MSD RELEASE OUTDATED ‘GUIDE FOR DESIGNATED DOCTORS’ AND CURRENT DESIGNATED DOCTORS LIST – ONLY UPON ADVICE BY THE NZ OMBUDSMAN

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PART 1: INTRODUCTION

As part of wider welfare reforms to bring in changes in the treatment of beneficiaries with health conditions, injuries and disability, and also with the appointment of a new hierarchy of Principal and Regional Health and Disability ‘Advisors’ in 2007, the Ministry of Social Development (MSD) followed a new approach in trying to move more persons with longer term sickness and disabilities off benefits and back into employment.

It was all part of the ‘Working New Zealand: Work Focused Support’ programme, brought in by the then Labour led government under Prime Minister Helen Clark and her Ministers.

A key role in this new strategy was held by medical practitioners and some other health professionals, who were expected to work with MSD and Work and Income to achieve better outcomes, so that persons who suffered from sickness, injury and/or disabilities managed to stay in employment, or returned sooner into employment, where needed with extra supports.
It was in early to mid 2008 that MSD’s main department Work and Income (WINZ) released their ‘Guide for Designated Doctors’, which was one piece of a ‘guidance’ document, that MSD presented then, to “assist” their signed up ‘Designated Doctors’, who were mostly general practitioners, when completing medical certificates and cooperating with WINZ.

There were other measures being prepared and started as early as 2006/2007, and in all earnest during 2008, which involved the preparation and commencement of so-called ‘Designated Doctor Training’ by Senior Advisors at MSD, which was something the Ministry had never engaged in before. That would later raise serious new questions about the actual independence of ‘Designated Doctors’, and we believe that was part of the reason, that this kind of on site group training of assembled medical practitioners would not be continued.

For a sample of information that was then being communicated within MSD, see the authentic ‘Memo’ copy found by clicking this hyperlink (from 23 Jan. 2008; see under page 4 and ‘Training material’ the mention of a ‘Designated Doctors Guide’):

To fully understand what was going on then, we strongly recommend you read and study this post, found under the following hyperlinks (one leads to a downloadable PDF version):

As there are likely to be ongoing changes made to the way WINZ, their Designated Doctors, Principal Health Advisor, Principal Disability Advisor, and also Regional Health Advisors and Regional Disability Advisors, work with clients having health conditions, injuries and/or disabilities, some of what has been covered by that revealing post may not be quite current anymore, but we believe, that the overall approach and system has not changed all that much.

A dedicated official information requester, who is well trusted by us, has over recent years been following the developments in the medical and work capability assessment regime area. He has gathered substantial information on Work and Income’s ‘Designated Doctors’. He has also carefully studied what WINZ have been doing by bringing in new trials and other programmes, aimed at getting people with mental health and other so-called ‘moderate’ and ‘common’ health conditions into employment. He has made a number of interesting OIA requests to the Ministry (MSD), which generated some responses offering useful insights.

Being as concerned as many directly affected persons dependent on benefit income are, who often face unrealistic expectations by employers, as well as by MSD, he asked repeatedly for information on what advice and guidance material MSD may be using and providing to medical practitioners and various other health professionals. With a request of 27 Sept. 2016 he once again asked for more information on that, as well as for a current list of the ‘Designated Doctors’ that MSD and WINZ use for examining and assessing clients.
This post reveals the massive barriers that MSD and WINZ appear to have put into place, for any person seeking transparency and more information about how Work and Income works with persons on benefits granted on grounds of poor health and/or disability.

It also reveals for the first time, the very current list of their Designated Doctors, which does now look somewhat different to one that had been made available in August 2012.

PART 2: OFFICIAL INFORMATION ACT (OIA) REQUEST OF 27 SEPT. 2016 TO THE MINISTRY OF SOCIAL DEVELOPMENT (MSD)

On 27 September 2016 the information requester sent a new OIA request by email to MSD, requesting, besides of a lot of other information (MHES, other trials), access to the following:

“11. Information in the form of a complete current list (with names, health qualifications, practice names and addresses, preferably also by regions) of ‘Designated Doctors’ that MSD and WINZ have on their files, and being available to be commissioned to conduct medical and/or work capability examinations on WINZ clients with health conditions and disabilities, and/or persons they may care for (see for instance also provisions under sections 88E, 40C and 40E of the Social Security Act 1964).”

“12. Information in the form of the official current ‘Guide for Designated Doctors’, or any newer replacement guide, that MSD provides to medical and health practitioners in order to inform them of their requirements and expectations in relation to conducting examinations and preparing reports for MSD - on clients with health conditions and / or disability. I note that some time ago, in an earlier Official Information Act response a reference was made to the WINZ or MSD website, where such information could supposedly be found, but it was never found, even after extensive searching.”

He closed his request letter with the following comments:

“The above specified information is sought for reasons of providing desired transparency and accountability to the public, and is asked to be made available under the Official Information Act 1982 within the specified time frame of 20 working days.”

The full authentic text of that OIA request letter dated 27 Sept. 2016, only partly anonymised, can be found by clicking the following hyperlink: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/msd-o-i-a-request-to-c-e-re-work-to-wellness-providers-mhes-spes-etc-anon-27-09-2016.pdf

PART 3: EARLIER OIA REQUEST TO MSD, DATED 1 OCT. 2014

As a matter of fact, the requester had made a somewhat similar request years earlier, on 1 October 2014, when he asked under ‘11’ for the following information to be made available:

“Information on what advice or expectations MSD has communicated to medical practitioners - like general practitioners (GPs) and also medical specialists (orthopaedic surgeons, psychiatrists, psychologists, and so forth), for them to consider when asking questions to, and when assessing health conditions and work ability of their patients who require a ‘Work Capacity Medical Certificate’ for benefit purposes? Have particular sets of questions been sent or presented to GPs, as a format to work with, have particular criteria
been communicated, beyond of what is contained in the medical certificate forms, or the ‘Guide for Designated Doctors’. In regards to the latter, where can a current copy of that “guide” be found, as nothing could be found online on the Work and Income website.’’

