

NOTE: The following report was written after HealthQuest issues had been repeatedly brought to the attention of various Dept Health officers, Health Care Complaints Commissioners, Premier Mr Carr's office, Ombudsman's Office, ICAC and Ms Irene Moss through the years.

HealthQuest's client is the department or organisation which pays it to process the targeted individual/employee. HealthQuest operates on a fee-for-service basis, delivering its services to its clients (departments which pay for such services).

WBDE stance is that:

1. Forced psychiatric 'assessment' is outlawed by UN Declaration of Human Rights.
2. Medical practitioners including psychiatrists are forbidden to act without the informed consent of their targeted individual,
3. The personal questions which psychiatrists ask are outlawed by industrial relations/employment regulations and guidelines for job interviews.
4. Samples of psychiatric 'assessment' include whatever s/he wishes, often reams and folders of highlighted material with which the paid psychiatrist forms whatever opinion s/he wishes. The psychiatrist may or may not interview the targeted individual. If there is an interview the psychiatrist routinely asks offensive questions of the targeted individual's

- * sexual acts,
- * family members and friends' acts,
- * thoughts and beliefs, etc.

The psychiatrist states an 'opinion' (paid for by the employer client) and is allowed to apply a psychiatric label to the targeted individual's previously good name. There is no formal facility to remove that offensive label.

If the targeted individual seeks another psychiatrist to negate such bought 'opinion', reports show that the additional psychiatrist may add further psychiatric labelling and simply muddy the waters worse.

**Independent Review
of HealthQuest**

**Report to the New South Wales
Health Department**

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Acronyms

AHS	Area Health Service
FOI	Freedom of Information
FTC	Fit to continue
GMO	Government Medical Officer
HCCC	Health Care Complaints Commission
ICAC	Independent Commission Against Corruption
MAP	Medical Appeals Panel

Executive summary

Over recent years there have been a number of complaints regarding how some public sector employers have referred employees to HealthQuest and how HealthQuest has gone about assessing whether employees are fit for duty. These complaints allege that employers are making inappropriate referrals of whistleblowers to HealthQuest and/or attempting to find medical solutions for internal management problems. The complaints also raise the issue of whether HealthQuest's internal processes and controls are adequate. In essence the complaints raise issues regarding transparency, procedural justice and accountability in relation to the procedures used by employers and HealthQuest.

The Premier's Memorandum 98-1 on *Revised Health, Safety, Medical Assessment and Medical Retirement Procedures* sets out policies and procedures in relation to consultations with employees and assessment by HealthQuest, where the health of an employee may be effecting their ability to undertake the inherent requirements of their job. Issues to be considered in making workplace adjustments and procedures relating to medical retirements and appeals are also set out.

There is anecdotal evidence that human resource practices have improved since the issuing of the Memorandum in January 1998. Nonetheless, there is also anecdotal evidence of non-compliance by some agencies. In addition, a number of the management and procedural issues raised by complainants are not addressed by the Premier's Memorandum.

The purpose of this review has been to examine the adequacy of current internal processes and controls in the operation of HealthQuest in relation to the issues raised by the complaints, in the context of the policy framework provided by the Premier's Memorandum. The review has also examined the relationship between referring agencies (employers) and HealthQuest and the adequacy of the appeals process. While the review has been informed by the issues raised in individual complaints, as the focus has been on policies and procedures, it has not involved an investigation of these complaints.

Virtually all of the complaints relate to the referral of existing employees to HealthQuest for consideration of involuntary medical retirement. So as to place this review in context, it should be noted that this is a relatively small component of HealthQuest's work. In addition, most appeals against HealthQuest assessments are from employees who are seeking medical retirement, where HealthQuest has determined that they are fit to continue.

The major findings of this review are set out below:

The referral of employees to HealthQuest

Initial and ongoing employer – employee consultation is essential where employees are being referred to HealthQuest to determine their fitness for work. The extent to which public sector employers comply with this policy requirement is variable.

While some Departments have put a significant effort into improving the quality of their referral reports to HealthQuest, the standard of reports is variable and sometimes deficient. Some reports lack objectivity and clarity as to the reason for referral .

In some instances employees are not provided with a copy of the employers referral report, despite the requirements of the Premier's Memorandum.

On occasion HealthQuest tries to 'rescue' situations which arise because employers have not followed the policies and procedures set out in the Premier's Memorandum, particularly in relation to transparency and procedural justice.

An insufficient emphasis is placed on ensuring that employees have a good understanding of the policy and procedural requirements on the employer, HealthQuest's role, the procedures involved in the process of health assessment, who makes decisions, what information is taken into account, right of access to personal information, confidentiality, and the right of appeal. For example, there is no user-friendly written guide.

The internal processes and controls of HealthQuest

Employees who have been referred to HealthQuest for fitness to continue assessments should be given the option of making a written response to the information provided by the employer, prior to the outcome of the assessment being finalised.

HealthQuest needs to ensure that the record of assessment contains sufficient detail to justify all findings and recommendations.

Procedures for informing employees of the outcome of HealthQuest assessments are in need of significant improvement.

In the case of referrals of whistleblowers and employees identified as 'difficult', the employer and HealthQuest should take special care to ensure a high standard of communication so that employees are fully aware of assessment and decision making procedures.

HealthQuest procedures on access to personal information need to be streamlined and improved.

Given the stress placed on all HealthQuest staff arising from the publicity surrounding complaints in recent years it would appear that the organisation has become defensive in relation to complaints. While this is understandable, there is a need to move beyond this and foster a culture which recognises the opportunities for learning which arise through complaint handling.

While HealthQuest has a number of current quality assurance measures in place, there is a need for these to be developed and extended, with some form of independent, external quality assurance.

The accountability of HealthQuest needs to be enhanced by the development of improved measures of performance and annual reporting.

The relationship between HealthQuest and referring agencies

On the basis of a very limited number of interviews with employers, there would appear to be a significant variance in employer perceptions of their relationship with HealthQuest, ranging from generally positive to one of frustration.

On the positive side there was said to be good dialogue, attention to procedural correctness by HealthQuest and a responsiveness to urgent cases.

Areas of frustration centred on disagreement on what constitutes the inherent requirements of a job, the practicality of recommendations for adjustment and the absence of substantive dialogue in relation to employer input to the assessment process and guidance from HealthQuest on how to handle individual cases following assessment.

There is a significant difference in the approach taken by HealthQuest and employers to the issue of adjustment. Employers point to significant constraints which affect their ability to make adjustments. While HealthQuest recognises these constraints, it sees its role as advocating for adjustment if this is at all possible.

While there is agreement that employer human resource practices have improved following the issuing of the Premier's Memorandum, HealthQuest expressed the view that many employers still do not appear to have an adequate understanding of their occupational health and safety obligations. This is said to result in a lack of understanding of the role of HealthQuest.

The Medical Appeals Panel (MAP)

Depending on the Act under which people are employed, they may or may not have the right of appeal to the MAP. Appeal rights exist for those employed under the Public Sector Management Act, the Police Service Act, the Teachers Service Act, and the Superannuation Act.

Those who are eligible to lodge an appeal are advised of this in writing by both HealthQuest and the MAP. This is unnecessary duplication.

Information on the right of appeal should be made available at the time of referral to HealthQuest by way of a plain English brochure. This brochure should also be sent to employees with HealthQuest assessment outcome letter. There is a need for the processes by which the MAP assesses and determines appeals to be made transparent. This information should be included in the brochure.

Appeals are currently confined to consideration of the medical assessment. The right of appeal could be broadened to encompass administrative and procedural issues.

While the MAP arranges for independent specialists to review HealthQuest assessments, there is no input from occupational medicine specialists. This is a weakness.

Use of the word 'panel' creates an expectation about process, suggesting a group of experts who jointly review HealthQuest assessments. There is no group of people meeting on a

regular basis, with all appeals being decided solely by the Chair. The option of structural reform needs to be considered.

Written decisions, explaining the reasons why an appeal is allowed or disallowed, are needed to assist in creating a transparent process and to establish that procedural fairness has been followed.

Complex appeals take too long to be determined.

The policies and procedures of the MAP need to be fully documented. At present there are only very limited accountability provisions.

Summary

There is a need for some employers to improve their understanding of how to address occupational health and safety issues and their practices in relation to how employees are referred to HealthQuest.

For HealthQuest, most of the issues relate to improving the transparency of processes and procedural justice. Perceptions that HealthQuest places the interests of the agency ahead of those of the employee, or of collusion, are often created because the processes to which individuals are subjected are not well understood. This is exacerbated when established policies and procedures relating to how employers should refer employees are not followed.

These perceptions can be dealt with by increasing transparency and giving employees confidence that the organisation places a high value on accountability and procedural justice. This can be done by providing information on the ethical obligations of HealthQuest staff, the procedures which will be involved in the health assessment, the personnel involved in decision making and review, and information about individual rights and obligations.

The key is for HealthQuest to give priority to actively communicating that it is an organisation which is committed to transparency, procedural justice and accountability. While this may be done in one-to-one communications between HealthQuest staff and employers and employees, there is no evidence of this being done in a systematic way. This finding is reinforced by the overly bureaucratic and perfunctory nature of HealthQuest correspondence with employees, the lack of adequate printed information for employees on the assessment process and inadequate measures to communicate the outcome of assessments.

A series of recommendations have been made to address the findings of this review.

Recommendations

1. The need for all public sector employers to consult with employees and keep them informed in cases where medical advice is being sought to determine whether they can undertake the inherent requirements of their position needs to be strongly reinforced.
2. Guidelines should be developed on how to improve the standard of employer reports to HealthQuest where medical advice is needed on whether the health of an employee prevents them from undertaking the inherent requirements of their position or to ensure the health and safety of the employee.
3. HealthQuest, in consultation with the Premier's Department and referring agencies, should develop guidelines to assist employers in making appropriate referrals to HealthQuest where medical advice is needed on whether the health of an employee prevents them from undertaking the inherent requirements of their position or to ensure the health and safety of the employee.
4. Referrals to HealthQuest for fitness to continue assessments should only be able to be made by officers with specific delegated authority.
5. All public sector employers who use HealthQuest for fitness to continue assessments should ensure that adequate quality control mechanisms are in place so that referral of employees occurs in a manner which is consistent with the requirements of the Premier's Memorandum 98-1.
6. Where employees have been referred to HealthQuest for assessment of their fitness to undertake the requirements of their position, the information contained in the employers referral report should be provided to the employee, prior to their appointment. The HealthQuest fitness to continue referral form should make provision for the employee to sign that they have been provided with a copy of the referral documents and indicate if they do or do not wish to respond. The response can be in writing to HealthQuest or orally at their assessment appointment. If the employee has not signed the referral form it should be returned to the employer for rectification prior to the assessment proceeding. Where employees refuse to sign the form, the employer should certify that every reasonable effort has been made to have the employee sign and that they have been provided with a copy of the referral documents. Time limits should apply for employees who elect to make written responses, with the assessment proceeding if no written response is received within the specified time frame.
7. Consideration be given to amending the Premier's Memorandum 98-1 to clarify that employers are not required to provide employees with copies of material provided to HealthQuest where there is a claim for exemption under Freedom of Information legislation. The amended Memorandum should include examples of appropriate exemptions such as a *real* threat of harm exists or confidential workers compensation reports provided by a third party.

8. HealthQuest should develop a procedure which requires all employers to provide supplementary information relating to FTC assessments in written form. The employer should sign a declaration that they have provided a copy of this supplementary information to the employee. The requirement for the provision of information to be in writing should not preclude dialogue between HealthQuest and the employer on how to manage individual cases.
9. A user friendly guide for people being assessed by HealthQuest should be developed to inform them of the role of HealthQuest, how assessments are conducted, and their rights of appeal, access to information and obligations.
10. Employees who have been referred to HealthQuest for fitness to continue assessments should be given the option of making a written response to the information provided by the employer, prior to the outcome of the assessment being finalised. HealthQuest needs to take care in determining what weight to place on information provided by the employer where the employee identifies or is identified as a whistleblower or 'difficult', by considering the possibility of a lack of objectivity on the part of the agency.
11. HealthQuest should ensure that the record of assessments contain sufficient detail to justify all findings and recommendations.
12. The Premier's Department, HealthQuest and representatives of referring agencies should consider ways in which to improve the communication of the findings and outcomes of HealthQuest assessments.
13. In the case of employer initiated referrals of fitness to continue health assessments, the employer and HealthQuest should take special care to ensure a high standard of communication so that employees are fully aware of assessment and decision making procedures.
14. All persons who are referred to HealthQuest should be informed of their right to access personal information on their HealthQuest file, apart from documents which would be exempt under Freedom of Information legislation. This information about their right of access should be incorporated into the general information which is provided to employees at the time they are notified of their assessment appointment.
15. Persons who wish to access personal information on their HealthQuest file should not be required to do so by invoking the provisions of Freedom of Information legislation. Nonetheless, a formal application should be required so that the person's identity can be established. HealthQuest should apply Freedom of Information principles in processing applications.
16. When persons make inquiries or apply for release of personal information held by HealthQuest, they should be provided with material which advises them on how applications are processed and their rights.
17. HealthQuest should develop an application form to be used by employees when applying for access to personal information held by the agency.

