WORKERS COMPENSATION COMMISSION

INTERIM PAYMENT DIRECTION

This direction is issued pursuant to the *Workplace Injury Management and Workers Compensation Act* 1998

Matter No: **1353/20**
Applicant: **Jackie Taylor**
Respondent: **State of New South Wales**
Date of direction: **30 March 2020**
Citation: **[2020] NSWWCCR 5**

The Registrar directs:

1. The respondent is to pay the applicant pursuant to s 37 of the *Workers Compensation Act 1987* (the 1987 Act) $802.25 per week from 15 January 2020 to date and continuing.

BACKGROUND

2. The applicant was employed by the respondent in Sydney Local Health District at Concord Hospital. The applicant sustained a psychiatric injury in the course of her employment on 23 October 2018. The applicant is claiming weekly benefits from 15 January 2020 to date and continuing.

3. In a letter dated 19 December 2019, Employers Mutual Limited (the insurer/EML) notified the applicant that an appointment had been made with Dr Peter Young, psychiatrist, on 9 January 2020.

4. The insurer in its letter dated 15 January 2020 suspended the workers payments on the basis of an alleged refusal to attend a work capacity assessment in accordance with section 119(3)(a) of the *Workplace Injury Management and Workers Compensation Act* 1998 (the 1998) Act and section 44A(6) of the 1987Act and a medical examination as requested as set out in section 119(3)(a) of the 1998 Act.

5. The parties were legally represented in the telephone conference on 26 March 2020. The applicant was represented by Ms Lawes of Garling & Co Lawyers. The respondent was represented by Mr Kennedy of Turks legal.

6. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied.

7. The issues to be determined in this dispute are

   (a) if, pursuant to s 119 of the 1998 Act, the applicant is prevented from recovering the weekly payments claimed by her because of her failure to attend on Dr Peter Young on 9 January 2020 for examination.

Submissions

8. Mr Kennedy made the following submissions**:**

(a) The respondent states that the correct pre-injury average weekly earnings (PIAWE) is $1,513.04 including $97.89 in overtime and $412.34 in shift allowances.

(b) The applicant was notified on 12 December 2019 of a proposed independent medical examination (IME), and an appointment for 9 January 2020 was confirmed on 19 December 2019. The applicant did not attend the appointment on 9 January 2020.

(c) The respondent issued a further letter to the applicant dated 14 February 2020 regarding a proposed IME appointment. An IME appointment has been scheduled for 31 March 2020.

(d) In relation to the need for the examination, despite amending the diagnosis to include something as potentially serious as post-traumatic stress disorder (PTSD), the applicant's general practitioner, Dr Naomi Jacobs, appears not to have arranged a psychiatric referral, instead mentioning only "psychology and exercise" in her report of 19 December 2019. The respondent has not seen any evidence of psychological treatment in the last six months.

(e) The respondent does not have any information as to whether or not Dr Jacobs, the nominated treating doctor (NTD), has followed the *Australian Guidelines for the Treatment of Acute Stress Disorder & PTSD* (2013) with regard to diagnosis and recommended treatment.

(f) The respondent does not have reports from a psychologist whom the applicant might be attending currently, or the treatment that the psychologist is providing.

(g) In light of the above, the request that the applicant attend an IME is entirely reasonable.

(h) The insurer relies on section 119 of the 1998 Act in support of its decision to suspend benefits for non-attendance at the IME.

(i) Compliance with section 119 is not dependent upon the request being "reasonable". In *Kavanagh v Sutherland SC* (2000) 21 NSWCCR 1 Curtis J considered that the test to determine whether a worker must submit himself or herself for an examination was not one of reasonableness. Accordingly, it was open to the insurer in this case to have arranged an IME appointment even though Dr Jacobs did not support it.

(j) The respondent relies on section 44A of the 1987 Act.

(k) The respondent was entitled to request the applicant's attendance at the case conference in order to gain an understanding of her condition and the likely road ahead with regard to return to health and return to work. Given the inability to proceed with a vocational assessment, the applicant's refusal to attend an IME and the lack of clarity regarding her current treatment, the insurer was justified in suspending payments for non-compliance.