At the end of that request letter, he considered it appropriate to remind MSD of the following: “The above specified information is sought for reasons of providing desired transparency and accountability to the public, and also to obtain assurances that the Ministry, same as its contracted service providers, do provide all their services at the highest standard, and at all times in a professional, acceptable, fair and reasonable manner. The specified information is asked to be made available under the Official Information Act 1982 within the specified time frame of 20 working days.”


It took months for the requester to finally get a response to that comprehensive OIA request of 1 Oct. 2014, which was dated 26 February 2015. But the information released by Debbie Power as Deputy Chief Executive for Work and Income was mainly about the new trials being run as Mental Health Employment Services (MHES) and Sole Parent Employment Services (SPES), and about a few other areas.

In regards to his request ‘11’ all that was provided in MSD’s response on page 8 was this: “Medical Practitioners provide an assessment of the impact of the individual’s disability or health condition on their ability to undertake suitable employment. The assessment also provides information that may enable an individual to work towards returning to paid employment.

All guidance for medical practitioners on about the Medical Certificate is now provided online at: www.workandincome.govt.nz.”

And upon looking on the website, the OIA requester was left to search for himself, to find only very limited, rather general, unspecific and little useful information on Designated Doctors, medical assessments and so forth. No ‘Guide for Designated Doctors’ or any similar ‘guidance’ material offering advice, directions or expectations could be found anywhere.


So the requester was simply referred to very general and basic ‘guidance’ information on the Work and Income website, nothing more, which seemed like an attempt of obfuscation, when considering earlier, a bit more transparent OIA responses which he was sent by MSD in 2011.

Some additional information would be released very much later on 22 Nov. 2017, upon Ombudsman complaints made on 13 Dec. 2014 and 9 March 2015, but that particular response would not answer the requester’s questions about any advice, expectations and criteria that WINZ may be communicating to medical and health professionals for examining
and assessing sick and/or disabled clients. There would be no further information about the ‘Guide for Designated Doctors’, or something similar that WINZ may be using.

PART 4: EARLIER OMBUDSMAN OIA COMPLAINT OF 9 MARCH 2015

Following an initial delay complaint, dated 13 Dec. 2014, about MSD not providing the earlier promised information requested by way of his letter dated 1 October 2014, the requester filed a more comprehensive, formal OIA review complaint to the Ombudsmen on 9 March 2015, after having received that unsatisfactory response on 26 Feb. 2015 (see above).

In his letter of 9 March 2015 he wrote re his request point ‘11’ and re MSD’s response:

“Regarding Request 11

I asked for the following information:

‘Information on what advice or expectations MSD has communicated to medical practitioners - like general practitioners (GPs) and also medical specialists (orthopaedic surgeons, psychiatrists, psychologists, and so forth), for them to consider when asking questions to, and when assessing health conditions and work ability of their patients who require a ‘Work Capacity Medical Certificate’ for benefit purposes? Have particular sets of questions been sent or presented to GPs, as a format to work with, have particular criteria been communicated, beyond of what is contained in the medical certificate forms, or the ‘Guide for Designated Doctors’. In regards to the latter, where can a current copy of that “guide” be found, as nothing could be found online on the Work and Income website.”

I appreciate the information provided and referred to on the Work and Income website. This does though only cover general and mostly widely available information that MSD communicates to medical practitioners, specialists and other health professionals, who conduct assessments on health conditions and on work ability of clients.

Through earlier Official Information Act requests to MSD I have already been informed that Regional Health Advisors, Regional Disability Advisors, also the Health and Disability Coordinators, and the Principal Health Advisor, do all regularly communicate and correspond with various medical practitioners and other health professionals working with MSD and Work and Income. This happens particularly with designated doctors. I am informed and aware that there are other forms of direct Advisor to practitioner “advice” and “expectations” being communicated to such health professionals. These forms of communicated advice, guidelines and expectations are NOT covered by the mostly more general information on the website.

I had also asked: “Have particular sets of questions been sent or presented to GPs, as a format to work with, have particular criteria been communicated, beyond of what is contained in the medical certificate forms, or the ‘Guide for Designated Doctors’.

Hence my request has in that regard not been met. I must therefore ask again that such information is provided, which would not be case specific, and which is applied more generally. This kind of information is not available via the website, and it goes beyond information on the ‘Work Capacity Medical Certificate’, and in some cases also beyond of what was once available through a “Guide for Designated Doctors”. If there are reasons to withhold it, I am sure MSD can mention and explain these.
Last not least I also asked for a source to find the once used ‘Guide for Designated Doctors’, which has also not been provided, certainly not on the Work and Income website. All that is offered are links to download an application form (in PDF) for “designated doctors” and to access “READ Codes” to use by doctors. See the following link: http://www.workandincome.govt.nz/community/health-and-disability-practitioners/designated-doctors.html\#Resourcesfordesignateddoctors

That part of my question appears to also not have been answered. If there is no longer such a Guide, or if it is withheld for particular reasons, it must be expected that this is clarified. The same should be expected if that former “Guide” has been replaced by another document.”


Like with other Ombudsmen Office complaints at that time, this matter would drag on for years, until it would finally be progressed from mid May 2017 onwards. But the ‘Guide for Designated Doctor’ question would not be resolved in any form until 8 November 2017, that was only after yet another complaint was made to the Ombudsmen Office on 3 Dec. 2016 about MSD’s unsatisfactory response to the newer information request dated 27 Sept. 2016!