18. HealthQuest needs to place greater emphasis on building an organisational culture which develops a systematic awareness that effectively dealing with complaints provides the opportunity to address employee and employer concerns and to improve the administration and operations of the organisation.

19. An independent specialist in occupational medicine should conduct regular, random quality assurance audits of HealthQuest's determinations and processes in relation to all core functions for the purpose of identifying trends and areas where systemic improvements can be made. (The power to modify the outcome of individual assessments would continue to rest exclusively with the Medical Appeals Panel.)

20. HealthQuest should develop a quality plan which identifies areas where performance could be improved. The plan should contain strategies to address these areas, with monitoring of progress against milestones.

21. In the interests of quality assurance it should be a standard procedure of HealthQuest to refer all consultants reports commissioned by the Medical Appeals Panel to the medical practitioner(s) who undertook the original HealthQuest assessment. HealthQuest policies and procedures should be amended to reflect this.

22. All specialists who undertake assessments for HealthQuest should be required to show proof, on an annual basis, of continued membership of their relevant College.

23. HealthQuest should develop guidelines for GMO nominees in external locations on workplace adjustment.

24. The governance structures and annual reporting requirements of HealthQuest should be enhanced. The form this should take to be resolved following resolution of where HealthQuest should be placed in the structure of the NSW health system.

25. HealthQuest should develop a series of performance indicators to enhance internal monitoring of performance and public accountability. Performance against key indicators should be included in the organisation's annual report.

26. The proposal for a joint conferencing approach to discuss possible outcomes which flow from complex or disputed fitness to continue assessments should be considered by the Premier's Department in consultation with HealthQuest and referring agencies.

27. Consideration should be given to extending the right of appeal against decisions of the Government Medical Officer to all public sector employees and also to the employer.

28. The MAP should dispense with the written notification to employees of their appeal rights as this duplicates the written notification by HealthQuest. A specific, plain English language (and the 10 major community languages) brochure on appeal rights should be developed. This should be sent to employees by HealthQuest both at the time they are advised of their appointment and again with the letter advising them of the outcome of their assessment. The brochure should provide a simple and full explanation of how the MAP goes about determining appeals.

29. The grounds for appeal to a re-vamped Medical Appeals Panel should be broadened to encompass consideration of administrative and procedural matters that relate to compliance with the Premier's Memorandum 98-1 and other relevant policies and procedures.

30. The Medical Appeals Panel should ensure that reports from treating practitioners nominated by the appellant are up-to-date.

31. The opinions of specialists in occupational medicine should be sought by the MAP, as appropriate, in the assessment of appeals against decisions of the Government Medical Officer.

32. Consideration be given to the option of broadening the membership of the Medical Appeals Panel to include a greater range of expertise or seeking opinions from a broader range of experts.

33. Written reason for decisions by the Medical Appeals Panel should be recorded and made available to HealthQuest, the appellant and the employer.

34. NSW Health and the Medicals Appeals Panel need to determine whether there are ways of shortening the time taken to determine the outcome of appeals. One strategy to consider is a Medical Appeals Panel occupational physician examining all appellants and making recommendations, with only difficult cases being referred to specialists.

35. To enhance transparency and accountability the Medical Appeals Panel should be required to:

- develop a policies and procedures manual; and
- provide an annual report on its activities to the Director General of Health. This report should either be published or a summary included in the Annual Report of the NSW Health Department.

Section 1

Placing the review in context

1.1 Overview of the functions of HealthQuest

1.1.2 The purpose of HealthQuest

HealthQuest is a self-funding organisation providing a range of occupational health and safety services to the public and private sectors. Their mission statement is:

“To provide a high quality of health assessment and advice to assist employers and employees to:

- achieve the best possible relationship between employee health status and job requirements; and*
- minimise illness related losses associated with employment.”*

1.1.3 Type of services provided

The services provided by HealthQuest can be grouped as follows:

- Health risk management: includes pre-employment health assessments, VDU vision screening and ergonomics and workplace audits.
- Individual health assessment: includes expert assessments of illness.
- Injury prevention training
- Workplace health education
- Consultative advice: includes policy development, occupational health management advice, identifying intrinsic requirements of positions, and telephone advice on workplace health issues.

The bulk of HealthQuest’s work consists of pre-employment or permanency assessments. These are occupational health assessments to determine whether the person is able to undertake the inherent requirements of the job, with or without reasonable adjustment, and not present a danger to themselves or others. Government Departments may now contract this work to private sector organisations rather than use HealthQuest. A number of public sector employers have opted to replace pre-employment assessments with employee declarations.

Table 1 shows the number of fitness to continue and pre-employment assessments conducted by HealthQuest in 1998 and 1999. While the number of fitness to continue assessments was relatively stable, there was a significant decline in pre-employment assessments.

**Table 1: Type of individual assessments conducted by HealthQuest
1998 - 1999**

Type of assessment	1998	1999
Fitness to continue	1681	1707
Pre-employment/permanency	5123	3902

Source: HealthQuest

Public sector employees employed under certain Acts (eg Public Sector Management Act, Police Service Act, Teaching Service Act) can be required by their employer to attend a medical examination by HealthQuest to assess their fitness for ongoing employment.¹ An employee can also initiate this process. Where an employee is considered unable to meet the inherent requirements of their job, an assessment of their ability to undertake modified or alternative duties may be appropriate (also referred to as adjustment).

Where the Government Medical Officer (GMO), who is the Director of HealthQuest, determines that an employee should be medically retired, the employer is obliged to act in accordance with that advice. Where a recommendation for adjustment is made, the employer can reject this advice if it would cause unjustifiable hardship (eg not practical or too costly).

Apart from the Director, the other full-time medical positions are that of the Deputy Director and the Senior Medical Officer. HealthQuest can also refer employees to a range of specialists. These specialists are engaged on a sessional basis. They work from either HealthQuest's central location or their own practices. Selected rural GPs also undertake assessments for HealthQuest in their own practices. General practitioners mostly undertake pre-employment assessments or straight forward FTC assessments. Most FTC assessments are done centrally.

1.2 The policy context

The Premier's Memorandum 98-1 on *Revised Health, Safety, Medical Assessment and Medical Retirement Procedures* set out policies and procedures in relation to:

- consultations with an employee, and advice from the Government Medical Officer, in relation to which duties an employee is capable of performing;
- factors that an employer should take into account in determining whether an adjustment can be made to the workplace; and
- medical retirement and the appeals process.

These procedures and related legislative requirements are based on the principles that:

¹ Also referred to as fitness to continue or FTC.

- “an employee must be able to perform the inherent requirements of their position, and an employer must provide adjustment for the employee to undertake their duties, unless providing the adjustment would cause unjustifiable hardship;
- an employer is responsible for ensuring the health, safety and welfare at work for all employees; and
- where the health of an employee prevents them from undertaking the inherent requirements for the position, or where there is a health and safety concern, medical advice should be sought and the employee consulted with a view to determining the most appropriate course of action.”

The requirements of the Premier’s Memorandum are discussed in more detail in subsequent sections of this report.

1.3 Overview of the functions of the Medical Appeals Panel

The role of the Medical Appeals Panel (MAP), as set out in the Premier’s Memorandum, is to review the GMO’s recommendations and advise the employer, employee and GMO whether an employee is able to undertake the inherent requirements of the position or whether other strategies should be considered to enable the employee to continue in employment.

In 1999 there was an average of 16 appeals per month to the MAP against GMO decisions.

Section 5 contains a detailed review of the MAP.

1.4 The independent review

1.4.1 Background to the review

In recent years there have been a number of complaints regarding how some public sector employers have referred employees to HealthQuest and how HealthQuest has gone about assessing whether these people are fit for duty. These complaints have been made to the Health Care Complaints Commission (HCCC), the Ombudsman and the Independent Commission Against Corruption (ICAC). Most of the complaints relate to where an employer is seeking an assessment of an employee’s fitness to continue in employment. A common theme of employer referrals in these cases is alleged behavioural problems in employees. On the basis of anecdotal evidence, it appears that some employers are suggesting or claiming that mental illness is impairing work performance. A number of complaints have come from people who identify as whistleblowers.

The procedural and internal control issues relating to these complaints are substantively dealt with in sections 2 – 5 of this report. A brief summary of the basis for these complaints is provided below to set the context for this review.

Some of the complaints allege that employers are misusing HealthQuest by inappropriate referrals of whistleblowers. Others claim that referrals for FTC medicals are attempting to

impose medical solutions on internal management problems. For example, referring an employee to HealthQuest where the real problem is a stressful work environment which has been inappropriately managed. There have also been complaints regarding the adequacy of consultation with employees prior to referral and non-compliance with policies and procedures in relation to how referrals are made.

Complaints also raise the issue of whether the internal processes and controls of HealthQuest are adequate and sufficient to allow the organisation to provide truly impartial and independent advice. Complaints have also raised issues relating to the adequacy of the Medicals Appeals Panel's procedures.

Each of the investigatory bodies (the HCCC, the ICAC, and the Ombudsman) identified a range of procedural issues in relation to the complaints they received. In essence, the complaints raise issues relating to transparency, procedural justice and accountability regarding employer referrals and the internal procedures and controls of HealthQuest and the Medical Appeals Panel. In response to the identification of these issues the NSW Health Department decided to commission this independent review.

It should be noted that all of the matters analysed by the ICAC at the time of its review of HealthQuest complaints in October 1999 pre-dated the Premier's Memorandum. The ICAC has noted that the Memorandum has done much to redress the actual and perceived problems with HealthQuest and the Medical Appeals Panel by setting out principles and procedures to be followed by employers, HealthQuest and the MAP. Nonetheless, the ICAC also notes that their analysis of the issues raised by complaints indicates that the Memorandum does not address a number of management and administration issues, and of those addressed there has been no assessment to date of how effectively they have been implemented.

It should also be noted that the ICAC decided not to investigate any of the complaints it reviewed as there was no indication of a reasonable likelihood of corrupt conduct having occurred. However, the agency concluded that there were indications that there may be systems and procedural problems that make the agencies involved susceptible to a perception of corrupt conduct and the risk of such conduct actually occurring.

On the basis of the information available to this review, there does not appear to be a significant number of employee complaints regarding pre-employment assessments. Where complaints are made about pre-employment assessments they primarily relate to whether particular intrinsic job requirements are justifiable. For example, is an objectively measurable standard relating to hearing or eyesight actually required for a particular job. These type of complaints do not raise procedural issues of the type raised by complainants undergoing fitness to continue assessments. Accordingly, and consistent with the terms of reference, this review has primarily concentrated on examining issues relating to fitness to continue assessments.

It is also useful to place the complaints regarding fitness to continue assessments in context. Fitness to continue assessments can be initiated by either the employer or the employee. Most of the complaints to the three investigatory bodies relate to FTC assessments which were initiated by the employer. By way of contrast, most of the appeals to the MAP are from employees who are seeking medical retirement, where HealthQuest has determined that they are fit to continue.

1.4.2 Terms of reference

- Review the current internal processes and controls in the operation of HealthQuest to identify strengths and weaknesses, having regard to procedural issues identified by the Health Care Complaints Commission, the Independent Commission Against Corruption, and the Ombudsman as well as the principles set out in Premier's Memorandum 98-1 *Revised Health, Safety, Medical Assessment and Medical Retirement Procedures*.
- Review the relationship between referring agencies and HealthQuest in the context of Premier's Memorandum 98-1 *Revised Health, Safety, Medical Assessment and Medical Retirement Procedures*.
- Identify best practice which would ensure the principles of accountability, transparency and procedural justice are applied.
- Propose solutions to improve the internal processes and controls of HealthQuest and the relationships between referring agencies and HealthQuest, having regard to the concerns expressed by the Health Care Complaints Commission the Independent Commission Against Corruption and the Ombudsman, the principles in Premier's Memorandum 98-1 *Revised Health, Safety, Medical Assessment and Medical Retirement Procedures* and best practice.
- The Independent Review is to be limited to reviewing internal processes, not structure. Development of an options paper canvassing various models for the structure of HealthQuest (and the Medical Appeals Panel) is being undertaken within the NSW Department of Health.

1.4.3 Scope of the review

This review has been informed by the procedural issues identified by the HCCC, the ICAC and the Ombudsman, which have arisen out of their consideration of a number of complaints against HealthQuest. The review has, however, not involved an investigation or detailed examination of individual complaints. Rather, the review has been pitched at a higher level, and has examined the adequacy of internal processes and controls. The focus of the review has been to determine the extent to which internal processes and controls ensure that the principles of accountability, transparency and procedural justice are applied.

1.4.4 The Working Party

The NSW Health Department established a working party to consider the findings and recommendations of this review and the separate review relating to the structure of HealthQuest and the MAP.