(l) The respondent has not had the cooperation of the NTD, Dr Jacobs, in relation to the formulation of an injury management plan for the applicant

9. Ms Lawes made the following submissions**:**

Issue 1 – not a refusal

(a) The insurer alleges in its letter dated 15 January 2020 that the worker's payments have been suspended on the basis of a refusal to attend a work capacity assessment in accordance with section 119(3)(a) d the WIMWC Act and section 44A (6) of the WC Act. This is an erroneous decision as the worker had a medical incapacity as certified and explained by her nominated treating doctor, Dr Jacobs in her letter dated 19 December 2019, which was provided to the insurer.

(b) Given the worker had a medical incapacity neither section 119(3)(a) of the WIMWC Act and section 44A (6) of the WC Act is enlivened and therefore cannot be used by the insurer to suspend the workers payments.

(c) The only grounds for a suspension of weekly payments is refusal and failure to properly participate, none of which apply to what has occurred in this matter.

(d) It was the injured worker's NTD, Dr Jacobs who advised the insurer that the worker was not fit to attend the appointment. There has been no "worker refusal" or "failure to properly particulate."

(e) As no "refusal" or "failure to properly participate" has occurred a determination should be made to the effect that the insurer is ordered to back pay the worker from 15 January 2020 to date.

Issue 2 - ***Section 119 & Part 7.5 of the Guidelines***

(a) As per Section 119(4) of the 1998 Act:

> "A worker must not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the Workers Compensation Guideline."

(b) Part 7 of the October 2019 Guidelines deals with IME's. Specifically, Part 7.5 of the Guidelines provides that *"all referrals for IMEs are to be arranged at reasonable times and dates, and with adequate notification given to the worker.* As per part 7.5 there are a number of elements the written advice to the worker the notification must include.

(c) In this letter from EML dated 19 December 2019, advising of the IME appointment with Dr Peter Young, the insurer has failed to advise the worker of the following, as per the Guidelines:

1. "An explanation of why information from the treating medical practitioner(s) or author of the assessment report to the insurer's enquiry was inadequate, inconsistent or unavailable
2. Contact details of the independent medical examiner's offices and appropriate travel directions
3. What to do if the worker does not believe the examination is reasonable"

(d) In the letter dated 19 December 2019, the insurer failed to explain why the treating medical practitioner's assessment report was inadequate, inconsistent or unavailable. The insurer failed to provide the phone number and name of the office of the IME. The insurer failed to advise the worker of what options were available to her if she believed the examination was not reasonable.

(e) The requirement in Part 7.5 of the Guidelines is mandatory and if not discharged the applicant cannot be prevented from recovering compensation *(Jack Elvin Craigie v Faircloth & Reynolds Pty Ltd [2020]* NSWWCC 40 at [120]).

Issue 3 - ***IME appointment not reasonably necessary***

(a) On 24 December 2019 the applicant was advised by email that her weekly payments would be suspended as at 24 December 2019. This suspension letter was found to be invalid by WIRO and a new suspension letter was required.

(b) The letter of EML dated 15 January 2020 suspended weekly payments on the basis of:

> (a) Injured worker has failed to attend or participate in the work capacity assessment arranged under section 44A (5) of the1987 Act, and
> (b) Injured worker has not complied with obligations to attend a medical examination as requested as per Section 119(3)(a) of the1998 Act.

(c) In accordance with Section 44A (5) of the 1998 Act and of the Guidelines the insurer failed to explain why the IME was reasonably necessary.

(d) Prior to the insurer arranging the IME the applicant attended numerous case conferences where the insurer had been advised by the treating doctor that the applicant was not well enough to attend vocational assessments and IME appointments.

(e) Dr Jacobs wrote a letter to the insurer dated 19 December 2019 advising: -

> "…The ongoing stress of seeing a psychiatrist at this time is only more traumatising to her and will put back her recovery. For this reason I believe it would be detrimental to her mental health for extra psychiatric appointments at this time."

(f) This letter was sent to the insurer on 19 December 2019. On 20 December 2019 a copy of Dr Jacobs' letter was also provided to the insurer by the applicant, who requested the insurer contact the treating doctor. The applicant did not receive a response from the case manager.