PART 5: MSD’S FIRST RESPONSE TO THE NEW OIA REQUEST, DATED 27 OCT. 2016

There was one short, initial response by the ‘Official and Parliamentary Information team’ of MSD on 29 Sept. 2016, basically only confirming to the requester that they had received the OIA request of 27 Sept. on 28 September 2016, and informing him that the matter had been referred to their ‘National office’ to respond.


On 27 October 2016 the Ministry did then send a more formal initial response email, stating the following:

“On 27 September 2016 you wrote to the Ministry requesting, under the Official Information Act 1982, information regarding the Mental Health Employment Services.

The Ministry has decided to grant your request in part, namely information which relates to Work to Wellness services. However, it will take some time to prepare this information for release. The information will be sent to you by 17 October 2016. The Ministry has also decided to refuse your request for information which relates to the following:”
• A copy of the list of Designated Doctors including their qualifications, location and clients they treat is refused under section (9)(2)(a) of the Act.
• Whether clients with mental health conditions had suffered any medical problems since being referred to Work and Income is refused under section (9)(2)(a) of the Act.
• The number of people who had been approached to be referred for the service is refused under section 18(e) of the Act as the information does not exist.
• Your request for the ‘Guide for Designated Doctors’ is withheld under section (9)(2)(f)(iv) of the Act as the information is under active consideration.

If you wish to discuss this decision with us, please feel free to contact OIA_Requests@msd.govt.nz

You have the right to seek an investigation and review by the Ombudsman of this decision...”

So once again some valuable, important and possibly sensitive information was being refused by the Ministry, which was nothing all that new to our OIA requester. Nevertheless, it was a disappointment, upon which he would take further action.

A PDF with an authentic, partly anonymised copy of that email response of 27 Oct. 2016 can be found by clicking the following hyperlinks:

PART 6: MSD’s SECOND RESPONSE TO THE NEW OIA REQUEST, DATED 23 NOV. 2016

MSD did present a formal, more comprehensive OIA response in respect of a lot of the other information, as it had been requested on 27 Sept. 2016, which came by way of an email sent to the requester on 24 November 2016, having attached their letter, dated 23 Nov. 2016.

Most information was about the ‘Work to Wellness’ employment referral service, about the MHES and related aspects. But information on ‘Designated Doctors’, the ‘Guide for Designated Doctors’, or any newer replacement guide, and the likes, was again refused.

In response to request ‘11’ the response by the Ministry was the following:
“Information about the doctors including their location, practice name, qualifications and the clients they care for is withheld under section 9(2)(a) of the Act. The need to protect the privacy of these individuals outweighs any public interest in this information. Additionally, the doctors have not given the Ministry consent to release their information when requested. I understand the Ministry has released the list previously to another requester and unfortunately was released in error.”

In response to request ‘12’ the Ministry wrote:
“The current status of the guide for designated doctors is currently being updated and a refreshed guide will be available once this has occurred. As such, this part of your request is refused under section 9(2)(f)(iv) of the Official Information Act as it is under active consideration. The release of this information is likely to prejudice the quality of information received and the wider public interest of effective government would not be served.”
While committing itself to the principles and purposes of the OIA, this response by MSD was anything but helpful, and not convincing to the OIA requester. The letter was signed by Ruth Bound, Deputy Chief Executive, responsible for Service Delivery.

A PDF file with the complete, authentic, only partly anonymised scan copy of this response of 23 Nov. 2016 can be found via this hyperlink: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/msd-oia-rqst-re-work-to-wellness-mhes-spes-services-fr-27-09-16-d-c-e-reply-anon-23-11-16.pdf

PART 7: OMBUDSMAN OIA COMPLAINT OF 3 DEC. 2016 - ABOUT MSD’s INFORMATION REFUSAL

Given the blunt and firm refusal by MSD to make available a range of remaining, sought information, including the list of Designated Doctors, and the ‘Guide for Designated Doctors’, or any replacement ‘Guide’, our requester filed yet another complaint with the Office of Ombudsmen, which was dated 3 Dec. 2016.

In it he referred to his original request of 27 Sept. 2016, the responses by MSD dated 27 October and 23 Nov. 2016 (see above), and then wrote the following under the corresponding paragraphs:

“[4] My requests 5 and 11 appear to have been refused under section 9(2)(a) of the Official Information Act 1982, which says the following: ‘9 Other reasons for withholding official information’....

“(2) Subject to sections 6, 7, 10, and 18, this section applies if, and only if, the withholding of the information is necessary to—
(a) protect the privacy of natural persons, including that of deceased natural persons; ..”

[5] My request 12 was refused under section 9(2)(f)(iv) OIA, which says the following:
“(f) maintain the constitutional conventions for the time being which protect—
(iv) the confidentiality of advice tendered by Ministers of the Crown and officials;..”

He expressed his disagreement with MSD’s stated reasons for those refusals, and offered his arguments and explanations as to why the so far withheld and refused official information should be made available to him after all.

In relation to the ‘Designated Doctors List’ he expressed the following concerns, gave his reasons and explained his views and position on why the information should be released (under the corresponding paragraphs):

“[9] Refusal 1. – under section 9(2)(a) O.I.A., as mentioned in MSD’s letter:
It was under point '11.' In my request from 27 September 2016² that I asked MSD for the following information:

“11. Information in the form of a complete current list (with names, health qualifications, practice names and addresses, preferably also by regions) of ‘Designated Doctors’ that MSD and WINZ have on their files, and being available to be commissioned to conduct medical and/or work capability examinations on WINZ clients with health conditions and disabilities, and/or persons who they may care for
In my letter from 31 October 2016 to MSD, I first expressed my concern that the Ministry’s staff may have misunderstood my question, in particular the following sentence:

“A copy of the list of Designated Doctors including their qualifications, location and clients they treat...”