The Working Party was chaired by Mr Bob McGregor, Deputy Director General (Operations), NSW Health Department and nominees of the following organisations:

- the Premier's Department;

- the Health Care Complaints Commission;
- the Ombudsman;
- the Independent Commission Against Corruption;
- Central Sydney Area Health Service; and
- HealthQuest.

1.4.5 How the review was conducted

The following describes the key steps in the review:

- Documents which set out the policy context in which HealthQuest and the MAP operate were reviewed.
- Documentation setting out the functions of HealthQuest was reviewed.
- Correspondence between the Ombudsman, the HCCC, the ICAC and the NSW Health Department regarding procedural issues identified by complaints was reviewed.
- HealthQuest policies and procedures relating to medical assessments for employment and retirement were reviewed in relation to:
 - compliance with the Premier's Memorandum;
 - the extent to which they reflect the principles of accountability, transparency, procedural justice; and
 - the extent to which they address the procedural issues identified by the HCCC, the ICAC and the Ombudsman.
- Documentation from the MAP in relation to procedures for determining appeals made against HealthQuest decisions were reviewed.
- Interviews were conducted with current and former staff of HealthQuest, the MAP, the Central Sydney Area Health Service, the Ombudsman, some Government Departments which refer to HealthQuest, and the NSW Health Department. A list of people interviewed is at Appendix 1.
- Analysis of all information and the development of findings
- Presentation of the report to the Working Party.

Section 2

Referral of employees to HealthQuest

As outlined in section 1, employers can refer employees to HealthQuest for assessment of their fitness to undertake the inherent requirements of their position. This section examines the adequacy of processes used by employers and HealthQuest in making and accepting referrals, particularly in regards to compliance with the Premier's Memorandum.

The areas examined are:

- consultation with employees prior to referral;
- the adequacy of referral information provided to HealthQuest by employers ;
- whether referral information is provided to employees prior to their HealthQuest assessment; and
- understanding by employees of HealthQuest's role and how it goes about making assessments.

2.1 Consultation with employees

The Premier's Memorandum states:

"It is important that an employee be consulted and kept informed in cases where medical advice is being sought to determine whether they can undertake the inherent requirements of their position."

The Memorandum states that the consultation may relate to:

- the employer's concerns regarding work performance;
- the possibility of rehabilitation or making adjustments;
- the availability of employee assistance programs;
- the purpose of the medical assessment, the role of HealthQuest and possible outcomes following the medical assessment; and
- the appeals process.

The intention of the Memorandum is for the option of a HealthQuest assessment to be seen as part of an integrated occupational health and safety program rather than a simple solution to poor performance in the workplace. Where a referral to HealthQuest takes place, employers clearly have a responsibility to prepare employees by informing them of why this is occurring.

The extent to which public sector employers comply with these guidelines appears to be variable. A starting point for a number of complainants was the lack of both initial and ongoing consultation by their employers as to why they were being referred for medical assessment. HealthQuest confirms that this is a problem in a proportion of cases. Some HealthQuest staff indicated that up to 20 per cent of employees referred for FTC assessments claimed they were not aware of the reason why this action had been taken.

Given the timeframe for this review it was not possible to speak to a wide range of public sector employers. Representatives of two Departments were interviewed to provide some insight into practices. Variables which seemed to effect the extent to which employers complied with consultation and referral requirements were:

- fitness to continue referrals only being made by officers with delegated authority;
- all referrals being made by centralised human resources units to allow for vetting and quality control;
- the experience of officers in making referrals;
- a commitment at the human resources management level to improving practice;
- the existence of Department specific guidelines on how to implement the Premier's Memorandum.

Good initial and ongoing communication between employers and employees is clearly central to transparency, procedural justice and accountability. It is an area which needs improvement.

Recommendation

1. The need for all public sector employers to consult with employees and keep them informed in cases where medical advice is being sought to determine whether they can undertake the inherent requirements of their position needs to be strongly reinforced.

2.2 Referral information required by HealthQuest

2.2.1 The policy and procedural requirements

The Premier's Memorandum states where employees are being referred to HealthQuest for the purpose of a FTC medical assessment, the employer should provide a report based on the inherent requirements of the job. The report is meant to include the following information:

- explain why the employee is being referred;
- include the position description or statement of duties (this should reflect the requirements of the position and it is preferable that the employee agree that it is an accurate description of their responsibilities);

- identify any inherent requirements of the position which, in the employer's opinion, cannot be performed;
- indicate what action is being taken or proposed to resolve the issue (eg making adjustments);
- include recent medical certificates and related reports such as rehabilitation and workers compensation reports; and
- sick leave record.

2.2.2 The adequacy of employer reports to HealthQuest

While some referrals are declined, it is clear that the standard of information contained in referrals which are accepted is sometimes considered deficient. Both HealthQuest and complainants have identified a lack of objectivity in the explanations as to why an employee is being referred to HealthQuest as a continuing problem associated with some referrals. This particularly applies to stress related cases and where interpersonal relations in the workplace have deteriorated.

It should, however, be noted that some Departments have put a substantial effort into improving the quality of reports and this appears to have had the desired effect. For example, in the Department of Education and Training all reports are vetted by a central staff welfare unit. Both the Department and HealthQuest are of the view that the standard of reports has improved.

The following problems have been identified in relation to some referral reports:

- there is no apparent health related issue;
- a lack of objectivity;
- a lack of factual information on how work performance is being affected;
- insufficient factual information is provided to support assertions or conclusions;
- the statement of a medical diagnosis, particularly in the area of mental health, by supervisors who are not qualified to do so;
- not all the information required by the Premier's Memorandum is provided (although HealthQuest states that, depending on the nature of the referral, not all of the information may be needed);
- on occasion, too much information is provided, along with a failure to delineate what is the health issue which led to the referral.

HealthQuest noted that supervisors are sometimes not closely enough involved in the referral to HealthQuest. For example, the referral report will be prepared by human resources

personnel. While the involvement of human resource specialists provides the benefit of quality control, the information regarding perceived problems has become too filtered or indirect to be of particular use.

Where there are deficiencies in employer reports, particularly in regards to objectivity, employees may reasonably develop suspicions about the fairness of the process. These concerns may be exacerbated if the employee is not familiar with the purpose of the referral, how the assessment will be conducted and who will be making decisions.

Recommendation

2. Guidelines should be developed on how to improve the standard of employer reports to HealthQuest where medical advice is needed on whether the health of an employee prevents them from undertaking the inherent requirements of their position or to ensure the health and safety of the employee.

2.2.3 The relevancy of employer reports

Written reports from employers may contain information which HealthQuest does not consider relevant to their assessment. Apart from declining inappropriate referrals, HealthQuest does not decline to accept certain types of information. The reason for this is that the employer report may include information which is both relevant and irrelevant to HealthQuest's assessment. The difficulty for employees is to know what information HealthQuest takes into account in coming to their decision. This may have particular relevance in situations where reports contain contested claims or accounts of workplace disharmony.

This problem is hopefully being addressed by the improvement in the quality of employer reports to HealthQuest, a trend which needs to continue. There may also be benefit in HealthQuest explaining, on an individual basis to employees undergoing FTC assessments, the type of information which they do and do not take into account in making their assessment. It would be worthwhile for this type of information to be also included in information leaflets provided to employees.

2.2.4 HealthQuest consideration of referrals

All referrals to HealthQuest need to be in writing. The standard practice is for referrals to be made using a generic 'request for services' form which has been developed by HealthQuest. The Director or Deputy Director of HealthQuest reviews all referrals and decides whether sufficient information has been provided, whether to accept or decline the referral and how the referral will be assessed. This includes deciding the type of health professional(s) who will make the assessment and whether the client will be seen at HealthQuest or by a GMO nominee in another location.

If the referral does not indicate why it is proposed to send the employee to HealthQuest or there is insufficient information, the Director or Deputy Director telephones the referring officer to inform them of the deficiencies. Additional information needs to be provided in writing. The Director states that in a number of cases, no further information is received. This

is interpreted to mean that the employer has decided to manage the case in some other way, rather than referring to HealthQuest. This process appears to result in the vetting of some inappropriate referrals.

The senior staff of HealthQuest also provide consultative advice to employers on individual cases, prior to referrals being made. This may involve discussing whether there is a genuine health issue which needs to be assessed or whether the situation could be handled in another way.

Referrals of employees who have previously been assessed by HealthQuest are declined if little time has elapsed since the most recent assessment and there is no significant new information which would have a bearing on the outcome of the previous assessment. For example, where an employee has been assessed as fit to continue and there is no new information which would affect this recommendation. The Acting Director indicates that approximately one such referral is declined per fortnight.

No data is maintained on the number of referrals which are declined, the reason for doing so, or where no further information is received.

HealthQuest does not have a policy or guidelines on the acceptance of referrals. They say that as the circumstances of individual cases varies considerably, it is difficult to be prescriptive. Nonetheless, it should be possible to develop guidelines which encapsulate, at least in a general way, the minimum requirements which need to be met for a referral to HealthQuest. To provide sufficient flexibility these guidelines should not be prescriptive. The purpose of the guidelines would be to provide:

- a standard approach within HealthQuest to the acceptance of referrals;
- transparency of process regarding the minimum requirements which a referral must meet;
- guidance to employers on the minimum requirements they need to meet in making referrals. The guidelines could contribute towards an improvement in the standard of employer's referral information.

Recommendations

3. HealthQuest, in consultation with the Premier's Department and referring agencies, should develop guidelines to assist employers in making appropriate referrals to HealthQuest where medical advice is needed on whether the health of an employee prevents them from undertaking the inherent requirements of their position or to ensure the health and safety of the employee.

4. Referrals to HealthQuest for fitness to continue assessments should only be able to be made by officers with specific delegated authority.

5. All public sector employers who use HealthQuest for fitness to continue assessments should ensure that adequate quality control mechanisms are in place so that referral of employees occurs in a manner which is consistent with the requirements of the Premier's Memorandum 98-1.

2.2.5 Providing reports to employees

The Premier's Memorandum requires that a copy of the information sent to HealthQuest must be provided to the employee. The extent to which this is complied with is variable. HealthQuest's Senior Medical Officer estimates that 10 – 15 per cent of FTC referrals have not seen the employer report. The HealthQuest consultant psychologist indicated that around 50 per cent of the cases he sees have not seen the employer's referral letter, although they may have seen some of the supporting documentation.

In cases where there has been inadequate consultation with the employee prior to making the referral and a failure to provide a copy of the report, the employee may arrive at HealthQuest without knowing the reason for referral. HealthQuest confirmed that such occasions do occur.

HealthQuest usually finds out that the employee has not been given a copy of the referral report when they present for their appointment, although some employees ring HealthQuest prior to their appointment, seeking details of why they have been referred. In this latter type of case, the standard procedure is to suggest the employee make inquiries with their employer. The HealthQuest letter notifying the employee of their appointment states that if they have any queries about the reason for the examination they should contact their employer. Nonetheless, this is clearly not sufficient for ensuring that employees are adequately informed beforehand, not that this is HealthQuest's responsibility. It is the responsibility of the employer.

Provision of a copy of the referral information is fundamental to both transparency and procedural justice. It also promotes efficiency by allowing the employee to prepare for the assessment (eg collection of relevant material).

One option to address this situation would be to ask all employees attending HealthQuest for a FTC assessment, at the commencement of their interview, whether they have been provided with a copy of the employer's report. Where this has not been done they could be clearly informed that they have the option of not proceeding with the appointment until such time as the employer provides them with the report.

While the option of deferring the interview may currently be offered, there is no standard procedure. The option of deferral is raised if the employee is 'unable to settle' or uncomfortable. In some instances employees refuse to proceed with the assessment. On the basis of interviews with a number of HealthQuest staff it appears that an effort is made to salvage the appointment, if at all possible. This is facilitated by the assessing practitioner explaining HealthQuest's role and summarising or reading out information from the employer's report.

It is recognised that it may not be in the interest of the employee to defer the assessment. They may have travelled a long distance, could be running out of leave or have other reasons for wanting a quick resolution.

The disadvantage of the option outlined above is that it puts the onus of checking that the information has been provided, onto HealthQuest. This perpetuates the dynamic where HealthQuest tries to 'rescue' situations which arise because employers have not followed the

policies and procedures set out in the Premier's Memorandum, particularly in relation to transparency and procedural justice.

The preferred course of action is to amend the HealthQuest fitness to continue referral form to make provision for the employee to sign that they have been provided with a copy of the referral documents. Where referrals have not been signed by the employee, they should be returned to the employer. If the employee refuses to sign the form, following provision of the referral documents, the employer should inform HealthQuest that this is the case and the assessment should proceed.

The fitness to continue referral form should also ask the employee to indicate whether they wish to respond to the employers referral material, either in writing or orally at their assessment appointment. Where an employee decides to respond in writing, a time limit should apply, with the assessment proceeding if no written response is received by the deadline.

It is recognised there may be cases where HealthQuest is asked to make an urgent assessment. Nonetheless, the same principle should apply. If there is sufficient time to forward referral information to HealthQuest there should be sufficient time to also provide the employee with a copy.