(g) The insurer made the decision to suspend weekly payments irrespective of the numerous case conferences where it was discussed that the injured worker was not well enough to attend vocational assessments and IME, the information obtained at a three hour vocational assessment held on 19 December 2019, and the letter from Dr Jacobs.

(h) In a discussion on 20 January 2020 between the applicant's solicitor and Naomi of EML, Naomi, advised that the insurer required further information from the treating doctor which was requested on 21 December 2019. The weekly payments were then suspended on 24 December 2019 as "they didn't receive a response from the general practitioner". Such a short period of time to respond was grossly unreasonable. Further, the IME appointment was unreasonable and suspending weekly payments was not warranted.

Issue 4: Requiring attendance on IME & Vocational Assessment

(a) We refer to the letter of the case manager of EML dated 15 January 2020 suspending weekly payments. At point five the letter it states that in order for weekly payments to resume, the injured worker must attend an IME appointment as arranged by the insurer and attend the next vocational assessment.

(b) In the letter of 15 January 2020, the insurer did not rely on non-attendance at a vocational assessment as reason for the suspension under "Reasons for the Decision" at point five. The insurer cannot require the applicant to attend in order to reinstate payment.

(c) In any event, the applicant did in fact attend a three-hour vocational assessment on 19 December 2019 as she was afraid her weekly payments would be cut off as advised by the case manager, irrespective of the advice of her general practitioner not to attend.

(d) The applicant received further correspondence on 19 December that a further vocational assessment is required. This was simply inappropriate and not required.

Issue 5 – Relevant issues of general Importance going to the worker's mental state

(a) The applicant has been subjected to unethical and improper conduct by her case manager throughout her claim. This conduct has further contributed to her mental health illness and her inability to attend IME appointments and vocation assessments at present.

(b) This conduct was evidenced by:

i. Case manager contacted the applicant and asked her how her physiotherapy was going. The applicant was not undergoing physiotherapy as she has a psychological injury. The applicant explained this, and the case manager said she would call her back. The case manager never called back providing an explanation or apology for the mix up.

ii. The case manager sent a medical report to the applicant about a different injured worker at the same hospital. The applicant was worried her confidential medical report was sent to someone else in error. The applicant's concerns were not addressed by the case manager.

iii. On 19 November 2019, the applicant had her own appointment booked with her treating doctor. The case manager contacted the doctor's practice to see when the applicant had an appointment next. When she found out the appointment was on 19 November, she told the receptionist that it was now a case conference and asked her to move the appointment to the afternoon. The case manager then contact the applicant and advised her the same. The applicant told the case manager that was her own private appointment which the case manager should not be changing. The case manager advised that she could make appointments when she wanted. That afternoon the case manager did not attend the case conference and instead the rehabilitation officer attended. The treating doctor was alarmed by the conduct of the case manager rearranging appointment for the applicant. The doctor couldn't get on to the case manager and left a message to discuss. No response was ever received.

iv. In numerous case conferences with the treating doctor, rehabilitation officer and the case manager, the treating doctor has advised that the applicant was totally unfit for work and required further treatment and was unfit to attend IME or rehabilitation appointments at present. However, the case manager arranged for STAR Rehabilitation to contact the applicant on numerous occasions to attend vocational rehabilitation.

(c) On numerous occasions the case manager has contacted the applicant and advised that if she did not attend the vocational assessment her weekly payments would be suspended. This information was simply incorrect.

(d) Against the advice of the treating doctor the applicant attended a three hour Vocational Assessment arranged by the insurer on 19 November 2019.

(e) Following the vocational assessment the case manager arranged another case conference. At this stage the applicant has attended a number of case conferences in a short time. The applicant was on her way to the case conference when she checked online to make sure the case conference time had not been rescheduled by the case manager when she noted it was cancelled. The applicant contacted the practice and was advised the GP had cancelled the appointment. The applicant was then called by the case manager and accused of not attending the appointment and cancelling. Following this, the IME was arranged.

(f) A further vocational assessment was also arranged for 23 December 2019. The applicant was advised of the appointment on 19 December 2019.

(g) The case manager emailed the injured worker on Christmas Eve 24 December 2019 to advise that her weekly payments would be suspended.