I did then clarify to MSD that it was not my intention to ask for any information about “clients” that may be “treated” by ‘Designated Doctors’ used by Work and Income (WINZ). I explained that the word “clients” was meant to refer to clients of WINZ, but that I would of course not expect any identifiable information of clients to be made available. All I asked for was information in the form of a current list of such medical practitioners used by WINZ, with their names, qualifications, practice names, addresses and preferably regions they work in.

Also did I state the fact, that I had been informed that such a list had previously been made available in October 2012 to ACCLAIM Otago, in Excel file format, which contained details on the region, centre, first name, surname, registration, practice name, phone number, facsimile number, address, suburb, town/city and postal code of the so-called ‘Designated Doctors’ that then worked for the Ministry. I did after then view a copy of that file received through contacts.

I pointed out that the ‘FYI’ website, found via the following link, does also clearly state that such information had been made available on 09 October 2012: https://www.fyi.org.nz/request/list_of_designated_doctors_for_b

A published letter on ‘FYI’ - from the Ministry dated 16 Oct. 2012 - refers to the earlier request and the response given then, and at the top of the web-page it says without any doubt “The request was successful”. At least at a later stage the information made available to ACCLAIM Otago was also shared with other persons, so many Designated Doctors that were already then on the list are already widely known to work with or for WINZ. If required I can also mention one or two web based forums, where links to the list were published.

Hence I informed MSD that I consider the refusal of that information to be somewhat irritating and hard to understand, as it appeared to be inconsistent with the previous official information policy by the Ministry. I wrote to MSD that I did not even ask for all the types of information that had then been previously released, and I explained that I could even agree to leaving the qualifications of the ‘Designated Doctors’ out from my request, and have instead only mentioned under what type of ‘registration’ these practitioners do work for the Ministry. I stated that I would uphold my request, and that I’d expect the information I asked for, at least a list of the ‘Designated Doctors’ by name, surname, WINZ region or district, and their registration.

I wrote to MSD that it appeared unreasonable to refuse the information under section 9(2)(a) in view of the fact that such concerns had not previously been expressed. I explained to MSD how the Medical Council of New Zealand (MCNZ) does itself have a publicly available register for all medical practitioners. Any person can check the details of a practitioner’s registration, the vocational scope she/he works under, plus in which geographic district the professional may be based. I also presented a
hyperlink to the MCNZ’s website, where a full list of all registered practitioners is available for a fee:

https://www.mcnz.org.nz/support-for-doctors/list-of-registered-doctors/

[16] Furthermore did I mention to MSD that the MCNZ even publishes a list of doctors who are currently suspended and also whose registration has been cancelled, and I presented this link:
https://www.mcnz.org.nz/support-for-doctors/suspended-doctors/

[17] I expressed my view that when the MCNZ and other registration authorities offer at least the publicly available information as they do, then the Ministry of Social Development should also not conceal information about who is working for it as ‘Designated Doctor’ - or any information about internal or external Advisors that it may use.

[18] In her response from 23 November 2016, Ruth Bound, Deputy Chief Executive at MSD, gave the following explanation for refusing the information I asked for:

“Information about the doctors including their location, practice name, qualifications and the clients they care for is withheld under section 9(2)(a) of the Act. The need to protect the privacy of these individuals outweighs any public interest in this information. Additionally, the doctors have not given the Ministry consent to release their information when requested. I understand the Ministry has released the list previously to another requestor and unfortunately was released in error.”

[19] This ground for refusal is not accepted by me. Firstly, the Ministry admits that the information was already made public by way of an “error”. I have reliable information that the then published ‘Designated Doctor List’ has been shared via the internet and other means, and therefore the names and at least some other details of the practitioners listed in it, are already publicly available. While there may have been some changes to the composition of the list, as it may have been updated since August 2012, it can though reasonably be presumed that the bulk of the names remain unchanged on the Work and Income list for Designated Doctors, as there has traditionally been only little change by practitioners moving on or off that list.

[20] As the information has already been released, it appears to be unreasonable to maintain the ground for refusal under section 9(2)(a) OIA to protect the privacy of the medical practitioners listed. If the formerly listed practitioners, who I argue will still make up the bulk of that list, have had their details already made available to the public, there is no justification to apply section 9(2)(a). And if it is applied now, then only new practitioners, who may have been added to the list that MSD holds, can rest assured that their details are not publicly available, which though unreasonably prejudices the other practitioners, whose details are already available.

[21] I do also maintain, that there is most definitely a public interest in the information being made available, at least in part, and to a similar degree as the MCNZ makes available information about its registered members. Why should the MCNZ see fit to publish names of registered practitioners, offering a reasonable degree of transparency and accountability, and why should MSD and Work and Income and their Designated Doctors on the other hand be treated differently - in a privileged manner? I consider that the clients that use and depend on the services provided by Work and Income, and that are also required by Work and Income to meet obligations,
like having to see a Designated Doctor for a second opinion, must have a right to reasonable transparency. Clients, and for that sake also the wider public, should be informed about who does as a general practitioner, or any other medical or health professional, work for MSD and WINZ as a Designated Doctor to examine sick and disabled persons for their entitlement to benefits or capacity to work.

[22] Designated Doctors should have nothing to hide, should not conceal their name or professional qualification or registration from the public, and should instead be transparent and accountable, as otherwise serious questions about their roles, their competency, their integrity and their ways of working with MSD will arise, which will lead to increased distrust in clients towards their involvement as examiners and assessors for Work and Income.