Recommendation

6. Where employees have been referred to HealthQuest for assessment of their fitness to undertake the requirements of their position, the information contained in the employers referral report should be provided to the employee, prior to their appointment. The HealthQuest fitness to continue referral form should make provision for the employee to sign that they have been provided with a copy of the referral documents and indicate if they do or do not wish to respond. The response can be in writing to HealthQuest or orally at their assessment appointment. If the employee has not signed the referral form it should be returned to the employer for rectification prior to the assessment proceeding. Where employees refuse to sign the form, the employer should certify that every reasonable effort has been made to have the employee sign and that they have been provided with a copy of the referral documents. Time limits should apply for employees who elect to make written responses, with the assessment proceeding if no written response is received within the specified time frame.

Occasionally, employers will refer copies of workers compensation reports to HealthQuest. Under Freedom of Information legislation there is an exemption to providing these type of reports to employees. While HealthQuest does not usually receive these types of reports, they are useful as they provide additional medical assessment information which can be considered in making a recommendation.

HealthQuest has pointed to the inconsistency between the Premier's Memorandum, which requires all information provided to HealthQuest to be given to the employee, and FOI provisions, which exempt the release of some types of information.

Recommendation

7. Consideration be given to amending the Premier's Memorandum 98-1 to clarify that employers are not required to provide employees with copies of material provided to HealthQuest where there is a claim for exemption under Freedom of Information legislation. The amended Memorandum should include examples of appropriate exemptions such as a *real* threat of harm exists or confidential workers compensation reports provided by a third party.

2.2.6 Oral reports from employers

The issue of whether HealthQuest accepts information provided orally by the employer has also been raised. All referrals to HealthQuest need to be in writing. Nonetheless, HealthQuest encourages employers to discuss individual cases, and supplementary information may be provided orally. A principle which underlies the Premier's Memorandum is that employees have a right to know what information HealthQuest is taking into account in making an assessment.

The Acting Director states that the current practice is for employers to be informed that HealthQuest does not accept oral information regarding assessments. Employers are advised that any supplementary information needs to be in writing. In the past additional information has been provided over the phone, which has been documented by notes to file. It was not always the practice to ask for written confirmation. There is currently no formally documented procedure regarding the acceptance of additional information in an oral form.

HealthQuest encourages dialogue with employers on how best to manage individual occupational health issues. They are concerned that the necessity to document referral information should not interfere with their ability to discuss cases with the employer. Ways of bringing transparency to discussions between HealthQuest and employers on individual cases is discussed in section 4, *The relationship between referring agencies and HealthQuest*.

Recommendation

8. HealthQuest should develop a procedure which requires all employers to provide supplementary information relating to FTC assessments in written form. The employer should sign a declaration that they have provided a copy of this supplementary information to the employee. The requirement for the provision of information to be in writing should not preclude dialogue between HealthQuest and the employer on how to manage individual cases.

2.3 Employee understanding of the HealthQuest assessment process

Following acceptance of an FTC referral, HealthQuest sends a letter to the employee notifying them of their appointment time for an assessment. The letter also states that they are "required to attend" and requests they bring copies of relevant health information such as readily available doctor's reports. As the employer should already have informed the employee of the reason for the referral, the letter does not provide this detail. This is appropriate as it is not the job of HealthQuest to undertake functions which rest with the employer. Attached to the letter is a single sided A4 sheet which gives guidance to GMO nominees on the performance of FTC medical examinations.

This letter is the first contact between HealthQuest and the employee. Whilst being informative, it is perfunctory in style.

While provision of the GMO FTC information sheet, to an extent, contributes towards transparency, the intended audience is medical practitioners. A more effective way of communication would be to prepare an information sheet designed specifically for employees.

The wording of the sheet could also be seen to assume an outcome prior to assessment. For example, the sheet asks “what aspects of the client’s condition are interfering with the performance of his or her duties?” and “what duties or tasks are being interfered with?” Neutral wording would be: is there any medical condition which appears to be interfering with the performance of his/her duties? What evidence is there of this condition interfering with particular duties or tasks?

While this may seem a minor point, neutrality of wording can be important in establishing HealthQuest’s independent role, particularly in situations where the relationship between the employer and employee has deteriorated or there is dispute between the employer and employee as to whether a medical condition and/or performance problems exist.

In addition to consultation on why the employee is being referred to HealthQuest, it is reasonable that they be given an outline of what the assessment will involve and by whom and how decisions will be made.

Specifically, there is no written, user-friendly guide for people being assessed by HealthQuest which informs them about:

- what HealthQuest’s role is;
- the independence of HealthQuest from the employer;
- the procedures involved in the process of health assessment;
- whether the employee can be accompanied by another person;
- who makes the decision on whether the employee is fit to continue;
- apart from the medical examination, what other information is taken into account;
- the right to have seen the employer’s referral documentation before attendance at HealthQuest and the obligation of the employer to provide this;
- the right to access personal information held by HealthQuest;
- confidentiality provisions;
- appeal rights which may exist (together with a separate brochure on the appeals process);
and

- the rights and responsibilities of employers, HealthQuest and the employee.

The HealthQuest foyer does not contain any leaflets or other type of information which explains the role of the organisation in relation to either pre-employment or FTC assessments. While the employer has an obligation to inform employees about the reason for referral, it is HealthQuest's role to inform them about the issues listed above.

Some explanation of these matters is provided by HealthQuest assessing practitioners at the commencement of the appointment. This, however, does not provide for standardisation of information provision. It is also clearly desirable that this type of information be provided prior to the appointment.

Recommendation

9. A user friendly guide for people being assessed by HealthQuest should be developed to inform them of the role of HealthQuest, how assessments are conducted, and their rights of appeal, access to information and obligations.

Section 3

The internal processes and controls of HealthQuest

3.1 The process of assessment

3.1.1 Defining the inherent duties of a position

The Premier's Memorandum requires employers to provide HealthQuest with a description of the requirement of the job and to identify any inherent requirements which, in the employer's opinion, cannot be performed. It also advises agencies that it is preferable that the employee agrees that it is an accurate description of their responsibilities. Given that HealthQuest aims to achieve the best possible relationship between employee health status and job requirements, defining what the job requirements are is an important aspect of their work.

HealthQuest states that, given its many years of experience, it is familiar with the majority of roles within the public sector. Position descriptions and/or statements of duties are sought from the employer for those jobs where HealthQuest does not hold them.

At assessment, the duties are explored with the employee to identify those which they can perform, have difficulty with, or unable to perform. HealthQuest reports that there is occasional dispute between employers and employees regarding what constitutes an accurate description of responsibilities, suggesting some agencies may not be attempting to obtain agreement from the employee as required by the Premier's Memorandum. In these circumstances this will also be explored with the employee during assessment. HealthQuest states that it generally gives more weight to employee descriptions of jobs, compared to generic job statements. The Senior Medical Officer states that disagreements usually revolve around whether the employee is fit to do the job rather than the nature of the job.

Workplace inspections by HealthQuest can also be used to examine what are the inherent job requirements. These inspections may also be used where there is a need to more closely define the health issue which needs to be examined, or in the case of stressful workplaces. These inspections can involve case conferences between HealthQuest, the employee, the supervisor and human resources management. Workplace inspections are being used less frequently in recent years due to the cost to the employer and pressure to finalise assessment outcomes.

3.1.2 Accompanying persons

Whether an employee is allowed to have an accompanying person at the assessment is at the discretion of the examining practitioner. The HealthQuest policy outlines issues to consider and possible reasons for either allowing or disallowing accompanying persons. The policy does not favour one course of action over the other.

On the one hand, the potential for accompanying persons to distract or disrupt the assessment process is recognised. On the other, the principle of allowing an accompanying person to be

present is well recognised in a range of human resource management policies, such as disciplinary interviews. If it was decided that it was appropriate to have consistency with these other policies, an option would be for accompanying persons to be denied access only in exceptional circumstances.

The issue of accompanying persons could be seen to relate to the common theme of transparency. Employee concerns are more likely to be acute in the case of individuals who identify as whistleblowers or who perceive that their employer is pursuing involuntary medical retirement. Given the flexibility in the current HealthQuest policy, the issue essentially relates to how it is implemented, particularly in regard to sensitive cases. This includes how reasons for denial of access to accompanying persons are explained.

The review is not in a position to come to findings on how the policy is implemented. It is suggested that the Premier's Department and HealthQuest review implementation practices and the desirability of any changes to either interpretation or the policy approach.

3.1.3 At the assessment interview/examination

HealthQuest states that the assessment interview guides the person through their medical history, focussing on aspects which impact on their capacity to meet the inherent requirements of their job. Work place difficulties, including problems complained of by the employee, such as harassment and lack of training opportunities, are also explored so that these can be brought to the attention of the employer. The history taking includes discussion about the workplace and reason for the employer's referral. The assessment takes into account any work or workplace changes and/or exploration of any adjustment which may be needed. This may include looking at support needs if, for example, conflict resolution is a prerequisite for a return to work. Other measures which may be recommended include peer support, a buddy system, change of supervisor or workplace location.

HealthQuest states there are situations where its assessment concludes that there is no relevant health condition, the problem being of an administrative nature. In these cases the employer and employee will be advised accordingly.

HealthQuest is able to refer employees to a range of specialists who are engaged on a sessional basis. Advocates of whistleblowers have suggested that employees should be able to choose the psychiatrist who will conduct their assessment from a panel.

In the case of FTC assessments of whistleblowers or employees perceived to be difficult, issues have been raised about the procedural fairness of the assessment process. Central to these concerns is:

- whether HealthQuest informs the employee of the details or substance of all allegations made about their conduct, physical and mental health by the referring agency or any of its employees; and
- whether the employee is given the opportunity to respond or put their case.

The HealthQuest position² is that:

“it is not the purpose of an occupational health assessment to inform an employee of the details of any or all allegations made by an employer about the employee’s conduct or health status. The health professional does establish whether the employee is aware of the reason for the assessment, discusses this and asks to hear their story. Whilst procedures are in place, each employee is treated as an individual, their circumstances being unique. The health assessment is not a legal or administrative enquiry or investigation and is not conducted in a mechanistic manner so as to cover each and every detail of information [provided] by the employer. Its purpose is not to investigate liability or guilt but rather the state of health and capacity of the employee to meet the inherent job requirements in a particular work environment. The employer’s information presents a backdrop to this by explaining the reasons for referral and associated concerns. Whilst the employer is expected to provide objective information, whether or not this is conveyed verbatim to the employee at the health assessment depends on how they present. The assessment is not a rigid procedure but rather a skilled and flexible professional process. Systematically putting an employee through a process of interrogation and reliving each event and incident would be potentially deleterious to the employee’s health and counter productive to the assessment process. This is particularly so in this situation where the assessing health professional and employee relationship is not a therapeutic one.”

The Acting Director of HealthQuest also stated that some of the employer’s referral information, which could be regarded as prejudicial, may not be regarded as relevant by HealthQuest. The employee’s response would not be sought in this situation.

HealthQuest goes on to state:

“After discussion with the employee as to the reason for the health assessment, the health professional hears their story and explores any aspects which need clarification in relation to information provided by the employer.”

Whether an employee will be in a position to provide a response will depend upon :

- whether they were provided with a copy of the employer’s report prior to their assessment; and
- whether the HealthQuest assessing practitioner determines the issue relevant to the assessment and requiring a response from the employee.

The position of HealthQuest in relation to what response is sought from the employee can be seen as constituting acceptable professional reasons. Nonetheless, it does not address the issue that, in some circumstances, the employee will perceive that their viewpoint has not been heard.

So while a detailed response to all the issues raised in the employer’s referral information may not be necessary for HealthQuest to make an adequate assessment, the employee may not see

² This is quoted at length given that the way in which assessments are conducted is central to the issues raised in relation to procedural fairness. This information is drawn from the HealthQuest response to written questions from the Ombudsman. The information was provided by Central Sydney Area Health Service. The letter post-dates the Premier’s Memorandum.

it this way. Essentially the issue goes to procedural justice being seen to be done. This issue also highlights the importance of improving the quality and relevance of employer referral letters.

It is the conclusion of this review that the employee should be given the opportunity to respond to all aspects of the information provided by the employer. The primary advantage of this approach is that it removes the possibility of the employee claiming or actually being treated in an unfair manner. The employee should have the option of responding in writing or orally at their assessment appointment, or both. As recommended earlier, the employers referral should include a signed acknowledgment from the employee that they have been provided with a copy of the referral information and either do or do not wish to respond.

There is also a need for HealthQuest to take care in determining what weight it places on information provided by the employer where the employee identifies or is identified as a whistleblower or a 'difficult' employee. In such cases allowance has to be made for the possibility of a lack of objectivity on the part of the agency.

Recommendation

10. Employees who have been referred to HealthQuest for fitness to continue assessments should be given the option of making a written response to the information provided by the employer, prior to the outcome of the assessment being finalised. HealthQuest needs to take care in determining what weight to place on information provided by the employer where the employee identifies or is identified as a whistleblower or 'difficult', by considering the possibility of a lack of objectivity on the part of the agency.

