

Federal Government workers compensation authority Comcare accused of unethical behaviour

Rachel Clayton, ABC, 4 Feb 2021

A doctor used by federal workers compensation authority Comcare and its licensees to examine claimants has never been formally investigated despite 66 complaints being made about him since 2000 to the Health Care Complaints Commission.

Key points:

- Worker's compensation claimants are often sent for an independent medical exam by a doctor of the insurer's choice
- Some people have accused Comcare of using doctors with track records of writing reports that can justify ceasing a claimant's compensation
- One doctor used by Comcare has allegedly been bullying claimants for years, including reducing one person to cowering in a corner
- The same doctor was referred to in parliamentary documents accusing him of bullying claimants in South Australia.

Comcare is the national occupational health and safety and workers compensation authority that handles claims for Commonwealth workers, such as those employed by Federal Government departments.

It also has 39 self-insured licensees that can use private-sector insurers for workers' compensation claims. The licensees use the Comcare framework and legislation, but pay premiums to private insurers.

When a case is reviewed by the insurer's claims manager, the claimant is often sent for an independent medical exam (IME). A report is written for the insurer and the claimant's ongoing compensation hinges on that report.

The ABC has spoken to dozens of workers who have tried to bring claims of psychological harm in the workplace, including bullying and harassment, to the federal workplace insurer but say they are being sent to an unreasonable number of doctors for IMEs despite winning their cases for compensation in the Administrative Appeals Tribunal (AAT).

One of the doctors used to conduct IMEs for Comcare and licensees such as Services Australia has been accused of bullying claimants for decades.

The doctor had 66 formal complaints made against him to the Health Care Complaints Commission (HCCC) between the year 2000 and June 2020.

Accusations of the doctor bullying South Australian claimants were raised in the South Australian Parliament a decade ago and included allegations the doctor reduced one person to cowering in the corner of the doctor's office and filming claimants without permission.

The doctor was never formally investigated by the ombudsman but WorkCover SA confirmed the doctor was never used again after 2010.

A complaint made about the doctor early last year led the Medical Council of NSW to place a condition on his registration to undergo a performance assessment. The condition was removed four months later.

A letter from the Medical Council of NSW and the Health Care Complaints Commission to the State Insurance Regulatory Authority (SIRA) in NSW in September 2019 referred to the numerous complaints made against the doctor and expressed concern about "the distress experienced by many patients due to their interactions with [the doctor]."

The letter asked whether SIRA had considered the status of the doctor's "current suitability to work as an assessor in the Workcover setting due to the high volume of complaints received".

Other doctors used by Comcare have also allegedly bullied claimants, denied them toilet breaks, lied in reports and used information from their childhood to determine they have pre-existing conditions, which Comcare uses as evidence that the workplace did not cause someone's injury.

One woman who spoke to the ABC said Comcare's lawyers used her experience with an eating disorder as a teenager and attending couple's counselling with her partner as evidence her claim for compensation should be denied.

The woman's previous experiences were used to argue the woman had a pre-existing mental health condition.

When that did not work, the 2020 Victorian bushfires and then the coronavirus pandemic were used to try and knock her compensation claim back.

Unqualified doctor paid thousands for single report

Questions have also been raised over the qualifications of doctors used for IMEs after a woman diagnosed with borderline personality disorder was sent for an assessment with a doctor who explicitly said on their website they did not treat the disorder.

The appointment went ahead, and documents obtained under Freedom of Information (FOI) show the doctor was paid \$4,180 for the assessment and recommended the woman immediately stop taking her antidepressant medication.

That HCCC says they are "unable to disclose details relating to" complaints made about that particular doctor "at this time".

Other documents seen by the ABC show a doctor from Sydney was paid \$8,400 for one report and a further \$3,090 for supplementary reports for one claimant over a five-week period.

It has led lawyers to question how independent a doctor can be when a large portion of their income comes from conducting IMEs for Comcare and its licensees.

Lawyers concerned Comcare's tactics are hurting injured claimants

If a claimant refuses to see a doctor nominated by Comcare, the claimant's compensation can be suspended and they must go to court to argue their case.

Australian Lawyers Alliance spokesman Tim White, who has represented Commonwealth work cover claimants for 20 years, said he believed Comcare sent long-term claimants, especially those suffering from psychological injuries, to as many doctors as necessary to cancel their claim.

