to personal injury industry talent attraction, retention and development. This is unique compared to other organisations who may have a broader exposure in the insurance industry (including with regulators and authorities). Indeed, EML recommends that icare engages with the PIEF to consider the PIEF's recommendations for mandated scheme agent training requirements.
  - The PIEF provides world's best practice professional development pathways (vocational and tertiary) for personal injury industry workers.

- The PIEF expressed a willingness to partner directly with EML to meet our specific attraction, development and retention needs, as we work across multiple states and workers compensation arrangements.

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## 4. Consistency in Case Management and Case Manager Turnover

Public hearing transcript references:

- pp. 5, 6, 8, 67 (7 November)

- 4.1 Consistency in case management on long-term workers compensation claims is a challenge for all scheme agents. EML has established a detailed process for transitioning from one case manager on a claim to another.
- 4.2 This process is designed to ensure that:
  - the outgoing case manager promptly advises the customer of the change as well as the new case manager's details
  - all immediate issues are acted on before the file is handed over
  - a detailed handover occurs between outgoing and receiving case managers
  - the receiving case manager contacts and establishes a dialogue with the customer as soon as possible after the handover.
- 4.3 EML invests heavily in its people through thorough recruitment, on-boarding, training and retention processes. This ensures that we do our very best to ensure we employ quality case managers, both from within the industry as well as from other areas (such as allied health and customer service backgrounds).
- 4.4 As a specialist claims manager, EML has a strong focus on developing its organisational culture and values. We are committed to ensuring that we are a 'great place to work', and believe that this helps retain a capable and engaged workforce that delivers high levels of performance. EML's *Employee Value Proposition* ("EVP") further supports this goal, allowing EML to offer a comprehensive range of benefits that are regularly benchmarked against the industry to ensure competitiveness within the marketplace.
- 4.5 EML has a formal talent and succession planning program, the *Top Talent Program*, which supports the retention of high-performing employees. The following key elements are included in this program:
  - identification, development and retention of top talent
  - building of 'bench strength' and a pipeline of capability across and within business units
  - ready availability of successors for business-critical roles.
- 4.6 The EML *Top Talent Program* is tailored to individual employees identified as high-performers, and includes a remuneration review, rigorous assessment and career pathway development planning, a recognition component, and comprehensive business exposure through a range of 'stretch' opportunities and assignments.
- 4.7 A key part of our retention and engagement strategy for claims staff is the provision of clearly defined career paths and development opportunities.
- 4.8 The effectiveness of our EVP is evident in EML's engagement results as well as our turnover data. EML's 2016 *Your Voice Employee Engagement Survey* indicated we have a well engaged staff with an overall engagement score of 86 per cent, which is higher than the Australian National Norm by at least 4 percentage points. Meanwhile, EML's turnover rates for its case management personnel has been below 20 per cent per annum for the past two years.

## EML Employee Care Program

- 4.9 Case managers face many challenging interactions in the course of their daily functions. This can expose some case managers to psychological stress and reduce their effectiveness in managing claims.
- 4.10 EML has identified this risk and developed an *Employee Care Program* (“the Program”) accordingly. The objectives of the Program are to improve the capability of case managers to manage difficult claims, ensure employee safety, reduce turnover, reduce the risk of psychological stress, and help improve job satisfaction. These objectives are met by up-skilling our staff via a series of tailored training programs across four key areas:
- Procedural Guidelines
  - Prevention Training and Services
  - Empowerment Training
  - Response Training and Services
- 4.11 The Program is comprised of the following mandatory components:
- Managing Suicidal Ideation / Blue Card Critical Incident Response
  - Managing Challenging Conversations
  - Self-care and Awareness Training (For Leaders)
  - Motivational Interviewing
  - High Risk Protocols
  - Employee Care Representatives (MHFA accredited)
  - Onsite psychologist support
- 4.12 The Program has, and continues to achieve, high levels of satisfaction and positive outcomes for EML case managers.
- 4.13 The Program was successful in winning the ‘Best WHS Training Program’ award at the 2015 National Safety Council Awards.