3.1.4 Input from treating doctors

It is common practice for HealthQuest to obtain reports from employee's treating doctors, with written authorisation. Where there is a difference of opinion between treating doctors and the HealthQuest assessment, it is usual for the treating doctor to be contacted so that this can be discussed. The Acting Director stated that if consideration was being given to medically retiring an employee against their will it is his practice to obtain at least one treating doctor's opinion. Where there is a difference of opinion he would get both doctors to talk to each other. It is possible that one or both of the doctors may have information which the other was not aware of. HealthQuest states that the most common situation is where they assess the employee as fit to return to work and their treating doctor disagrees.

3.1.5 The adequacy of medical records to support decisions

If further information is required from the treating doctor or the employee, or referral to another specialist is required, this is arranged. In these circumstances the employers will be sent an interim advice letter.

One of the procedural issues arising from some complaints is whether the HealthQuest record contains sufficient information to:

- explain or justify the diagnosis; and
- whether conclusions on the relationship between the diagnosis and the elements of work which the employee is unable to do are clearly stated.

The Acting Director stated that the amount of supporting documentation is generally adequate, although there is some variation between doctors. In the situation where notes for an assessment are regarded as inadequate, this is drawn to the attention of the examining doctor, with a request for the situation to be remedied. The Acting Director indicated that the level of documentation could be improved. The notes from the assessment, along with supporting documentation, should always be sufficient to justify the diagnosis and explain how the condition affects work capacity.

Where the assessment is conducted at HealthQuest the assessing practitioner discusses the case with the Director or Deputy Director prior to the employee leaving. This allows for a critical review of the assessing doctor's findings and is an important quality assurance mechanism. In the case of assessments done by GMO nominees in external locations, all reports are reviewed by the Director or Deputy Director. Where reports lack necessary detail, this is drawn to the attention of the doctor who is asked to provide a supplementary report.

Recommendation

11. HealthQuest should ensure that the record of assessments contain sufficient detail to justify all findings and recommendations.

3.2 Communication of the outcome of assessments

The following broad outcomes may result from a HealthQuest FTC assessment:

- the employee is fit to undertake the inherent duties of the position;
- the employees is fit to continue with work adjustments and/or a rehabilitation program;
- the employee is unfit but will be fit to return to work at a future date; or
- the employee should be medically retired.

The extent to which the outcome of the assessment is adequately communicated to the employee appears to be variable. This may occur in one of a number of ways:

- at the conclusion of the assessment the doctor informs the employee that they will be medically retired. (This appears to only happen occasionally, in clear cut cases.)
- giving the employee a fairly full outline of the reasons for the decision at the conclusion of the assessment interview;
- giving the employee some indication of current thinking, without being definitive; or

- not providing any indication of the outcome at the conclusion of the assessment. In these cases the outcome is communicated in writing.

The employee is provided with a copy of the outcome letter at the same time as the employer. Previous practice was to send the outcome letter to only the employer, who was responsible for informing the employee. As this was not always happening, HealthQuest started to also send outcome letters direct to employees.

The Department of Corrective Services stated that its preference was for the employer to inform employees of the outcome of assessments as this was properly the responsibility of the employer. They noted that on occasion the employee receives their copy of the outcome letter before the Department.

Outcome letters where the employee is assessed as fit to continue usually contain more detail than is the case for medical retirements. This first category of letter may contain an outline of the reasons for the referral by the employer, the relevant health findings (usually not detailed) to support the stated conclusion and any recommendations such as adjustments. If applicable, it also contains responses to specific questions asked by the employer. No documentation or additional explanation as to the basis for the assessment is routinely provided to an employee over and above that provided to an employer.

Where the employee is assessed as not fit to continue, reasons to support this finding are not usually provided. This also creates difficulties for the appeals process as the employee will not have been given sufficient information to know what they are appealing against.

The current method of communicating with employees regarding the results of assessments is unsatisfactory in a number of respects.

Firstly, an employee who is not provided with any feedback at the conclusion of the assessment interview may never be provided with reasons for the outcome.

There needs to be some form of clear communication at the end of the assessment interview. At a minimum this should:

- summarise the purpose of the assessment;
- state what point has been reached in the process;
- indicate whether any further information is needed;
- indicate the likely timeframe for completion of the assessment process; and
- indicate how the employee will be informed of the outcome.

The assessing practitioner should give the employee as much indication as is possible of their opinion, even if this is they 'don't know'. Effective communication at this point is particularly important as this may be the last time the assessing doctor will meet with the employee and thus be the only opportunity for a face-to-face explanation. If one accepts the Health Care Complaints Commission assertion that poor communication is the basis for most complaints, improved practice in this area holds the potential to improve employee understanding of why

particular decisions have been made and reduce the level of dissatisfaction with the outcome of assessments.

It is accepted that the HealthQuest practitioner may be faced with a complex situation in deciding what to communicate. Factors which could affect what they say may be fear of being misheard or misinterpreted, some degree of uncertainty as to what their final opinion will be, and concerns about raising false hopes about adjustment.

The former Deputy Director was of the view that communication with employees on outcomes/directions is an aspect of work that is done with different degrees of skill and is in need of improvement.

Another area which needs to be addressed is improved communication between employers and employees where adjustment has been recommended. The employee will be aware that adjustment has been recommended, as they will have received a copy of the letter to the employer. If the employer decides that adjustment will cause unjustifiable hardship, and the employee is unable to fulfil the inherent requirements of the job, HealthQuest is left with no alternative but to issue a retirement certificate. The employee will only be aware of any dialogue between HealthQuest and the employer regarding the practicality of adjustment if the employer has kept them informed. Where this does not occur the employee simply receives a copy of the retirement certificate in the mail, with no explanation as to why the adjustment could not be made. This is clearly sub-optimal communication which is likely to lead to dissatisfaction and complaints.

Clearly, there is a need to improve communication with employees on the outcome of assessments and their consequences. The Department of Corrective Services has proposed bringing all parties together in a case conferencing approach following assessment, to discuss possible outcomes. Details of this approach are discussed in section 4.

Recommendation

12. The Premier's Department, HealthQuest and representatives of referring agencies should consider ways in which to improve the communication of the findings and outcomes of HealthQuest assessments.

3.3 Special procedures for whistleblowers

There have been allegations of HealthQuest being inappropriately used by employers to medically retire employees who are 'whistleblowers' or in some way 'difficult'. This raises the issue of whether HealthQuest should have any special procedures which are applied to the assessment of these cases.

There are currently no special procedures unless the situation falls under the protected disclosures legislation. In this circumstance the outcome letter to the employer ensures that the information which the employee has made available about such a disclosure is not told to the employer. Apart from this provision, HealthQuest has indicated that it does not see the need for special measures.

The case against special procedures is that assessment processes should be adequate to deal with all cases. In essence the argument is that HealthQuest uses its occupational medicine expertise to assess each case, and the outcome of their professional judgement is not influenced by extraneous factors such as whether the employee is a whistleblower. It would also be difficult to apply special procedures as not all whistleblowers would be identified. For example, if an employee had made a protected disclosure this may not be known by either the human resources section of their department or HealthQuest.

While it is accepted that all assessments should be conducted in a uniformly professional manner, the case for special procedures essentially revolves around transparency of process. Perceptions that HealthQuest places the interests of the agency ahead of those of the employee, or of collusion, are often created because the processes in which individuals have to participate are not well understood. The potential for this is exacerbated when established policies and procedures relating to how an employee should be referred to HealthQuest are not followed. This can be dealt with by increasing the transparency of process for all assessments and taking special care in selected cases to ensure that all policies and procedures are followed.

This review has made a number of recommendations which address these issues. For example, providing information about the relationship of agencies to HealthQuest, the procedures which will be involved in the process of health assessment, the personnel involved in decision making or review, as well as information about individual rights. This type of information should be provided in a printed form to all persons being assessed by HealthQuest.

There is, nonetheless, a case for taking special care in relation to fitness to continue assessments. In essence this is a risk management approach. Clearly there is the potential for a greater level of apprehension on the part of employees who have been referred by their employer for FTC assessments, where there is a possibility that they will be medically retired against their will. These cases can be easily identified by HealthQuest.

While the principles of transparency and procedural justice should be fundamental to all components of HealthQuest's work, it makes common sense to take particular care in situations where the circumstances of the case and its outcome are sensitive and more likely to be open to challenge. This does not call so much for special procedures but rather special care to ensure that there is a high standard of communication to guard against the possibility of misapprehension. By identifying employer initiated FTC assessments as the cases which need special care, the problem of non-identified whistleblowers is also effectively addressed.

Recommendation

13. In the case of employer initiated referrals of fitness to continue health assessments, the employer and HealthQuest should take special care to ensure a high standard of communication so that employees are fully aware of assessment and decision making procedures.

3.4 Other policies and procedures

HealthQuest has a range of policies and procedures to guide its operations. They are reviewed periodically. In addition, NSW Health Department circulars are reviewed at their time of issue to determine if there is a need to develop or modify HealthQuest policies and procedures.

3.4.1 Employee rights and responsibilities

HealthQuest has two policies relating to employee rights and responsibilities. One is a general policy and the other relates to information about service provision.

The latter policy states that employees are provided with the same information on service provision as is given to health professionals so they may be fully informed about the processes which will be undertaken. This refers to providing employees with the single-sided, one page sheets provided to GMO nominees on how to conduct pre-employment and fitness to continue assessments. As previously discussed in section 2, this is not regarded as an adequate level of information provision for employees. The statement that employees are provided with the same information as health professionals is misleading. More detailed guidelines are also provided to health professionals.

The general rights and responsibilities policy relates to employees and covers access to 'care', respect and dignity, privacy and confidentiality, personal safety, informing employees of the identity and professional status of HealthQuest staff, access to personal information, refusal to undertake assessment and employee responsibility to provide accurate and complete information and respect and consideration.

There is no specific HealthQuest policy on the rights and responsibilities of employers, although the Premier's Memorandum could be seen as imposing a range of obligations on employers.

A copy of the policy is not provided to employees referred to HealthQuest on a routine basis. Rather than simply provide a copy of the policy it would, however, be preferable for HealthQuest to produce a more user friendly guide in the form of a leaflet. More information needs to be provided on some issues than is currently contained in the policy. For example, the policy states that employees "have the right to obtain, from the HQ professional, information regarding any health assessment undertaken." The leaflet should explain how medical records can be accessed. Another area where more detail is needed relates to refusal to undertake assessment. The policy states "clients may refuse to undertake assessment, with any consequences being a matter for the referring employer to determine." The range of consequences should be outlined so that employees are aware of the possible consequences of their refusal.

3.4.2 Confidentiality

Policies and procedures regarding confidentiality are generally consistent with the standards of NSW Health policies. All HealthQuest staff are required to sign a declaration which states that they have read and understand procedures relating to confidentiality.

Employees referred to HealthQuest for assessments are requested to sign a form which provides authority for information to be released to their employer and other parties such as the Superannuation Board and for information to be sought and discussed with their treating practitioners. Procedures are also in place to ensure that inappropriate material is not disclosed to people making telephone inquiries.

The standard approach of HealthQuest is not to disclose to employers the *details* of findings but rather to provide more generic information. For example, medical records are never provided and rather than providing a precise diagnosis, more general descriptions may be used. This is particularly the case for stigmatised conditions.

3.4.3 Access to personal information

Individuals are able to use Freedom of Information (FOI) legislation to apply for access to information on their HealthQuest file. HealthQuest receives a relatively large number of FOI applications, with 94 requests in 1998 and 66 in 1999. FOI applications to HealthQuest make up a significant proportion of the total applications to Central Sydney Area Health Service.

HealthQuest reports that a reason for the high number of applications is that employees often want information to support workers compensation claims. Priority is given to processing applications and the agency reports quick turn around times. The approach of HealthQuest is to provide applicants with all information (including HealthQuest generated medical records), except records generated by third parties, which is exempt. For example, workers compensation medical reports which have been prepared by another organisation are not released. HealthQuest reports that most applications result in all documents being released.

Appeals against decisions to withhold information are processed by Central Sydney Area Health Service. This is appropriate as it provides some degree of independent scrutiny.

Consistent with the legislation, if HealthQuest believes a person may be seriously affected by personally accessing information relating to their physical or mental health, the records will be forwarded to the applicant's nominated medical practitioner. HealthQuest estimates that in around 50 per cent of cases the information is released direct to the applicant. Previously the practice of HealthQuest was to only release information to treating doctors. It is at the discretion of the applicant's nominated medical practitioner as to whether they provide their patient with copies of the information and the extent to which they inform them of the file's contents.

Persons who request access to their records are provided with an information sheet which tells them how to apply. Records are only provided after receipt of an FOI application. HealthQuest has a written procedure on FOI which is consistent with the above description.

