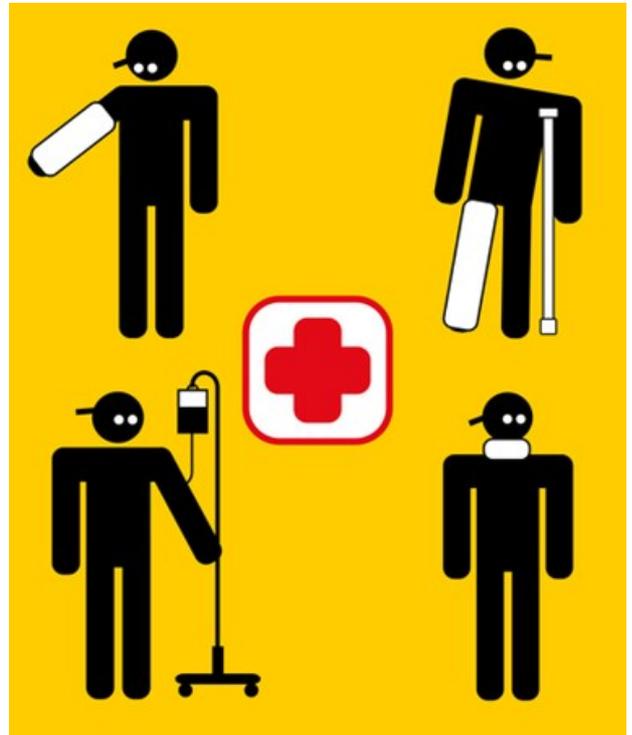




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LawTalk Blog



Independent medical advisers under the Return to Work scheme

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In July 2015, the *Return to Work Act* came into operation. This new law was a complete overhaul of the previous [workers compensation](#) legislation (formerly WorkCover) in South Australia and it has introduced many new concepts that have not previously applied to the management of South Australian workers compensation matters. Like with any major legislative development, it will likely take some time (perhaps years) to realise the full impact of many of these changes.

One significant change involves the introduction of Independent Medical Advisers ("IMA") whose expertise may be relied upon during the course of a workers compensation dispute in the South Australian Employment Tribunal ("SAET").

Often a Case Manager makes a decision about a worker's claim and the worker is not satisfied with the decision. A decision might involve a variety of different issues including:

- rejection of a claim;
- a decision to refuse [medical treatment](#), including surgery;

- a decision to cut off a worker's weekly income payments;
- a decision about a worker's permanent impairment compensation etc.

The worker can choose to appeal the decision through the SAET, in most cases with the support of a legal representative. The decision is disputed with an 'Application for Review'. Given the complexity of most legal disputes it is not recommended that a worker applies for a review without first seeking legal advice.

When the dispute makes its way to the Tribunal, it often becomes apparent that there is disagreement about elements of the worker's claim including the actual diagnosis of the injury, the severity of the injury, the need for medical treatment and many other complications. The worker may have evidence from their GP or other experts to support their case, whereas the insurance company may have completely contradictory medical evidence in its possession.

Before the Return to Work law came into operation, it was not easy to overcome a legal impasse caused by competing medical opinions. However, under the new scheme, the Tribunal may seek advice from an IMA about medical issues involving the particular worker.

The Tribunal may refer a specific question to the IMA; for example, Dr Black suggests that spinal surgery is absolutely necessary to assist the worker with improving his/her function and pain reduction whereas Dr Green may recommend that the worker should simply continue with more conservative treatment like physiotherapy. The worker wants surgery to be approved and a dispute has been brought before the Tribunal. In this case, the Tribunal may refer a question to an IMA regarding whether or not surgery is necessary.

Often questions are not as straightforward as the above example and they require a careful analysis of complex medical and other facts. It is expected that IMAs have a very high level of expertise in their area of specialisation.

The process of utilising an IMA is generally as follows:

1. The Tribunal, during the course of the dispute, identifies the specific question/s that should be referred to an IMA. The questions are generally determined following consultation with the parties to the dispute (via their representatives);
2. The Tribunal will nominate an IMA. Hopefully the parties to the dispute can reach an agreement regarding an appropriate IMA but if no agreement can be reached, the Tribunal can make the choice;
3. The Tribunal will contact the IMA and make the appointment for the worker to attend for a consultation with the IMA;
4. The Tribunal will write to the IMA asking the specific question/s and will provide relevant information including a statement of facts surrounding the dispute and copies of relevant medical material on file;
5. The examination will occur and the IMA will provide a medical report to the Tribunal;
6. In rare situations, if the IMA report does not lead to the resolution of the dispute, the IMA may be required to give evidence at a trial where one or both parties will have an opportunity to examine the IMA about his/her findings.

An IMA has a right to reject the referral, and a party to the dispute has a right to object to a particular IMA (for example, if a conflict of interest apparently exists, a party may oppose the referral to the IMA).

The IMA should not provide more information or opinions, apart from answering the specific questions posed in the referral letter.

One of the main purposes of the IMA process is to allow the IMA to provide a completely independent report; ie, the report will not be sought from the worker or the insurance company, but rather from the Tribunal itself. It is not uncommon for experts to be accused of bias in favour of the party requesting the report; in other words, when the insurance company requests a report, the report tends to be more favourable to their position, and vice versa when the worker requests a report. Similarly, treating doctors tend to be more sympathetic to their patients and provide favourable medical reports. It may be difficult for a treating doctor to give a truly objective report if the consequence might be to challenge the therapeutic relationship between the doctor and patient.

The objective of the IMA process is to attempt to eliminate this underlying bias in many medical reports. To maintain this objectivity, the parties to the dispute should not contact the IMA directly, but rather communication should go through the Tribunal.

An IMA is able to confer with other health professionals before finalising their report. They can review test results and call for further tests if they believe that could assist them with their assessment; for example, the IMA confirms that the worker should undergo an MRI scan before the report can be finalised.

The IMA report does not interfere with the Tribunal's responsibility to be the ultimate trier of fact in relation to any given dispute. In other words, the IMA is a consultant to the Tribunal, and it is the Tribunal which makes the ultimate decision.

The IMA process is a new process, only established under the *Return to Work Act*, and the effectiveness of IMAs as a tool to assist with dispute resolution has not been fully realised or tested.

If you have suffered a [workplace injury](#) or if you disagree with a decision of your Case Manager regarding your claim, please contact today's [blog writer](#) or one of our workers compensation team members.

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