(h) The conduct of the insurer and its agents has been unethical and improper. In light of the behaviour of the insurer and the applicant's adverse mental health condition, and the information provided by the treating doctor the IME should not go ahead and the applicant should not be required to attend vocational assessment while having no capacity.

(i) The issues of unethical and improper conduct by EML and its agents has been reported to SIRA.

Statement of Reasons

10. The parties agreed that the PIAWE was $1,513.04 as stated in the Reply and included $97.86 in overtime and $412.34 in shift allowances. The insurer advised that as at 20 January 2020 the applicant had been paid 57 weeks. The parties agreed that any payments would be in the second entitlement period.

11. The respondent conceded that there was no issue concerning failure to attend a work capacity assessment. It was agreed that the applicant attended vocational assessments and there was no evidence that a work capacity assessment had been arranged.

12. A WorkCover NSW certificate of capacity was issued by Dr Jacobs on 16 December 2019. Dr Jacobs certified the applicant as having no current work capacity for any employment from 17 December 2019 to 21 January 2020. Dr Jacobs noted that treatment included a psychologist and medication. The diagnosis was work related stress as a result of bullying at work.

13. On 19 December 2019, Dr Jacobs wrote a letter to the insurer stating that the ongoing stress of seeing a psychiatrist at this time was only more traumatising to the applicant and would put back her recovery. Dr Jacobs said that for this reason she believed it would be detrimental to the applicant's mental health for extra psychiatric appointments at this time.

14. In a letter dated 19 December 2019 (the notification), the insurer notified the applicant that arrangements had been made for her to be reviewed by an IME. The appointments details included the doctor's name, date and time of appointment, the address or the appointment and the doctor's specialty and qualifications. The insurer wrote:

> "If you are unable to attend this appointment please call me as soon as possible to reschedule.
>
> **Why this appointment was arranged**
>
> We are committed to supporting you in your recovery and return to work.
>
> We have arranged this appointment because the information we have received was inadequate and we need more information about your capacity for pre-injury duties and hours, including your recovery timetable and your recommended treatment."

15. The applicant was advised in the letter of 19 December 2019 that if she did not attend the appointment this may result in her weekly compensation payments being suspended under the 1987 Act.

16. The **insurer** suspended weekly payments on 24 December 2019 on the basis that the applicant had failed to comply with the following:

    - "You have failed to attend or participate in the work capacity assessment arranged for you as set out under section 44A(5) of the Workers Compensation Act 1987 (WC Act) and as such your payments may be suspended under section 44A(6) of the WC Act.
    - You have not complied with your obligations to attend a medical examination as requested by us as set out in section 119(3)(a) of the WIMWC Act."

17. On 15 January 2020, WIRO sent the applicant an email noting that the suspension letter dated 24 December 2019 did not correctly cite the applicable legislation used to apply the suspension. WIRO advised that the insurer would issue a new and correct letter dated 16 January 2020 and pay weekly benefits up to this date. Further, WIRO was satisfied the revised suspension letter would meet requirements and, on that basis, the remedy available to the applicant to overcome the suspension was to attend the appointments scheduled or seek legal advice regarding the suspension when the updated letter is received.

18. In a letter dated 15 January 2020 and notice under s44A(6) of the 1987 Act and s119(3)(a) of the 1998 Act (the notice), the insurer suspended weekly payments on the basis that the applicant had failed to comply with the following:

    - "You have failed to attend or participate in the work capacity assessment arranged for you as set out under section 44A(5) of the Workers Compensation Act 1987 (WC Act) and as such your payments may be suspended under section 44A(6) of the WC Act.
    - You have not complied with your obligations to attend a medical examination as requested by us as set out in section 119(3)(a) of the WIMWC Act."

19. The insurer in the notice stated that an IME appointment was arranged for the applicant on Thursday 9 January 2020 at 9am with Dr Peter Young, which the applicant failed to attend. A Workcover brochure entitled "Do you have a query or concern" was enclosed with the letter together with the notice.

20. In an email dated 20 January 2020 to Ms Lawes, the applicant wrote:

> "When the day came for the appointment, I was extremely unwell and obviously unable to attend, I asked her to cancel it and give me the phone number so that I could contact the doctor and reschedule. She has also ignored this. I complained to WIRO, they said that the first suspension was invalid due to not citing the legislation. She was to send another one starting on 16th Jan but sent it on the 15th Jan and has not given me the number to make an appointment with the psychiatrist. So I have been suspended but no appointment has been made ..."