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## 5. Triaging of Claims for Professional Assessment

Public hearing transcript references:

- pp. 38 (4 November)
- pp. 8, 20, 23, 45 (7 November)

- 5.1 EML has developed a dedicated claims model that is specifically designed to provide heightened specialist support to injured workers. As part of this model, EML employs claims management specialists to triage workers compensation claims.
- 5.2 This model provides a framework through which EML can streamline its approach to claims management and resolution. The model provides all stakeholders to a claim with a standard minimum service offering as well as a consistent experience. This facilitates improved recovery and return-to-work outcomes, and provides for:
- a segmented approach to claims management that enables effective strategies to be applied across cohorts of similar duration and/or characteristics
  - defined interventions to provide independent assurance that effective claims strategies are in place to progress claims to finalisation
  - specialist case management dedicated to the management of complex claims (e.g. seriously injured, death and disability etc.)
  - specialist quality assurance and support for specific case management technical functions to ensure a robust application of the legislation.
- 5.3 EML has developed this model so that it can respond to a variety of specific claim types.
- (i) An example of this innovation is the development of the 'WISE' early intervention program for the TMF portfolio. After partnering with the NSW Ministry of Health and icare self insurance, EML launched the WISE early intervention trial – a world first innovation involving the application of psychological treatment to musculoskeletal claims with a psychosocial overlay – across the NSW TMF Health Portfolio in 2015-16. The trial was awarded the 2016 Swiss Re Excellence & Innovation in Return to Work Award as well as an award at the icare TMF 2016 Awards for Excellence in the category of Outstanding Frameworks and Systems.

### Use of Independent Medicals Examinations

- 5.4 EML uses independent medical examinations ("IMEs") to assist in the best practice management of claims.
- 5.5 Information obtained from IMEs is used to support decisions about liability, treatment, WPI, rehabilitation and return-to-work. However, EML's internal procedures stipulate that IMEs are *only* appropriate when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent and all attempts to obtain information through direct contact with the practitioner(s) has failed, with the result that the problem remains unresolved.
- 5.6 EML's internal procedures also require that is clear evidence (a) outlining the reason(s) for referral to an IME and (b) demonstrating that all possible attempts have been made to communicate with the treating doctor/specialist via phone call, fax or initiating case conferencing, prior to the use of an IME.
- 5.7 Scheme agents previously operated within the 2012 *WorkCover Guidelines on Independent Medical Examinations and Reports*. Further instructions about IMEs were

provided to scheme agents in 2015 via a Direction Notice from icare, following extensive consultation with multiple stakeholders (including injured workers). The Direction Notice:

- (i) Was issued to address concerns that some scheme agents had in relation to the challenges workers faced when requesting an IME.
- (ii) Changed the way in which IMEs are engaged, by:
  - giving workers a choice of IMEs
  - allowing workers to attend visits to IMEs alongside a support person
  - enabling worker to access travel expenses up front.

5.8 These guidelines were issued under Sections 119(4) and 376 of *the Workplace Injury Management and Workers Compensation Act 1998*, and set out icare's policy in respect of IMEs as well as the mandatory obligations for employers and insurers when referring workers for a medical examination. The guidelines also provided guidance for all parties, including referrers, examining medical practitioners, and injured workers.

5.9 In rolling out the changes required by the Direction Notice, EML took the opportunity to revise and further develop comprehensive support material for our case managers, including:

- Procedure
- Checklist
- Scripting
- File Note Templates
- Updated Standard Communications.

5.10 The Procedure stipulates all IME referral requirements related to a worker's choice to select the examiner, travelling distance and appropriate provider expertise. It also requires case managers to call workers directly to:

- explain the reasons why an IME is being arranged
- provide the worker with an opportunity to seek clarification about any information lacking from their doctor within an agreed timeframe before progressing with an IME referral
- explain the selection of IMEs, outlining which is preferred
- discuss travel and expense costs and use of a support person
- identify a preferred time of day for the appointment to be arranged.

5.11 In February 2016, icare conducted an audit on the use of IMEs by scheme agents. Findings included:

- there was good evidence that treating doctors and specialists were being contacted prior to and post IMEs
- there was a good use of targeted and thoughtful questions about the injury claimed
- referral letters consistently contained reasons for referral, specified timeframes and level of complexity required from the IME
- there was timely follow up and completion of considered actions following receipt of an IME report
- file notes were generally clear.

- 5.12 Between January and September 2016, EML requested 870 IME visits for injured workers. Analysis of recent complaints data (between August and October 2016) indicates there have been seven complaints related to IMEs, equivalent to approximately 2.5 per cent of visits. Issues raised by workers included:
- concerns about the ability of the IME to make a decision based on a short examination
  - the need for an IME given the evidence that had already been provided
  - waiting extended periods of times for reports and decisions following an IME, potentially exacerbating injuries
  - having to go back for a supplementary report on the basis that the initial one didn't provide enough information to make a decision
  - a general lack of empathy and engagement by the IME provider (no "bedside manner").
- 5.13 EML is currently working with icare and the other scheme agents on developing a body of work to:
- ensure that there consistent and timely utilisation of and referral to IMEs
  - ensure the appropriate use of IMEs
  - manage the quality of IME services
  - improve appropriate and timely case management actions.

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