"IME's are used too often, especially on longer-term claims," Mr White said.

"I have experienced a lot of clients being sent to several different doctors during the course of their claim."

He also said Comcare seemed to use specific doctors.

"It tends to be similar names that come up regularly," he said.

Mr White said a preferred option would be for work cover insurers to use a claimant's treating doctor for an examination.

"More informed reports could be obtained from the treating doctor. Less money could be spent on paying for medical reports and more money put into trying to get the worker back to work," he said.

"Psychological injuries in my view are adversely dealt with under the Commonwealth scheme.

"Those injuries have a much higher threshold to meet for the claim to be accepted compared to a physical condition. Why should there be a different and more onerous test for workers injured psychologically?"

"The scrutiny these claims go through just further traumatises the worker often."

Slater and Gordon lawyer Gabriella Giunta, who has represented multiple Comcare claimants, agreed and said she had witnessed insurers select certain doctors for IMEs.

"We do see those doctor's names quite frequently," Ms Giunta said.

Doctor shopping is when an insurer sends claimants to multiple physicians until they obtain a report that can be used to cut a claimant off compensation.

"It is unethical," Ms Giunta said.

"Insurers should be obtaining independent advice for an injured worker.

"We see trends, with doctors used by insurers reaching the same conclusion in many of their reports for different claimants."

"There is a code of conduct — the expert witness code of conduct — and independent medical examiners have an ethical obligation to not be an advocate for any party."

Ms Giunta said she often worked with doctors who abided by the code but said she had come across "a pattern" of certain doctors who consistently provide reports that conclude a worker is no longer suffering from a workplace injury.

Comcare says information on doctors used 'does not exist'

Many claimants who spoke to the ABC had all been examined by the same doctors despite living in different states. Some had even been directed to see a doctor who had been flown in from New Zealand.

One woman from Western Australia was told she had to undergo an exam with a psychiatrist from Queensland when there were plenty of available psychiatrists in WA.

A Comcare spokesperson said the Safety, Rehabilitation and Compensation Act (SRC Act) gave Comcare "the power to require an injured employee to undergo an independent medical examination if more medical evidence is required" and added medical specialists were flown in when "suitable expertise is not locally available".

Ms Giunta said it was difficult to believe there would be such a lack of psychiatrists in capital cities that Comcare needed to fly one in from New Zealand.

"There are ample independent specialists for psychiatry that insurers can use unless it's a speciality that's very unique such as gastroenterologists or otolaryngologists," she said.

"If there are perfectly competent assessors in the region it would be reasonable to appoint one of those doctors as an IME.

"But they [Comcare] are allowed to send them [claimants] to whoever they want and failure to attend without reasonable excuse can lead to the claim being suspended."

Emails seen by the ABC show a female claimant was threatened with having her compensation suspended after she asked to see a female doctor instead of the male doctor she was instructed to see.

Comcare denies information request

The Comcare spokesperson said IMEs were used for a number of reasons including "determining the reasonableness and effectiveness of treatment and resolving disputes".

"This is particularly important in a long tail scheme where income replacement benefits can last until retirement age and medical treatment has no cut-off age," they said.

The spokesperson said it was not Comcare's practice to send claimants to a different doctor every time an IME was needed but said "there may be certain circumstances" where different doctors are required.

Those reasons included where a claimant had multiple injuries requiring different specialists, that further reports were needed when a claim reaches court and ensuring "appropriate medical evidence".

The spokesperson added Comcare did "not have a preferred list of doctors it uses to assess claimants".

The ABC requested documents from Comcare under FOI laws showing the number of times specific doctors were used, how much they were paid, and the number of assessments those doctors wrote declaring a claimant was fit for work over the 2019/20 financial year.

Despite four time extensions being granted to the FOI office to collate the documents, a formal letter of rejection said Comcare's scheme management, claims management group and legal groups were all asked to search for documents but could not find the data because it "did not exist".

The rejection letter also said Comcare did not record the number of times doctors were used by Comcare in the AAT and did not record "the outcome of specific findings resulting from assessments undertaken by [independent medical examiners]".

A Comcare spokesperson said the department did not "collect and hold data about IME usage and costs" in documents and therefore did not have to provide the information under the FOI Act.