21. Section 119 of the 1998 Act provides:

> (1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
>
> (2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
>
> (3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination—
>
> (a) the worker's right to recover compensation under this Act with respect to the injury, or
>
> (b) the worker's right to the weekly payments, is suspended until the examination has taken place.

22. Section 119(4) provides that a worker must not be required to submit himself or herself for examination by a medical practitioner under that section otherwise than in accordance with the Workers Compensation Guidelines or at more frequent intervals than may be prescribed by the Workers Compensation Guidelines. Section 376 of the 1998 Act makes provision for the issue of Workers Compensation Guidelines.

23. Section 44A of the 1987 Act provides as follows:

> (1) An insurer is to conduct a work capacity assessment of an injured worker when required to do so by this Act or the Workers Compensation Guidelines and may conduct a work capacity assessment at any other time. A "work capacity assessment" is an assessment of an injured worker's current work capacity, conducted in accordance with the Workers Compensation Guidelines.
> (2) A work capacity assessment is not necessary for the making of a work capacity decision by an insurer.
> (3) An insurer is not to conduct a work capacity assessment of a worker with highest needs unless the insurer thinks it appropriate to do so and the worker requests it.
> (4) An insurer may in accordance with the Workers Compensation Guidelines require a worker to attend for and participate in any assessment that is reasonably necessary for the purposes of the conduct of a work capacity assessment. Such an assessment can include an examination by a medical practitioner or other health care professional.
> (5) If a worker refuses to attend an assessment under this section or the assessment does not take place because of the worker's failure to properly participate in it, the worker's right to weekly payments is suspended until the assessment has taken place.

24. Part 7 of the SIRA Workers Compensation Guidelines (commencement date 21 October 2019) (the Guidelines) makes provision in relation to independent medical examinations and reports. Part 7 provides:

> "The mandatory obligations for insurers when they require a worker to attend an IME are outlined below….
>
> ***7.1 Reason for referral***
>
> Referral for an IME is appropriate when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent, and the referrer is unable to resolve the problem directly with the practitioners.
>
> Evidence of contact (or multiple attempts to contact) to try to resolve these issues with the nominated treating practitioner must be documented on the claim file.
>
> An IME is appropriate where the information required relates to:
>
> - diagnosis of an injury reported by the worker
> - determining the contribution of work incidents, duties and/or practices to the injury

- whether the need for treatment results from the worker's injury and is reasonably necessary

- recommendations and/or need for treatment

- capacity for pre-injury duties and hours

- the likelihood of and timeframe for recovery

- capacity for other work/duties (descriptions of such duties are to be provided to the independent medical examiner)

- what past and/or ongoing incapacity results from the injury

- physical capabilities and any activities that must be avoided

The reason for the referral must be documented on the claim file.

….

7.5 Notification to the worker

All referrals for IMEs are to be arranged at reasonable times and dates, and with adequate notification given to the worker.

The worker must be advised in writing at least 10 working days before the examination takes place. Additional notice should be considered for rural/regional workers.

If a shorter time is required because of exceptional and unavoidable circumstances (for example a need to consider an urgent request for treatment), the reduced timeframe must be agreed to by all parties.

The written advice to the worker must include:

- the specific reason for the examination

- an explanation of why information from the treating medical practitioner(s) or author of the assessment report to the insurer's enquiry was inadequate, inconsistent or unavailable

- date, time and location of the appointment

- name, specialty and qualifications of the independent medical examiner

- contact details of the independent medical examiner's offices and appropriate travel directions

- the likely duration of the examination

- what to take (for example, x-rays, reports of investigations/tests, comfortable clothing to enable an appropriate examination to be conducted)

- information that the worker may be accompanied by a person other than their legal representative, however, the accompanying person must not participate in the examination and may be required to withdraw from the examination if requested

- advice when it is the independent medical examiner's routine practice to record the examination on audio or video; and that the worker must either consent to or decline this before the examination. The recording is only to proceed if the worker consents.