[23] I may also inform you, that I have myself once experienced great injustice when being wrongly assessed by a WINZ Designated Doctor who “examined” me and followed an unreasonably tight work capacity direction set by the WINZ Principal Health Advisor, declaring me “fit for work”, while my own doctor and specialists agreed in all their reports, that this was definitely not the case. I was even forced to appeal a flawed decision made by WINZ and face a Medical Appeals Board (appointed by MSD!), and then even had to apply for a judicial review at the High Court, to challenge yet another highly questionable decision by that Medical Appeals Board, that largely upheld WINZ’s seriously flawed decision. I will attach evidence of this and other important information of relevance in attachments 6 to 12. That evidence also includes recent findings that MSD’s Principal Health Advisor has been using incorrect data in his presentations, or at least drawn wrong conclusions from inconclusive statistical reports.

[24] Therefore I insist on MSD providing the following information about their Designated Doctors:
The full name, the WINZ region or district, and the registration details of their practitioners.
I ask you as Ombudsman to thoroughly investigate and carefully consider the matter, and to recommend that MSD makes at least that basic information available, so WINZ clients, or any other interested person in the wider public, can use that information to perhaps obtain additional information from the MCNZ, on any practitioner they may be interested in learning some essential details about, or about whom they have some concerns.”

In relation to the ‘Guide for Designated Doctors’ he raised the following concerns, and presented his position to the Ombudsman (again under corresponding paragraphs):

“[44] Refusal 4. – under section 9(2)(f)(iv) O.I.A., as listed in your email:
It is with serious concern that I note that my request under point ‘12.’ In my letter from 27 Sept. 2016² for the release of the ‘Guide for Designated Doctors’, or any similar, replacement guide, has been refused under the new section 9(2)(f)(iv) O.I.A..

[45] In her response from 23 November 2016⁵ Ruth Bound, Deputy Chief Executive, gives the following explanation for MSD’s refusal to make this information available:
“The current status of the guide for designated doctors is currently being updated and a refreshed guide will be available once this has occurred. As such, this part of your
request is refused under section 9(2)(f)(iv) of the Official Information Act as it is under active consideration. The release of this information is likely to prejudice the quality of information received and the wider public interest of effective government would not be served."

[46] Well, I can inform you as Ombudsmen, that I was provided a copy of the Ministry’s former ‘Guide for Designated Doctors’ (effective Sept. 2010), together with an Official Information Act response, by former Chief Executive Mr Peter Hughes on 24 March 2011 upon my request from 29 Dec. 2010. I may refer you to the attached evidence and the bullet points at the bottom of page 7 in that letter. In a further O.I.A. request dated 01 October 2014 I did with request ‘11’ ask for information on the guidance given to ‘Designated Doctors’, and also asked where a copy of the ‘Guide for Designated Doctors’ could be found. This was after I had earlier been told, it could be found on the Work and Income website. In her response to me, dated 26 Feb. 2015, Ms Debbie Power then responded that: “All guidance for medical practitioners on about the Medical Certificate is now provided online at: www.workandincome.govt.nz.”

[47] The information found on the WINZ website is very general and rather sparse in contents, and never answered the requests that I made earlier. The only other document ever found on the website has been an application form for Designated Doctors, hence there is no information available for public scrutiny, what a current ‘Guide for Designated Doctors’ does contain, and what detailed advice the Ministry gives to such professionals it works with, when examining sick and disabled clients, or applicants, which includes assessing their capacity to work.

[48] I must consider this to be a very serious lack of transparency, which is in my view not warranted and not fair and just in this time and age. There have been many anecdotal reports of cases where clients have felt unfairly treated, and where reports completed by ‘Designated Doctors’ appear to be inconsistent with a client’s medical records, including reports and advice. As already mentioned, I can add my own personal experience to theirs.

[49] Therefore one should expect that the Ministry would make available a copy of the present Guide, as it appears to now have been “under active consideration” for years, which is unacceptable. There must at some point in time be transparency offered for persons who wish to obtain more detailed insight into how ‘Designated Doctors’ are informed, advised and offered “guidance” by the Ministry, as otherwise serious questions will continue about the fairness, objectivity and reasonableness of Designated Doctors, when performing their work.

[50] Given the unavailability of a ‘Guide for Designated Doctors’, the present situation in regards to guidance and advice given by MSD to its Designated Doctors may somehow resemble a situation, where common citizens are expected to declare or even defend themselves, in front of persons having decision making powers over them, while being denied access to relevant legal and other relevant information to inform themselves about how decisions may be formed. It may also resemble a situation, where persons facing examinations by law enforcement officers - or hearings by persons with jurisdictional powers, are being denied any access to information that would assist them to understand how decisions about them would be formed. This is in my view a denial of basic legal rights a person should have.
It must also be considered that every day dozens if not hundreds of persons are expected to reveal sometimes very private, intimate details about their living and health situation, when applying for benefits or when having to meet various obligations they have as clients of Work and Income. At the same time I note that the Ministry now often sends email responses from its Online Service, which bear no names, at best they may only have a number at the bottom. Even the Official and Parliamentary Information team does not mention any names of the author of emails at the bottom of them; see again attachment 3 for an example.

This represents a growing serious imbalance between the expected transparency, accountability and access to information that exists between the Ministry on one hand, and its clients on the other. Some persons may even think that it is perhaps not surprising that the relationship between staff and clients has over recent times worsened, because of such realities, which could create a great sense of injustice in many clients of WINZ and MSD.

Therefore I ask for the investigation and intervention by the Office of Ombudsmen, to have clarified why an updated ‘Guide for Designated Doctors’ has not been made available for years now. I would expect that such a Guide is made available, and if the present one may not be the appropriate one to publish, as it may have passed its “use by date”, then MSD should be advised and expected to make a new Guide available within the foreseeable future, and offer a link to a copy via one of their websites. It is in my view simply unacceptable that such an important document, apparently still currently being used by ‘Designated Doctors’, is still under ongoing consideration or being reviewed by MSD. Hence I would expect that a more current version will be made available to the public in the very near future.”