This review has identified the following concerns in regards to HealthQuest's FOI procedures:

- As there is no general information leaflet about how HealthQuest works there is no automatic mechanism which informs employees of their right to access their file under FOI legislation. The system therefore relies on individuals knowing their right or making inquiries.
- The information sheet on how to access HealthQuest records under FOI is unnecessarily bureaucratic in tone and assumes a reasonably high standard of English comprehension.
- The information sheet only advises people how to make an application. Additional information such as time limits for processing applications, the type of information which is exempt, how to correct inaccurate information on file, and appeals rights are not covered.
- HealthQuest does not have an application form for FOI applications. Such a form would make it easier to apply.

The Ombudsman reports that Area Health Services have been able to significantly reduce the number of applications made under FOI by adopting the approach of releasing information people are entitled to, without the need for formally using the provisions of FOI. HealthQuest reports that the reason they insist on all applications being made under FOI legislation is to ensure that there is a formal screening process.

While there is a need for a formal screening process to determine which documents can be released and for HealthQuest to ascertain the identity of the applicant, it does not follow that this has to be done under FOI. While the provisions of the FOI legislation would still govern the process, a less bureaucratic, more user friendly approach could be taken by agreeing to release documents without the need for invoking FOI provisions.

Recommendations

14. All persons who are referred to HealthQuest should be informed of their right to access personal information on their HealthQuest file, apart from documents which would be exempt under Freedom of Information legislation. This information about their right of access should be incorporated into the general information which is provided to employees at the time they are notified of their assessment appointment.

15. Persons who wish to access personal information on their HealthQuest file should not be required to do so by invoking the provisions of Freedom of Information legislation. Nonetheless, a formal application should be required so that the person's identity can be established. HealthQuest should apply Freedom of Information principles in processing applications.

16. When persons make inquiries or apply for release of personal information held by HealthQuest, they should be provided with material which advises them on how applications are processed and their rights.

17. HealthQuest should develop an application form to be used by employees when applying for access to personal information held by the agency.

3.4.4 Complaint handling

HealthQuest provides periodic reports to Cental Sydney AHS on the number and nature of complaints, action taken and outcomes.

The HealthQuest policy is to promote the handling of complaints at the local level, whilst recognising a person's right to make a complaint to external bodies. The policy states all complaints will be given serious consideration and that complaint handling is promoted as a valued activity for the organisation and its clients.

Given the stress placed on HealthQuest staff arising from the publicity surrounding complaints made over recent years, it would appear that the organisation has become defensive in relation to complaints. While this is understandable, there is a need to move beyond this and foster a culture which recognises the opportunities for learning through complaint handling.

In order to foster such a culture HealthQuest may need some external assistance through access training and relevant publications. For example, the NSW Ombudsman's publication on *Dealing with Difficult Complainants* (1998), provides valuable practical guidance in a range of areas. Reference to the recently developed NSW Health principles for dealing with matters referred from the Ombudsman's Office may also provide some guidance on how HealthQuest's current policy could be extended. In addition, the HCCC is developing a training program to assist Area Health Services in dealing with complaints. HealthQuest could benefit from participation in this program.

Recommendation

18. HealthQuest needs to place greater emphasis on building an organisational culture which develops a systematic awareness that effectively dealing with complaints provides the opportunity to address employee and employer concerns and to improve the administration and operations of the organisation.

3.5 Quality assurance

3.5.1 Current measures

The following activities currently contribute towards quality assurance at HealthQuest:

- Some occupational medical practitioners at HealthQuest's central location have undertaken the training necessary to be accredited as authorised medical officers by WorkCover.
- Proof of continuing registration of all practitioners is checked by HealthQuest on an annual basis.
- Client satisfaction surveys occur on a periodic basis, although the results do not appear to be fed back to all staff.
- All doctors are provided with written guidelines on how to conduct fitness to continue and pre-employment medical assessments.
- A reasonably comprehensive range of policies and procedures have been developed by HealthQuest to provide for a consistency of approach.
- Only straightforward fitness to continue assessments are conducted by external GMO nominees. All other FTC assessments are conducted at HealthQuest's offices.
- Most specialists who undertake assessments for HealthQuest have their own private practices. (Those who do not are semi-retired.)
- Clinical guidelines have been developed in some areas. These are in the areas of measuring hearing, weight, height, vision, blood pressure, urinalysis, and VDU screening.
- Where the report of the employee's treating specialist differs with the HealthQuest specialists opinion, the report is referred to the HealthQuest doctor for review and re-consideration of their opinion.
- The outcome of all complex or difficult fitness to continue medicals are discussed by the Director or Deputy Director with the doctor who has made the assessment. The purpose of these discussions is to critically review the findings of the assessing doctor.
- The number of external GMO nominees has been reduced as a quality related measure.
- Reports from local GMO nominees are assessed centrally by the Director or Deputy Director with the intention of ensuring a consistent approach and limiting bias that may occur in a variety of settings. Where the GMO is dissatisfied with a report, this is drawn to the attention of the local GMO nominee and a supplementary report is requested, with a further examination of the employee if needed. (On the basis of the standard of their reports, the A/Director of HealthQuest reports he is satisfied with quality of GMO nominees.)

- Staff are encouraged to be involved in internal and external continuing education activities.
- Up until recently it has been the practice of the Director of HealthQuest to refer copies of the consultant's reports commissioned by the Medical Appeals Panel to the medical practitioner(s) who made the original HealthQuest assessment. The practice of referring these reports has not been occurring on a routine basis in recent times.

3.5.2 Improving quality assurance

With the exception of the Medicals Appeals Panel and the involvement of specialists in private practice in making assessments, there are no external quality assurance processes.

HealthQuest has not been formally accredited by any external agency. Accreditation assumes a peer group who assesses whether a service meets the industry norm. Existing independent accreditation mechanisms in the health sector may not be relevant to the work of HealthQuest as surveyors lack expertise in occupational medicine.

One option for improving quality assurance would be to have an independent specialist in occupational medicine conduct regular, random quality assurance audits of HealthQuest's determinations and processes in relation to all core functions. The purpose of these audits would be to identify areas where systemic improvements could be made to the work of HealthQuest. It would not be the intention to alter the outcome of individual assessments as this power appropriately rests with the Medical Appeals Panel.

Another initiative would be for HealthQuest to develop a quality plan. This plan would critically examine the organisation's core business to identify areas where performance could be improved. Strategies could be developed to address these areas, with progress measured against milestones.

Policies and procedures developed for external GMO nominees do not provide sufficient guidance of the sorts of issues which they should be considering in relation to adjustment. Improved guidance in this area would contribute to the quality of external assessments.

HealthQuest could also introduce a requirement that all practitioners who undertake assessments need to provide proof, on an annual basis, that they are actively engaged in the continuing education program of their relevant professional organisation. It is debatable about whether this requirement is reasonable for general practitioners in rural areas where there are less training opportunities. Nonetheless, the requirement should be regarded as a minimum standard of practice for all specialists. As specialist colleges already require their fellows to participate in continuing education, provision of proof of on ongoing membership of the College should be regarded as sufficient to establish continuing accreditation.

Recommendations

19. An independent specialist in occupational medicine should conduct regular, random quality assurance audits of HealthQuest's determinations and processes in relation to all core functions for the purpose of identifying trends and areas where

systemic improvements can be made. (The power to modify the outcome of individual assessments would continue to rest exclusively with the Medical Appeals Panel.)

20. HealthQuest should develop a quality plan which identifies areas where performance could be improved. The plan should contain strategies to address these areas, with monitoring of progress against milestones.

21. In the interests of quality assurance it should be a standard procedure of HealthQuest to refer all consultants reports commissioned by the Medical Appeals Panel to the medical practitioner(s) who undertook the original HealthQuest assessment. HealthQuest policies and procedures should be amended to reflect this.

22. All specialists who undertake assessments for HealthQuest should be required to show proof, on an annual basis, of continued membership of their relevant College.

23. HealthQuest should develop guidelines for GMO nominees in external locations on workplace adjustment.

3.5.3 Accountability

There is a need for greater clarity in relation to who is responsible for particular aspects of HealthQuest's governance. Organisations with areas of responsibility include Central Sydney Area Health Service, NSW Health, the Premier's Department (in relation to setting overall policy) and the Director of HealthQuest. A clear statement which delineates respective areas of responsibility would assist.

HealthQuest comes under the management of Central Sydney AHS. Accordingly the direct line of accountability is to the Area Board and senior management. The issue of where HealthQuest is most appropriately placed is being examined by a separate structural review.

There are, however, a number of accountability issues which do not relate to where HealthQuest is placed in the structure of the NSW health system. The first of these is adequate reporting of performance.

The most recent Central Sydney AHS annual report only contains a brief reference to the function of HealthQuest. This is accompanied by data on the number of staff and occasions of service. The fact that HealthQuest makes up a large proportion of FOI applications is also mentioned. Given the important role of HealthQuest in providing an independent safeguard in the area of public sector medical retirements and the genuine public interest nature of this issue, there is a case for better public reporting mechanisms, regardless of how the issue of structure is addressed.

This could take the form of enhanced reporting in the Central Sydney annual report or the production of a separate HealthQuest annual report. While this would be an additional financial burden for the organisation, for which funding is presumably not available, it could also be used as a marketing and educational tool.

There is also a need for HealthQuest to develop the collection of performance indicator data. The capacity of the organisation to report against performance is currently reasonably limited. For example, it should be able to report on:

- the number of FTC medicals initiated by employers and employees;
- the outcome of FTC medicals, by the variable of whether initiated by the employer or employee;
- the number of FTC referrals declined by HealthQuest; and
- achievements in relation to the proposed quality improvement program.

Performance indicators should serve the dual purposes of enhancing internal monitoring and public accountability.

Recommendations:

24. The governance structures and annual reporting requirements of HealthQuest should be enhanced. The form this should take to be resolved following resolution of where HealthQuest should be placed in the structure of the NSW health system.

25. HealthQuest should develop a series of performance indicators to enhance internal monitoring of performance and public accountability. Performance against key indicators should be included in the organisation's annual report.

Section 4

The relationship between referring agencies and HealthQuest

This section reviews the relationship between referring agencies and HealthQuest in the context of the Premier's Memorandum 98-1. In addition to interviews with HealthQuest, interviews were conducted with senior human resources staff in the central offices of the Department of Corrective Services and the Department of Education and Training. Due to time and budgetary limitations it was not possible to undertake a more comprehensive scan of this aspect of the terms of reference.

Issues relating to the adequacy of employer – employee consultation prior to referral to HealthQuest and how referrals are made have been discussed in section 2.

4.1 Perceptions of conflict of interest

HealthQuest is a self-funding organisation, charging employers on a fee for service basis. Because HealthQuest is being paid by the employer, some complainants have concluded that they place agency interests above those of the employee. Given that HealthQuest is now in a competitive market for all aspects of its work, other than FTC assessments, the perception of wanting to favour the employer could be reinforced.

These perceptions are difficult to address within the current structural arrangements. Nonetheless, it is most unlikely that there will be any move away from HealthQuest being a self-funding organisation.

Perceptions of bias are often created because the processes of the health assessment and the role of HealthQuest are not well understood. One way perceptions of conflict of interest can be dealt with is to increase transparency and giving employees confidence that the organisation places a high value on accountability and procedural justice. This can be done by providing information on the ethical obligations of HealthQuest staff, the procedures which will be involved in the process of health assessment and the personnel involved in decision making and review, as well as information about individual rights. The key to this is for HealthQuest to give priority to actively communicating that it is an organisation which is committed to accountability, transparency and procedural justice. While this may already be done in one-to-one communications between HealthQuest staff, employers and employees, there is no evidence of this in the perfunctory and overly bureaucratic nature of correspondence nor in the lack of adequate information available to employees on how the organisation operates, particularly in relation to assessments. Recommendations to address these issues have been made in sections 2 and 3.

4.2 The nature of the relationship between HealthQuest and departments

The Department of Education and Training described a generally positive relationship with HealthQuest. This was characterised by good dialogue, attention to procedural correctness by HealthQuest and a responsiveness for urgent cases. Nonetheless, areas for improvement were identified and these are discussed below. By way of contrast the Department of Corrective Services characterised its relationship with HealthQuest as one of frustration. The central theme of the Department's complaints regarding HealthQuest appear to relate to what should be the intrinsic requirements for the position of prison officer, the practicality of recommendations for adjustment and the absence of substantive dialogue or communication to give the Department more guidance on how to handle individual cases.

4.2.1 Inherent requirements

The Department of Corrective Services expressed the view that HealthQuest is too rigid in its determination of minimum health requirements to meet the intrinsic duties of being a prison officer. The example of eyesight requirements was provided. HealthQuest was commissioned by the Department to survey the job demands of prison officers, work out the health requirements and provide advice to the Department. As part of this process HealthQuest determined that prison officers need to have uncorrected eyesight of no worse than 6/12 in the weaker eye³. This has the effect of meaning that applicants who need to wear glasses or contact lenses to correct a lower level of acuity are assessed as not fit to be prison officers. This occurs at the time of pre-employment screening. The basis for the requirement is that if glasses were dislodged a prison officer would not have satisfactory vision and this could be dangerous in certain circumstances.