- advice that the insurer will meet any reasonable costs incurred by the worker, including wages, travel and accommodation. This may include pre-payment of travel and accommodation expenses. If the worker is not reasonably able to travel unescorted, this may include expenses for the worker's escort.

- advice that a failure to attend the examination or an obstruction of the examination may lead to a suspension of:

    - weekly compensation, and/or

    - the right to recover compensation under the 1987 Act.

- advice that the worker can request a copy of the report as well as documents that were provided to the IME

- advice that their nominated treating doctor will be provided with a copy of the examination report

- advice that the workers compensation legislation gives the worker or a nominee a right to a copy of any report relevant to a decision made by a referrer to dispute liability for or reduce compensation benefits

- what to do if the worker does not believe the examination is reasonable

- what to do if the worker has a complaint about the conduct of the independent medical examiner

- the SIRA brochure about independent medical examinations.

25. I propose to consider, first, whether the notification to the applicant dated 19 December 2019 (the notification) complied with the Guidelines. I note that the only attachment to the notification was a travel reimbursement form.

26. It is clear from the Guidelines that the written advice to a worker must include an explanation of why information from the treating medical practitioner(s) or author of the assessment report to the insurer's enquiry was inadequate, inconsistent or unavailable, contact details of the independent medical examiner's offices and appropriate travel directions and "what to do if the worker does not believe the examination is reasonable". The contact details are in addition to date, time and location of the appointment.

27. The insurer stated in the notification that the appointment had been arranged because the information received was inadequate and the insurer needed more information about the applicant's capacity for pre-injury duties and hours, including recovery timeframe and recommended treatment. I accept the applicant's submission that merely reciting the conclusion that the information received was inadequate and more information about the applicant's capacity for pre-injury duties and hours, including recovery timeframe and recommended treatment was required, does not comply with the requirement to explain why the information received to date was inadequate, inconsistent or unavailable. The notification did not, for example, list the information obtained to date, any attempts made to obtain information and the outcomes of such attempts. I find that the insurer failed to provide written advice as required to the applicant as to why the information received was inadequate.

28. The contact details of the IME's office, in my view, are not limited to the address. Contact details usually include a telephone number and an email address or online contact. For example, SIRA's contact details include a telephone number and an email address. I find that the insurer failed to provide proper contact details as required in the Guidelines.

29. In relation to "what to do if the worker does not believe the examination is reasonable", the notification fails to provide any information as to what the applicant can do if she believes the examination is not reasonable. Mr Kennedy submitted that the SIRA fact sheet or brochure attached to the Notice dated 15 January 2020 enclosed a Workcover brochure entitled "Do you have a query or concern" addressed this issue. However, the provision of the SIRA brochure is a mandatory requirement of the Guidelines in addition to the other matters to be included in the written advice to a worker.

30. The SIRA fact sheet is not, in my view, a substitute for the written advice that the insurer is required to provide to the worker. Roche DP in *Mateus v Zodune Pty Ltd (t/as Tempo Cleaning Services)* [2007] NSWWCCPD 227 stated that a "section 74 [Notice] must state in plain language, in the body of the document, the reason the insurer disputes liability and the issues relevant to that decision". I consider that in this matter the notice and notification must also state in plain language the advice that the insurer is required to provide to the worker.

31. In any event, the SIRA fact sheet merely states that "If you are asked to attend more than one independent medical examination, ask the insurer, your legal representative or employer why. You have a right to refuse to attend unnecessary appointments." This is not, in my view, an explanation of what a worker can do if the worker does not believe the examination is reasonable. The paragraph in the SIRA brochure relates to unnecessary appointments, not to unreasonable appointments.

32. I find that the applicant is not prevented from recovering compensation because of her failure to attend on Dr P Young for examination.