After stating his points and outlining his position the requester asked the Ombudsman to investigate the issues relating to the request and the unsatisfactory responses, and to recommend to the Ministry, that they make available the asked for information to him.

A PDF copy with the authentic text of that complaint letter to the Ombudsmen, dated 3 Dec. 2016, only partly anonymised, can be found via this hyperlink: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/ombudsman-complaint-msd-oia-rqst-info-withheld-drs-ddr-guide-anon-03-12-16.pdf

PART 8: MSD’s LATE RELEASE OF THE OUT OF DATE ‘GUIDE FOR DESIGNATED DOCTORS’ ON 8 NOV. 2017 – ONLY AFTER INTERVENTION BY THE OMBUDSMAN

After much more correspondence between the Office of Ombudsmen and himself, between the Ombudsman and MSD, it was suddenly and finally on 8 Nov. 2017, that the requester would by way of a short and ordinary email from MSD’s ‘Ombudsman and Privacy Complaint Services’ be sent a copy of the ‘Guide for Designated Doctors’, being an issue from July 2008! The email writer made clear also, that the document was now ‘out-of-date’.

He was not that excited and happy though, as the Ombudsman had apparently accepted that this was all that MSD should be expected to make available to him under the OIA, in response to his requests of 1 Oct. 2014 and 27 Sept. 2016. The copy was basically the same kind of
document that he had already been presented years earlier, and it was beyond belief, that there would be no other ‘guidance’ material in use, to provide medical practitioners and health professionals working for WINZ as ‘Designated Doctors’ with information about how to examine, assess and certify beneficiaries with health conditions and/or disabilities.

An authentic, partly anonymised copy of MSD’s email of 8 Nov. 2017 can be found via these hyperlinks:

The ‘Guide for Designated Doctors’ document released by MSD under the OIA on 8 Nov. 2017 can be found by clicking the following hyperlink:

PART 9: MSD’s PREVIOUS RELEASE OF THE SAME KIND OF ‘GUIDE’ - WITH AN OIA RESPONSE IN MARCH 2011

What is totally bizarre is the fact, that the same ‘Guide for Designated Doctors’ had already been released to the information requester years before in late March 2011. That was in response to OIA requests he had sent to MSD on 29 Dec. 2010 and on 13 Jan. 2011. The then Chief Executive Peter Hughes appeared to see no reason to withhold or refuse that document, which has not changed in contents since it was published in 2008, as far as we can gather.

Also was the OIA requester able to download a copy of that same document on or around 18 April 2011, apparently from the web, quite probably even from the MSD or WINZ website, where it may once have been available.

Here is a hyperlink that will load an older OIA response by MSD from late March 2011, which had an identical issue of the ‘Guide to Designated Doctors’ sent with it, thus made available to the information requester years earlier (see list of documents on page 7 of 8):

Also had a reprinted copy of the same edition been made available some time before:

Author’s further comments

We ask ourselves, why were MSD so reluctant to make that ‘Guide’ available since then? We know that Peter Hughes was appointed as Chief Executive at MSD under the previous Labour led government. He had a 35 year career at the Department of Social Welfare and at the Ministry of Social Development, last as Chief Executive, being for ten years until 2011:
http://www.ssc.govt.nz/author-biography-peter-hughes (info as at 23 June 2017)
https://nz.linkedin.com/in/peter-hughes-2345523b (link inserted 01 April 2018)
The last National led government (2008-2017) would have set its own priorities as to what it would have expected of any new CEO appointment by the State Services Commission:

http://www.ssc.govt.nz/appt-process

“**The State Sector Act specifies separate roles for the Government and the Commissioner in the appointment of chief executives:**

*The Government specifies its priorities in relation to chief executive positions; ..”*  
(as at 6 Jan. 2011)

So any newly appointed Chief Executive would have had to meet the ‘priorities’ the then new government had, signalling a change once Mr Hughes moved on from MSD. It appears that a new kind of approach to information management was taken soon after his departure, so that only less transparent information was made accessible under the OIA. Anecdotal evidence supports this, so does a report by the former Chief Ombudsman Dame Beverley Wakem, released late in 2015, which can be found via this hyperlink:


Some have thought that her Office’s investigation into the compliance with the OIA by government agencies did not dig deep enough, and was not comprehensive enough:

https://www.nbr.co.nz/opinion/nz-politics-daily-erosion-integrity-2015

We also ask, why was the ‘Guide for Designated Doctors’ released only now, after Ombudsman Donnelly looked into the matter, following a complaint about MSD and their responses to OIA requests made on 1 Oct. 2014 and 26 Sept. 2016? **It would appear that MSD withheld that document without good reason.** It was deemed to be ‘under review’ for years, and there has not been any new ‘Guide’ published since. So MSD have either been rather ‘slack’ in working on a new guide, or they had instructions not to rush with this, possibly preferring to leave people in the dark about how they work with Designated Doctors.

I would again recommend this post, as it shows, that there were major changes made from 2007/2008 on, in the way WINZ worked with Designated Doctors and with clients and applicants who required medical certification for the purpose of establishing their health conditions, impediments, disabilities and ability to work:


It would appear, in our humble view, that MSD have decided not to publish any formal, documented, clear ‘guidelines’, or even any document like the ‘Work Capability Assessment’ (WCA) used in the UK. **The Ministry seems to prefer working with an assessment regime, where they can use absolute discretion in dealing with such matters on a case by case basis.** That would protect them from many legal challenges, as individual clients may find it very difficult to make an appeal to the Medical Appeals Board, or even apply for judicial review to the High Court. Those are the ONLY options left for persons who may not agree with a WINZ decision made upon a doctor’s or other health professional’s assessment presented to them. To take such actions requires a lot of insight into and understanding of the system, it requires medico legal knowledge, requires access to reports and other information that was recorded, and it would involve a lot of effort and work to even prepare any challenge. Most will find such a task daunting, without any assistance by a legal advisor and representative, and may thus rather resign to the dictate they may face by MSD and the people they appoint as Designated Doctors and also as Medical Appeals Board panel members.
Having an openly accessible ‘Guide’ document for Designated Doctors, and for possibly also other medical and health practitioners to follow, that risks MSD being challenged on the particular advice, expectations, guidance and other criteria contained in it.