The Department has informed HealthQuest that it believes this requirement should be liberalised. The Department prefers to take a risk management approach to the situation, arguing that the likelihood of a dangerous situation arising is very low.⁴

In support of the Department's position is the fact that there is no ongoing program of testing prison officers beyond the pre-employment stage, that there are prison officers who wear glasses, and an absence of evidence to show that this has constituted a problem, although not all prison officers who wear glasses may have vision below the prescribed standard.

This situation puts the Department in a difficult position. Should it require all prison officers to have periodic eyesight tests? If they did, would the cost of the program and the loss of experienced prison officers be justified by the level of risk posed by these prison officers continuing to work?

³ This is the World Health Organisation definition of abnormal vision.

⁴ The NSW Equal Opportunities Tribunal has found that this eyesight requirement does not constitute unlawful discrimination under the NSW Anti-Discrimination Act. In the case of complaints by two unsuccessful applicants for the position of prison officer, the Tribunal heard conflicting expert evidence on whether the requirement was reasonable. The Tribunal decided to prefer the views of the Director and Deputy Director of HealthQuest who testified that the requirement was necessary "albeit in this particular instance, not without some hesitation".

If, however, the Department does not conduct such testing and some adverse consequence occurs because a prison officer of poor eyesight was not tested and medically retired, would the Department have a legal liability?

The difference of opinion essentially revolves around defining the inherent requirements of the job of prison officer. Case law states that an inherent requirement is one which is fundamental, intrinsic or essential to the position. HealthQuest has used its medical expertise to define the requirement in a particular way.

In essence the Department takes the view that the HealthQuest position cannot be justified if one takes a risk management approach. HealthQuest takes the perspective that as an independent body it has the role of determining the inherent requirements of a job, using its expertise in occupational medicine. It also says this particular case is an unusual example.

While it is beyond the scope of this review to resolve this issue, it is drawn to attention as it sheds light on how a fundamentally different approach to assessing the issue of risk has contributed to a strained relationship between HealthQuest and a government department.

4.2.2 The outcome of assessments and the issue of adjustment

The Premier's Memorandum puts a strong emphasis on the employer making adjustments to accommodate the health condition of the employee, where possible. The final decision as to whether reasonable accommodation can be made is one for the employer. The role of HealthQuest is to make a recommendation. If, however, HealthQuest has recommended the employee should be medically retired, the employer must act in accordance with this advice. Similarly, the employer cannot medically retire a person unless HealthQuest has made such an assessment.

On the basis of consultations there appears to be a significant difference between the approach taken to adjustment by HealthQuest and employers. Whether the response of employers interviewed for this review is representative of other agencies is not known.

Changes in the public sector appear to have constrained the extent to which adjustment can be accommodated by employers. This is a point made by both HealthQuest and employers. Increasingly employers are requiring able bodied persons who are capable of fulfilling the full range of duties of their position. Factors which are causing this are said to be:

- the increasing number of positions which require multi-skilling. The extent to which disability can be accommodated may be limited if a wider range of skills are required;
- budgetary constraints mean that it is increasingly difficult for employers to 'carry' employees who may not be fully productive;
- the cost involved in providing adjustment (eg retraining); and
- increasing restrictions on portability within organisations (eg between cost centres)

All these factors appear to have resulted in some tension between HealthQuest and employers on the extent to which adjustment can be reasonably accommodated. While HealthQuest sees itself as an organisation which takes a careful approach to determining whether an employee can fulfil the inherent requirements of a position, it also see itself as an organisation which advocates for adjustment if this is possible. The employer perspective is that many of the adjustment recommendations by HealthQuest are impractical and would not be made if HealthQuest had a better understanding of the nature of particular jobs and the operating environments of government departments.

For example the Department of Education and Training says that HealthQuest assesses some cases as not fit for teaching duties, but fit for administrative work. The Department says that this cannot be implemented as the Acts under which teachers and clerical staff are employed are different and clerical staff are selected only on the basis of merit.

The Department felt there was a need for HealthQuest to have a better understanding of the intrinsic requirements of the job of teaching. For example, where it was recommended that a teacher be retrained to teach in another area, for example, not fit for physical education teaching, HealthQuest did not appear to understand that the level of retraining may be significant in both time and cost.

Similarly, the Department of Corrective Services says it receives assessments which state that an employee is not fit to continue as a prison officer but is fit for other duties. The Department says that prison officers have been recruited to do a specific job and some do not have the skills necessary for other work. The Department also says that whilst it has asked HealthQuest to provide rehabilitation advice in its FTC assessment reports, this has not been forthcoming or there has been only a temporary improvement in the type and quality of advice provided, following complaints.

The tensions between HealthQuest and employing agencies regarding adjustment may reflect the distinct perspectives which arise from different functions. On the one hand HealthQuest, from the perspective of occupational health, sees its job to advocate for adjustment whereas the increasing constraints experienced in the operational environment of government departments limits the extent to which adjustment is viewed favourably.

4.2.3 Communication between HealthQuest and agencies

Both Departments saw the need for a greater degree of dialogue with HealthQuest.

The Department of Education and Training was of the view that where there is a difference between the supervisor's report and the employee, HealthQuest tends to put more weight on employee claims. The Department is of the view that there is no opportunity to have further input to the assessment process, following referral. They would particularly like to have input prior to the formulation of recommendations relating to adjustment. Clearly, this has the potential to be a contentious issue as it could lead to perceptions of improper collusion between HealthQuest and the employer.

It also needs to be recognised that the information HealthQuest can release to the employer regarding the individual employees is constrained by existing policies and procedures and privacy legislation.

The Department of Corrective Services proposed that broader consultation prior to determining the outcome of fitness to continue assessments could be done in a transparent way, so as to overcome any perceptions of collusion. They have proposed that following assessment, there should be a joint conference involving all parties, to discuss possible outcomes. Participants would include the employee, their nominated advocate, possibly their treating doctor, HealthQuest and the employer. The role of the conference would be to bring all parties together to review options in the light of the assessment.

Advantages of such a model would include:

- it would be transparent as the consultation between the employer and HealthQuest would take place in the presence of the employee;
- issues relating to adjustment from both HealthQuest's and the employer's perspective could be fully explored;
- it would foster discussion and better understanding by both the employee and the employer of the assessment and its implications;
- it would provide an opportunity for any issues regarding procedural fairness or the outcome of the assessment to be aired and possibly resolved; and
- it would foster a case management approach to addressing the employee's health issues.

Disadvantages of such a model would be:

- it would involve the disclosure of confidential medical material to the employer, beyond what is currently regarded as normal practice;
- the employee may feel coerced to be involved when they did not wish to be;
- it may raise false expectations in employees of the possibility of adjustment being made;
- it is more resource intensive than the current system; and
- it could lead to delays in determining the outcome of assessments.

Such an approach would not be needed for all FTC assessments. For example, in the case of an employee with terminal cancer where the outcome of the assessment is clear, there would be no benefit in taking a case conferencing approach. It should be possible to readily identify those cases where this approach would be possible. This approach would also overcome the problems currently associated with communicating the outcome of assessments, which are outlined in section 3.

The issue of privacy could be overcome where the employee gave permission for details of their health assessment to be disclosed to the employer. It may also be possible to adopt a case conferencing approach where only limited details of the health assessment were disclosed if the employee did not consent to full disclosure.

Both of the Departments consulted were of the view that there needed to be further consideration of the optimal approach to take to privacy. They are of the opinion that they are placed in a difficult position by not being given sufficient details of the health status of their employee to allow them to manage the situation. They take the view that they should be provided with this information, along with strict privacy obligations.

Recommendation

26. The proposal for a joint conferencing approach to discuss possible outcomes which flow from complex or disputed fitness to continue assessments should be considered by the Premier's Department in consultation with HealthQuest and referring agencies.

4.2.4 HealthQuest perspective

The former Deputy Director of HealthQuest is of the view that only a handful of Departments have particularly good practice in relation to the management of employees with health related performance problems, with only a further one quarter to a third of employers having 'reasonable practice'. Nonetheless, there did appear to be a consensus that practices had improved since the issuing of the Premier's Memorandum in January 1998. This improvement has not, however, been uniform across referring agencies.

Concern has been expressed by HealthQuest that many employers do not appear to have an adequate understanding of their occupational health and safety obligations. This results in a good deal of time being spent by senior HealthQuest staff in explaining issues to employers. The lack of understanding was also said to have resulted in inappropriate expectations of HealthQuest 'rubber-stamping' decisions of the employer. In particular, HealthQuest identified the following issues which apply to agencies with sub-standard practices:

- a lack of understanding of the role of HealthQuest and how this is different to that of both treating and insurance doctors; and
- a lack of understanding of what to expect from HealthQuest.

HealthQuest says there are already opportunities for dialogue with the employer in relation to individual cases. It was said that there is always the opportunity for the employer to contact HealthQuest to discuss recommendations relating to adjustment if the employer does not feel that all relevant facts have been taken into account. It was said that where new objective information had been provided, HealthQuest had been prepared to change its recommendation. On some occasions employers have been rung by HealthQuest to explore the nature and extent of adjustment which could be made prior to recommendations being formulated, although it was acknowledged that the extent to which this occurs may depend on the personal style of different doctors.

While there can clearly be benefits in a greater level of dialogue between HealthQuest and the employer, (eg the HealthQuest doctor may be able to get the employer to see how adjustment could be made,) there is clearly the risk of this being perceived as improper collusion. To avoid this it would be necessary for the dialogue to occur in a transparent way. This would mean the employee should have the right to comment on any new information which HealthQuest proposed to take into account in determining the outcome of the referral.

HealthQuest comments that it tries to encourage earlier referrals, at the onset of problems, so as to allow for proactive intervention before problems compound.

HealthQuest reports that it actively encouraged employers to telephone and discuss individual cases. The Director and Deputy Director also attempt to educate staff through one-to-one consultations in relation to individual cases. This usually occurs where the referral is in some way inadequate.

Other educational activities engaged in by HealthQuest include talking at various cross-agency forums of human resources managers and in-house staff development days. HealthQuest has also previously conducted one day forums for human resource managers which were well attended. However, these forums have not been held in recent years. As a self-funding organisation competing with the private sector HealthQuest sees constraints in providing non-revenue raising educational activities. Nonetheless, the need for more activities of this kind is acknowledged.

Section 5

Internal processes and controls in the operation of the Medical Appeals Panel

The MAP sits within the administration of the NSW Health Department. The body was established in 1980 by an administrative decision. The Chair of the MAP is appointed by the Director General of Health. He is supported by an executive officer who is employed by the Department of Health.

The administrative and review processes followed by the MAP are set out on pages 5 – 7 of the Premier’s Memorandum.

Table 2 sets out the outcomes of appeals for the last 3 years. There has been a significant increase in the number of appeals made to the MAP over the last two years. It is, however, difficult to make an assessment of the trend in outcomes given the significant number of appeals for 1999 where the result is still pending.

**Table 2: Outcome of appeals to the Medical Appeals Panel
1997 – 1999**

Outcome of appeal	1997	1998	1999
Allowed	20	34	24
Disallowed	69	68	42
Allowed to an extent *	5	15	22
Withdrawn #	6	12	12
No grounds for appeal #	3	12	12
Miscellaneous	4	12	16
Retired whilst appeal in progress	2	-	-
Appeal still pending	-	-	66
<i>Total appeals</i>	<i>109</i>	<i>153</i>	<i>194</i>

Source: Medical Appeals Panel

* For example, HealthQuest may have assessed the person as FTC and the MAP has determined they are not fit for their job but an adjustment could be made by finding the employee other work.

Appeals which were declined because there was no ground. Eg an appeal relating to administrative matters.

The MAP does not maintain data on the reason for appeal. Anecdotally, they report that the majority of appeals to the MAP are against the outcome of fitness to continue assessments. Of these, most appeals are against HealthQuest’s assessment of ‘fit to continue’, where the employee is seeking medical retirement. Some people appeal against the diagnosis made by

HealthQuest and not the assessment of whether or not they are 'fit to continue'. These appeals are said to relate to workers compensation claims.

5.1 Eligibility to appeal to the MAP

Whether an employee has a right of appeal to the MAP depends upon the legislation under which they are employed. Appeal rights apply to those employed under the Public Sector Management Act, the Police Service Act, the Teachers Service Act, and the Superannuation Act. Some Departments have extended appeal rights to employees who are not engaged under these Acts. While there may be overriding industrial reasons for limiting appeal rights, this situation seems anomalous. Departments interviewed for this review were of the view that the right of appeal should also extend to the employer. Extending the right of appeal would have cost implications.

Recommendation

27. Consideration should be given to extending the right of appeal against decisions of the Government Medical Officer to all public sector employees and also to the employer.

5.2 Notifying employees of their right of appeal

The final assessment by HealthQuest can be appealed by employees. The outcome letter sent to employees by HealthQuest contains information regarding the right of appeal. HealthQuest also advises the MAP of the names and addresses of all employees who have had a medical assessment, provided they have a right of appeal. The MAP writes to the employee notifying them of their right of appeal. The letter is accompanied by a 2 page leaflet which outlines administrative and review processes.