33. In view of my findings above, I do not propose to deal with the other issues raised, including the reasonableness of the request for the applicant to attend the IME. However, I would accept that the change in diagnosis to include PTSD did appear to be a matter which, in the absence of clarification by Dr Jacobs, would warrant an IME. However, there are no statements from the case manager or any other case manager concerning what information had been received from Dr Jacobs, the outcome of the case conferences between the case manager, Dr Jacobs, the applicant and Elena Fanous, rehabilitation consultant of Star Injury Management, apart from a one page report dated 22 November 2019. I also noted that Ms Lawes stated that the applicant had attended an IME in 2019 at the insurer's request. There may be an issue as to whether the request was reasonable in all the circumstances. No report was filed by either party in relation to the IME examination in 2019. It may be that the report was not provided to the applicant. However, weekly payments continued after that examination until the payments were suspended on 24 December 2019. I would infer that the doctor who conducted the IME examination in 2019 found that the applicant had no current work capacity.

34. It is also necessary to make some comments concerning the conduct of the insurer and, in particular, the conduct of the case manager.

35. The applicant sent the case an email on 19 November 2019. The applicant wrote:

> "Hi [name omitted]
>
> I have one phone message from you and one previous email which I am replying to.
>
> Regarding trying to contact me I spoke with you for the first time on Wednesday 6th Nov. On that occasion you introduced yourself to me and enquired about how my physio was going. I explained that I do not attend physiotherapy for my injury and you asked me why not. I said I think you are mixing me up with someone else. You stated you would call me back and we agreed on 2pm that same day. You did not call me back.
>
> Late last week I received an email from you with another person's confidential medical information.
>
> I do not feel that you currently have a grasp of my situation. Having a case conference right now would not be a good idea. It needs to be planned in advance. It is not appropriate to take my scheduled medical appointment and use this for a case conference. I have waited 2 weeks to get an appointment with my GP and it is important that I am able to see her as indicated on my treatment plan and not have my appointments cancelled by you."

36. Firstly, it is inappropriate in my view for a case manager to take over a scheduled appointment made for treatment purposes and change the appointment into a case conference. Such an action prevents a worker from obtaining the regular treatment required to facilitate recovery.

37. Secondly, the applicant quite rightly expressed some concerns about the case manager's competency as a case manager and it appears that since those concerns were expressed, the case manager has failed to treat the applicant impartially and properly support her recovery. Some examples include:

> (i) [Name omitted], in the notice dated 15 January 2020, stated that the applicant must attend a vocational assessment to have weekly payments resume. That statement is incorrect;
>
> (ii) the case conference on 9 December 2019 was cancelled by the doctor, not the applicant;
>
> (iii) the case manager failed to address the concerns of Dr Jacobs as expressed in her letter dated 19 December 2019 and by the applicant in her email of 19 December 2019;
>
> (iv) vocational assessments taking up to three hours per session were arranged at weekly intervals in December when the applicant was certified as having no capacity for work at weekly intervals, and
>
> (vi) [Name omitted] suspended payments on Christmas Eve of 2019 when the applicant would be unable to contact the insurer or seek legal advice for some period of time over the Christmas and New Year period and when an IME examination had been arranged on 9 January 2020.

38. In particular, the failure of the case manager as case manager to contact Dr Jacobs after she received the letter from Dr Jacobs dated 19 December 2019 is disturbing. Dr Jacobs clearly expressed the view that it was detrimental to the applicant's mental health to attend an extra psychiatric examination at that time and this could put back her recovery. The failure to contact Dr Jacobs in such circumstances and make further enquiries is unacceptable in my view and contrary to the duties the insurer has to the applicant.

39. I note that Ms Lawes has said that the issues of unethical and improper conduct by EML and their agents has been reported to SIRA. I consider that is appropriate in this case. I also noted that the applicant stated in the conference on 26 March 2020, that because her benefits were suspended she lost her home. The applicant said that she is living in a hostel for the homeless where she "does not feel safe".

40. I have found that the applicant is not prevented from recovering compensation because of her failure to attend on Dr P Young for examination. Therefore, the respondent is to pay the applicant pursuant to s 37 of the *Workers Compensation Act 1987* (the 1987 Act) $802.25 per week from 15 January 2020 to date and continuing.

NOTE: A person who fails to comply with an interim payment direction is guilty of an offence in accordance with section 300.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE INTERIM PAYMENT DIRECTION ISSUED BY CAROLYN RIMMER, REGISTRAR'S DELEGATE, WORKERS COMPENSATION COMMISSION.

L Golic

Lucy Golic
Acting Senior Dispute Services Officer
As delegate of the Registrar