For information on the WCA, check out the following links:
https://en.wikipedia.org/wiki/Work_Capability_Assessment

PART 10: MSD’s CONFUSING COMMENTS RE ‘GUIDES’ FOR MEDICAL PRACTITIONERS IN ANOTHER OIA REPLY FROM 3 FEB. 2017

Further questions arise from an older OIA response by the Ministry of 3 February 2017, which we could even access via the Work and Income website, where they have until Sept. 2017 been publishing at least some information responses, which appears to have happened only upon advice by the Chief Ombudsman, who was determined to improve the OIA processes when taking Office a year or two ago.

In that particular response, being to an OIA request made on 17 Jan. 2017, the Ministry gave some peculiar explanations about how it now works with medical practitioners.

The unidentified requester asked for:
“A copy of the following document – “Guide for Medical Practitioners – Disability Allowance”” and:
“A current list of titles of guidance documents provided for medical practitioners.”

After some general ‘nice talk’ about how the Ministry ‘depends’ on assessments by various medical and health practitioners, who all need to be appropriately qualified and registered, Elisabeth Brunt, General Manager, Ministerial and Executive Services, wrote the following:
“Your request for the ‘Guide for Medical Practitioners – Disability Allowance’ is refused under section 18(e) of the Official Information Act, as this document does not exist.”

“The Ministry does not supply medical practitioners with guidance documents or a list of guidance documents available. However, there is information available for medical practitioners on the Ministry website. Additionally, medical practitioners can contact their local Health and Disability team at their nearest Work and Income regional office on 0800 559 009 for further advice, if required.”

Then a list of links to publications and resources on their website was offered.

Further explanations provided with that response was the following:
“Work and Income have established a panel of respected medical practitioners, known as ‘designated doctors’, to provide second opinions on medical information. The provision of a second opinion assists Work and Income to determine a person’s capacity for work and entitlement to financial assistance. It also assists with helping people to move towards employment. Further information regarding designated doctors is available online at: www.workandincome.govt.nz/providers/health-and-disability-practitioners/designated-doctors.html”
“There is a guide for designated doctors, however, the status of the guide is that it is currently being updated and a refreshed guide will be available once this has occurred. As such, the guide for designated doctors is withheld under section 9(2)(f)(iv) of the Official Information Act, as it is under active reconsideration. The release of this information is likely to prejudice the ability of government to consider advice and the wider interest of effective government would not be served. “

Now, when reading this, the information requester who provided us with all this information, was reminded of the letter dated 23 Nov. 2016, which MSD had sent him, in response to his request of 27 Sept. 2016. They used very similar, if not identical wording, to explain why they could or would not release a copy of the ‘Guide for Designated Doctors’ (see PART 6 again).

The PDF with the authentic response by MSD, only partly anonymised and dated 3 Feb. 2017, can be loaded by clicking this hyperlink: https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/r-20170203-response-guide-to-medical-practitioners.pdf


PART 11: MSD RELEASE A NEW CURRENT LIST OF DESIGNATED DOCTORS – UPON ADVICE BY THE OMBUDSMAN

It was a pleasant surprise to the information requester, when he received a letter from Ombudsman Leo Donnelly, dated 15 March 2018, in which he indicated he considered that MSD should release the Designated Doctors list. That appears to have been decided after the Office of Ombudsmen consulted on this with the Office of the Privacy Commissioner (OPC).


It only took a few days until MSD responded to the OIA requester by sending him an email on 20 March 2018, which had that very information attached in an Excel file. The information did not show address and contact details, which must have been a condition set by the OPC.


To view the authentic current list of WINZ’s Designated Doctors, which has been created by way of file conversion from the original Excel file, released by MSD on 20 March 2018, click the following hyperlinks that will load the relevant PDF files:
For a redacted version of an older Designated Doctors list, which was made available by MSD to an OIA requester in August 2012, you can click this link to view a PDF that was created from the same data then contained in MSD’s ‘Designated Doctors Master List’:
https://nzsocialjusticeblog2013.files.wordpress.com/2018/03/msd_designated_doctor_list_complete_core_data_as_on_20-08-2012.pdf
(some data showing address, phone and other details was deleted due to privacy concerns)

You can compare both lists and find that a fair number of former ‘Designated Doctors’ are no longer active as such, and questions may be asked about their reasons. There appear to be a few new names though, which should not surprise us after over 5 years of time.

When you wish to make use of the information in that list, please do so responsibly and appropriately, and refrain from any forms of harassment or other illegal conduct. While there is justified concern about the way Designated Doctors work for and with WINZ and MSD, especially with their so-called Principal and Regional Health and Disability Advisors, any concerns and grievances an affected person may have should be dealt with by first consulting a beneficiary advocate, legal advisor or other suitable support person. There are options to take matters to a ‘Medical Appeals Board’ (MAB), and to prepare for that, we recommend reading and studying this earlier post, which will to the most still be current and relevant:

It pays to prepare well for making an appeal to have a matter dealt with by such a MAB, and much care and caution is recommended when preparing submissions. Always go with a support person or even representative agent, and if that process does not succeed, the only way to challenge a decision made upon such a hearing is judicial review to the High Court. For that you will most definitely need to find and talk to a qualified lawyer, at first perhaps seek initial advice through a Community Law Office.