This system, where both HealthQuest and the MAP notify the individual of their right of appeal is unnecessary duplication. An alternative would be to have a specific, plain English brochure on appeal rights. This could be sent to employees by HealthQuest both at the time they are advised of their assessment appointment and again with the letter advising them of the outcome of their assessment.

The provision of such a brochure would still mean that employees are not reliant on knowing or independently ascertaining that they have a right of appeal. The brochure should provide a simpler and fuller explanation of how the MAP goes about determining appeals than the current leaflet. This would help to make the process transparent.

Currently, it is not until employees have been medically assessed by HealthQuest that they are advised of their right of appeal. Sending the brochure to the employee with the letter advising them of their HealthQuest appointment would overcome this deficiency.

Recommendation

28. The MAP should dispense with the written notification to employees of their appeal rights as this duplicates the written notification by HealthQuest. A specific, plain English language (and the 10 major community languages) brochure on appeal rights should be developed. This should be sent to employees by HealthQuest both at the time they are advised of their appointment and again with the letter advising them of the outcome of their assessment. The brochure should provide a simple and full explanation of how the MAP goes about determining appeals.

5.3 The review process

The processes used by the MAP do not appear to be fully understood. This is because of a lack of transparency in how the MAP operates. The following sections describe the key elements of the review process. This is followed by a discussion of areas where improvement could be made.

5.3.1 Preliminary assessment

A small number of appeals will be declined following initial assessment. Grounds for declining appeals are:

- the appeal does not relate to the medical assessment of the employee's ability to undertake the intrinsic duties of the position (eg relates to administrative/procedural issues); and
- in cases where there is a clear and objective assessment by the GMO that the employee does not meet the intrinsic requirements for a position. For example an applicant to be an ambulance driver who is colour blind. In other words, the MAP confines itself to considering whether the health assessment is correct rather than whether the intrinsic requirement is justifiable or not.⁵

5.3.2 Information collection

After accepting an appeal, the MAP collects available information relating to the health status of the appellant. This information constitutes:

- the employee's HealthQuest file, which is forwarded to the MAP; and
- medical reports from treating practitioners nominated by the employee are obtained, unless relatively recent reports from these practitioners are on the HealthQuest file.

5.3.3 Further assessment and referral to a specialist by the MAP

⁵ Complaints regarding whether an intrinsic requirement is justifiable may, depending on the circumstances of the case, be able to be considered by the Anti-Discrimination Board.

All of the information collected is then reviewed by the Chair of the MAP. The objective is to determine whether sufficient information is available for the outcome of the appeal to be determined or whether the appellant should be referred to one or more of the Panel's specialist medical consultants for an independent assessment and report.

If the latter course is taken, all of the information relating to the appeal is forwarded to the specialist, who in addition to reading this is asked to examine the employee and provide a report.

The specialists used by the MAP are required to do an independent assessment of the appellant's ability to undertake the intrinsic duties of the job rather than an opinion of the HealthQuest assessment.

The Chair states that the only type of cases where an independent specialist's opinion is not sought would be if there was unanimity in the opinions of HealthQuest, the practitioners they had used in the assessment and the treating practitioners nominated by the appellant. The Chair can recall only one such case in the last two and half years.

5.3.4 Deciding the outcome of appeals

Employees do not appear before the MAP. Following receipt of the report from the specialist, (or based on a review of the information collected without such a referral), the Chair reviews all information and decides the outcome of the appeal.

In deciding an appeal, the MAP reviews the assessment of HealthQuest in relation to diagnosis, whether the employee is able to undertake the inherent requirements of the job and whether the employee could continue to work with reasonable adjustments and/or a rehabilitation program. Beyond this, the Chair states that there are no criteria for determining appeals. This is because the nature of individual cases varies considerably.

Where there is a difference of opinion between various assessments the Chair says he usually accepts the opinion of the MAP specialist, although this is not automatic. An example provided where this was not the case was where a specialist had looked at the case too narrowly, without taking account of the inherent requirements of the job.

The acceptance of the assessment of the MAP specialist, in situations of conflicting opinions, is partly based on the fact that the specialist has had the benefit of reviewing all the previous assessments and opinions in addition to undertaking the most recent assessment. In some cases the passage of time between the HealthQuest assessment and the MAP assessment have resulted in a change in the appellant's medical condition.

The Chair states that he does give weight to the opinion of the appellant's GP and any other treating doctors, but if there was a substantial difference of opinion he would usually favour the opinion of the MAP specialist.

The outcome of the appeal is notified in writing to the appellant, HealthQuest and the employer. The letter usually only provides a very brief overview of the process used to determine the appeal and whether the appeal is allowed or disallowed. This lack of detail,

particularly as to the absence of reasons for the outcome, contributes to the reasonable perception that the processes of the MAP lack transparency.

5.4 Reforming the Medical Appeals Panel

5.4.1 Broadening the grounds for appeal

While the Industrial Relations Commission can review procedural fairness, it has been proposed that the MAP should widen the right of appeal to include administrative and procedural issues. If this was done consideration would need to be given as to how the MAP goes about its work. At present there is no mechanism for communication between the MAP and employers. This is presumably based on the focus of the appeal being a consideration of the medical assessment. If administrative processes used by the employer were to be taken into account there may be a necessity for the MAP to seek information from employers.

Departments interviewed as part of this review requested that they be allowed input to the current appeals process. If this was allowed, in the interests of transparency and procedural fairness, there would need to be a mechanism which permitted the employee to comment on any matters raised by the employer. While there may be merit in these types of changes they have the potential to add time to what can already be a lengthy process.

5.4.2 Reports from treating practitioners

The practice where the MAP does not request reports from treating practitioners if relatively recent information is on file could be considered unsafe. There is the possibility that the person's medical condition may have changed since the reports were provided to HealthQuest or there may be other new information which the treating practitioner is in a position to provide.

5.4.3 Involvement of occupational medicine specialists

While the MAP refers appeals to a range of specialist medical consultants, no cases are referred to consultants who specialise in occupational medicine. HealthQuest expressed concern at the lack of input from occupational medicine.

The Chair of the MAP acknowledged the merit of involving specialists in occupational medicine. He stated that the difficulty was the limited number of occupational health specialists. Some cases are referred to specialists in rehabilitation, which could be seen as partially addressing this concern.

5.4.4 Broadening membership of the 'Panel'

The very title of the Medical Appeals Panel creates expectations about process. The word 'panel' suggests a group of experts who jointly review the GMO's decision. There is, however, no group of people who meet on a regular basis. All decisions on appeals are made by the Chair, who is a medical practitioner.

The 'panel' refers to the list of medical specialists to whom an appellant can be referred by the MAP for review of the GMO's decision. If there is conflicting advice between the HealthQuest assessment, the appellant's treating practitioner and/or the specialists used by the MAP, it is a matter for the Chair, acting alone, to determine the outcome of the appeal.

Membership of the Medical Appeals Panel could be broadened to include a medical practitioner with expertise in occupational medicine, a person with expertise in reviewing administrative procedures and decisions, and a person with expertise in human resource management. The outcome of appeals would be decided by all members of the Panel. Alternatively, the current structure could be maintained, with the Chair seeking opinions on individual cases from these areas of expertise, as appropriate, prior to deciding the outcome of appeals. If this latter course of action is taken the title of the Appeals Panel should be changed to remove the false impression it creates.

5.4.5 Reasons for decisions

The Chair of the MAP does not produce written decisions on the outcome of appeals. Doing so would result in enhanced transparency for the MAP, particularly given the Chair is solely responsible for these decisions. Currently, the reasons for the outcome of the appeal need to be inferred from reading the file. (The MAP provides HealthQuest with copies of their consultant's reports, with the consent of the appellant). HealthQuest has commented that while the reason for most appeals are apparent, this is not always the case. Recording the reason for decisions would therefore also enhance quality assurance through the provision of additional information to HealthQuest.

Appellants may access their MAP file using Freedom of Information procedures. However, if the reasons for decisions are not always apparent to HealthQuest, this will be particularly so for appellants who may have difficulty in understanding the meaning and interpretation of a medical file. A fundamental principle of natural justice is that the reasons for decisions should be explained to people in terms which they can readily understand.

Provision of reason for decisions would also assist employers by guiding them how to manage cases where adjustment or rehabilitation is recommended. The appellant would, however, need to agree to the employer being provided with any details which related to their medical records.

The Chair has indicated that he supports the preparation of written reasons to explain the outcome of all appeals. He has indicated that a considerable amount of time would be needed to prepare reports for complex cases, which make up a significant proportion of appeals to the MAP. This would increase the cost of the MAP's operations. There may, however, be some

off-setting administrative savings if the MAP does write to every employee who has been assessed, informing them of their appeal rights.

5.4.6 Delays in determining appeals

The time taken to determine the outcome of appeals ranges from 6 to 12 months if the case is complex. This creates difficulties for both employers and employees.

The Chair of the MAP indicated that the level of fees paid to specialists effects the ability to both obtain reports and the time in which they are provided.

HealthQuest has suggested delays could be considerably reduced by use of a MAP occupational physician to examine all appellants and make recommendations. Only difficult cases would be referred to other specialists. This would avoid the often considerable waiting times that accompany such referrals.

5.4.7 Accountability

There is a need for greater clarity in relation to who is responsible for particular aspects of the governance of the MAP. While the organisation sits within the administration of NSW Health, overall policy responsibility comes under the Premier's Department. Lines of accountability for the Chair are not clear. A statement which delineates respective areas of responsibility would assist.

A related issue is who should be responsible for funding the MAP. This cost is currently met by NSW Health. This issue has potentially greater significance as some of the proposals for reform of the MAP would increase costs.

The MAP does not have any documented policies or procedures apart from the overview of its administrative and review processes contained in the Premier's memorandum and the two page sheet sent to appellants. This reinforces the perception of lack of transparency.

Apart from complaints to the HCCC, the ICAC and the Ombudsman, there are currently no accountability provisions relating to the MAP. The Panel does not produce its own annual report and there is no reference to or report on the performance of the MAP in the NSW Health Annual Report. The Chair is largely acting alone, albeit with the benefit of advice from a range of independent specialists. Although the MAP is located within the NSW Health Department, there are no formal reporting or accountability arrangements in place. The issue of the structural alignment of the MAP or its revamping is being considered by a separate process. One option worth investigation would be whether there should be a clinical reporting line.

Recommendations

29. The grounds for appeal to a re-vamped Medical Appeals Panel should be broadened to encompass consideration of administrative and procedural matters that relate to compliance with the Premier's Memorandum 98-1 and other relevant policies and procedures.

30. The Medical Appeals Panel should ensure that reports from treating practitioners nominated by the appellant are up-to-date.

31. The opinions of specialists in occupational medicine should be sought by the MAP, as appropriate, in the assessment of appeals against decisions of the Government Medical Officer.

32. Consideration be given to the option of broadening the membership of the Medical Appeals Panel to include a greater range of expertise or seeking opinions from a broader range of experts.

33. Written reason for decisions by the Medical Appeals Panel should be recorded and made available to HealthQuest, the appellant and the employer.

34. NSW Health and the Medicals Appeals Panel need to determine whether there are ways of shortening the time taken to determine the outcome of appeals. One strategy to consider is a Medical Appeals Panel occupational physician examining all appellants and making recommendations, with only difficult cases being referred to specialists.

35. To enhance transparency and accountability the Medical Appeals Panel should be required to:

- develop a policies and procedures manual; and
- provide an annual report on its activities to the Director General of Health. This report should either be published or a summary included in the Annual Report of the NSW Health Department.

Appendix 1

Interviews and/or discussions were held with the following persons:

HealthQuest:

Dr Helia Gapper, Director, HealthQuest

Dr Armand Casolin, Acting Director, HealthQuest

Dr Helen Jagger, former Deputy Director, HealthQuest

Dr Vis Mahader, Senior Medical Officer, HealthQuest

Mr Hadi Stambouliah, consultant psychologist to HealthQuest

Sue Bidwell, Occupational Health Adviser to HealthQuest

Lili Stefanovic, Office Manager, HealthQuest

Central Sydney Area Health Service:

Dr Greg Stewart, Director of Health Services, Central Sydney Area Health Service

Medical Appeals Panel:

Dr Owen Curteis, Chair, Medical Appeals Panel

Ms Anna Kollias, Secretary, Medical Appeals Panel

Investigatory bodies:

Mr Chris Wheeler, Acting Ombudsman

Government Departments:

Ms Kay Lord, Executive Director, Human Resources Management, Department of Corrective Services

Ms Judy Windl, Manager, Human Resources Services, Department of Corrective Services

Ms Lyn Collie, Manager, Occupational Health and Safety, Department of Corrective Services

Ms Trish Kelly, Director, Personnel Programs, Department of Education and Training

Ms Kate Sheehan, Manager, Staff Welfare Unit, Department of Education and Training

NSW Health Department:

Ms Rosemary Milkins, Director, Executive and Corporate Support, NSW Health Department

Ms Colleen Moyes, Executive Support Unit, NSW Health Department

Mr Bruce Leighton, Executive Support Unit, NSW Health Department