For the rest we must refer you back to the post mentioned already, to inform yourself about Designated Doctors and how they appear to be operating within the MSD and WINZ ‘second opinion’ and ‘assessment process’ framework:

PART 12: CONCLUSION: SECRECY, OBFUSCATION, APPARENTLY INTENDED CONFUSION AND UNCERTAINTY

To summarise our findings and thoughts on all of the above, we can only come to the conclusion, that MSD are making huge efforts to protect themselves, especially their Designated Doctors, their Principal Health and Disability Advisor, and their Regional Health and Disability Advisors from as much scrutiny by the public as they can. That is in relation to
the particular ways they work with WINZ clients and benefit applicants, who have serious health conditions, injuries and disabilities, and who are dependent on benefit support.

There is no other explanation for this determined effort to refuse making available to the public such a simple, mostly acceptable document like the ‘Guide for Designated Doctors’. We do actually have access to much more in the way of documentation that could ‘prejudice the ability of government to consider advice’, more so than that ‘Guide’, as they choose to describe it. We do have some information that could hamper what MSD and WINZ may be preparing already, to put into a new ‘Guide’ in the future, but we choose not to ‘prejudice’ them and their actions. Let them present their ‘work’ first, so we can expose the tricks they may try and use, to deny sick, incapacitated and disabled persons needing benefit support access to much needed information, and access to their rights. The same information available to us would potentially throw a big spanner into the works of MSD, who are making ever so newer attempts to deny persons a truly fair and reasonable treatment by medical examiners, assessors, by Designated Doctors, their Advisors and WINZ case managers at the coal face.

The above OIA requests, the responses by MSD, some correspondence with the Ombudsman, and much more at our hands, shows how the Ministry tried repeatedly to block access to any information about their Designated Doctors, altogether that is, which would be like allowing the Medical Council to keep secret all information about the practitioners registered with them, by not even disclosing their names and scopes of practice. So at least in this case the Ombudsman realised that the Ministry was wrong in their attempts to block access to the information that was sought, and asked them to release it. That though is no reason to rejoice, as the Ombudsmen themselves have shown to only insist on information releases in some cases, often rather granting the government agencies the benefit of the doubt on their decision.

It becomes clearer now that MSD have chosen to withhold, or to not even create, any documentation on the way they work with Designated Doctors, or with any other assessors commissioned by them. They refuse to disclose how existing clients or new applicants should be examined, assessed and medically certified. While there are of course Codes and Rules that any medical practitioner and other health professional has to abide by and work under, we have today less information about how WINZ works with those mentioned professionals, than we had a few years ago. There have been comments made, such as, that medical practitioners should not have to determine whether a person can do certain work, or not. But when looking at the Work Capacity Medical Certificate, the person completing it is asked about whether a person can be expected to work more or less than 15 hours, whether he/she can return to work within a certain period, whether any treatment or supports may be needed, and so forth. So going by that, and other questions, medical professionals are still expected to make decisions on ability to work, which WINZ does of course use to decide on resulting work capabilities.

MSD do intentionally want to keep clients with health conditions and disability in the dark, same as the wider public, on how they advise, communicate and otherwise ‘guide’ Designated Doctors, which they clearly do through the Principal Health and Disability Advisors, and the Regional Health and Disability Advisors. Health and Disability Coordinators are also involved. They would not have created all those positions, if they were not intent on offering ‘guidance’ to Designated Doctors and other medical practitioners or health professionals. The fact seems to be, they do all this behind the scenes, on a case by case basis, under endless discretion, so that no one case can be treated as another, thus they ensure that it is almost impossible for outsiders to assess and establish, what directions, what criteria, what expectations and so forth are communicated to the medical profession. ‘Designated Doctor training’ is now also happening on an ad hoc, yet ongoing basis, partly online, partly in
person to person communications by certain Advisors with the persons they ‘train’ (e.g. Designated Doctors), either by phone or face to face. It would be interesting to see whether any person can extract some OIA info from MSD on that, but it may require some information on who does what at a certain time, to nail such a request down to some specific details. The way they now operate makes it very difficult to get any specific information.

Hence this situation leaves most affected persons in much uncertainty, even in confusion about how their own case was in the past decided on, or how it will in future be decided on by WINZ and/or trained Designated Doctors. They will be left in uncertainty as to how they can perhaps best prepare and protect themselves from incorrect, inappropriate, poor and flawed ‘assessments’ by third party assessors like Designated Doctors. They will have to be guarded against questionable decisions made by a WINZ Case Manager acting upon advice by a Regional Health or Disability Advisor, who will in most - if not all - cases rely on the ‘advice’ received by way of a report, and perhaps additional information, which they received from a client’s or applicant’s own doctor or specialist, and/or a third party assessor, such as a Designated Doctor. We know that WINZ also likes to get clients sign consent forms, so their Case Manager, or at least the Regional Health or Disability Advisor, can contact their own general practitioner or even specialist directly. In such situations we would advise persons to apply to WINZ and MSD under the Privacy Act 1993 to get access to the particular details that were being discussed, in the form of records of this, which is personal information of the individual concerned. WINZ staff must under the Public Records Act keep correct and detailed enough records of such communications.

The situation is one that does not raise much hope, as it leaves the affected persons even more vulnerable than they may already by without having to apply for WINZ benefits and support.

In publishing this post, we do hope to shine more light on this increasingly appalling ‘welfare’ or ‘social security system’ we are confronted with, so that enough people are at least informed of what goes on. We will not tire from this, and continue to dig and expose as much as we can in the near future. As health and other factors put a limitation to what we can do, we appreciate patience and understanding, as few others have the time, energy and interest to do this work. So for now, take care, be prepared, stay calm and do all that is needed to hold the Ministry of Social Development AND the Government of the Day to account.

Marcus

Post edited and updated on 2 April 2018

Link to only version of this ‘post’ or report (published 2 April 2018):