

ROLE AND USE OF DOCTORS IN WORKERS COMPENSATION SYSTEM

Please Refer to the 2010 Deed Glossary for Defined Terms

This operational instruction clarifies the role and use of doctors within the NSW WorkCover Scheme.

Nominated Treating Doctor

The Nominated Treating Doctor (NTD) is the treating doctor chosen by the injured Worker as required under S47(3) of the Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act). The NTD is responsible for coordinating the medical management of an injured Worker, is involved in the formulation of the Worker's Injury Management Plan and participates in the Return To Work process. An injured Worker can have only one (1) NTD and this will usually be a general practitioner. Treating specialists, unless specifically requested by the Worker and with the permission of the Scheme Agent, should not assume the role of NTD.

The NTD will complete a WorkCover Medical Certificate. The Medical Certificate must accurately report the diagnosis of the Worker's Injury and the Worker's level of fitness for work, based on the doctor's clinical opinion. Properly completed WorkCover Medical Certificates are essential to assist the Scheme Agent and the Employer in managing the Worker's Claim and Injury. Completion of the Medical Certificate by the NTD enables the Worker to receive their entitlement to weekly Benefits, and all reasonably necessary medical treatment and rehabilitation.

By signing the WorkCover Medical Certificate, the NTD agrees to communicate with all relevant parties (Worker, Scheme Agent, Employer, other treating practitioners, rehabilitation providers and Injury management consultants) to manage the Worker's Injury management and Return To Work. If the NTD does not participate in Injury management, the Scheme Agent is to write to the Worker (with a copy to the NTD and Employer) advising them that if the doctor does not participate, they may need to change their NTD as outlined on their Injury Management Plan. The Scheme Agent is to ask the Worker to show the letter to the doctor and request the doctor to participate, before requesting that the Worker change NTD.

Additional questions for the NTD or requests for copies of medical records, should only be necessary if the information provided in the Medical Certificate or other information from the doctor is inadequate. Requests should be specific to the Scheme Agent's particular need for information about the injured Worker's Claim, treatment or Return To Work.

The Scheme Agent is to always make reasonable attempts to obtain information from the Worker's treating practitioners (including treating specialists) prior to considering referral to an independent medical examination.

Injury Management Consultants

Section 45A of the 1998 Act provides for WorkCover to appoint injury management consultants (IMC). The role of an IMC is to assist in the resolution of problems that arise in relation to a Worker's Return To Work, particularly if there is a disagreement between the Worker's NTD, the Employer and the Scheme Agent. An IMC is an important resource for preventing the escalation of a problem to a formal dispute.

Document name: Operational Instruction 1.12	Prepared by: Provider and Injury Management Services
Version: 2010 - 1.0	Issue date: January 2010
Revision: 0	Review date: January 2011
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When referring to an IMC:

- (a) The purpose of referral to the IMC is to resolve difficulties with the NTD, the Employer and the Worker in relation to the Worker's capacity to undertake Suitable Duties employment – a referral template is attached (Appendix A)
- (b) The NTD and the Worker must be notified of the reason for the referral and supplied with the brochure explaining the role of the IMC. The NTD and the Worker must receive a copy of the IMC report following the consultation
- (c) There is a requirement that the IMC contact the NTD to discuss and attempt to resolve problems regarding Return To Work
- (d) Referrals to an IMC must specify the problem that needs to be addressed in relation to the Worker's capacity to undertake Suitable Duties employment and should not request the IMC to comment on liability, causation, diagnosis, prognosis, suitability of treatment or whether treatment is reasonably necessary, or permanent impairment
- (e) The IMC report must provide a summary of findings, action taken and result achieved through contact with the NTD. If resolution is not reached, the IMC should advise the next steps the Scheme Agent can take.

The maximum time for which an IMC can charge for services is three hours. Prior approval from the Scheme Agent is required if additional time is necessary – e.g. for a worksite visit when requested by the Scheme Agent or from the Workers Compensation Commission if the consultation will exceed three hours. The fee an IMC who is Approved by WorkCover is paid must be in accordance with the applicable Workplace Injury Management and Workers Compensation (Injury Management Consultants) Order.

A list of Injury management consultants and the *Workplace Injury Management and Workers Compensation (Injury Management Consultants) Order* are available on the WorkCover website.

Independent Medical Examiners

The WorkCover Guidelines for independent medical examiners require these examiners to be specialists with qualifications relevant to the Worker's Injury and to the question that is being asked.

The role of an independent medical examiner is to examine an injured Worker and supply independent, impartial advice based on the best available evidence. The doctor is not to be in a treating relationship with the Worker. An assessment may be requested for the purposes of providing information to assist with Injury and Claims Management. Reasons for referral may include obtaining information related to:

- (a) Diagnosis of the Injury and to determine the contribution of work to that Injury
- (b) Diagnosis of the Worker's ongoing condition and whether it still results from the Injury
- (c) Reasonably necessary treatment and recommendations for treatment
- (d) The Worker's fitness for duties offered by the Employer, including Suitable Duties, or their capacity to work in suitable employment
- (e) For Injuries Pre 1 January 2002, an assessment of permanent loss as per the *Table of Disabilities*
- (f) An assessment of whole person impairment for injuries on or after 1 January 2002 by medical specialists trained in the *Guides for the Evaluation of Permanent Impairment*.

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These medical specialists are listed on the WorkCover website.

Referrals for an independent medical examination are only to be made when adequate information cannot be obtained from the treating medical practitioner(s). If the referral relates to causation or treatment, the independent medical examiner is to be in current clinical practice.

Unless there are changes in the Worker's condition, or there is evidence to suggest that treatment may require change, at least 6 months must have elapsed since the last independent medical examination. Where possible the Worker is to be re-referred to the same independent medical examiner if another consultation is required.

Further information regarding Independent Medical Examinations is available in the *WorkCover Guidelines on Independent Medical Examinations and Reports*.

Assessors of permanent impairment

The role of an assessor of permanent impairment is to assess and report on the level of permanent impairment of a Worker who may have sustained a permanent Injury.

Section 376(1) of the *1998 Act* puts beyond doubt the requirement that 'assessors of permanent impairment are to be medical practitioners with qualifications in the relevant medical specialty, who have undertaken the requisite training in the use of the *WorkCover Guides*. The *WorkCover Guides* referred to are the *WorkCover Guides for the Evaluation of Permanent Impairment*.

If a Claim for lump sum compensation, pain and suffering, Work Injury Damages or Commutation is received and is not supported by a report completed by a medical specialist with training in the *WorkCover Guides*, it does not meet the minimum requirements for Claims for those Benefits.

The Scheme Agent must advise the Worker of the requirements of the *WorkCover Guides for the Evaluation of Permanent Impairment* including that an assessment of the level of permanent impairment must be conducted in accordance with the *WorkCover Guides*.

The Scheme Agent should carefully check qualifications of medical practitioners to ensure they are medical specialists and that they are trained in the application of the *WorkCover Guides*.

A list of trained assessors, their speciality and the body system in which they have been trained are available on the WorkCover website. Not all assessors will be Approved Medical Specialists but they will be a specific medical specialist trained in the use of the *WorkCover Guides for the Evaluation of Permanent Impairment*. It is recommended that the Scheme Agent obtain an assessment from the treating specialist, if they are trained in the *WorkCover Guides*.

Assessments of permanent impairment

Injuries received on or after 1 January 2002 require an assessment of permanent impairment for determining the lump sum compensation Benefits a Worker may be entitled to and for determining whether a Worker has a level of permanent impairment that meets or exceeds the thresholds for compensation for pain and suffering, Work Injury Damages or Commutation.

The level of permanent impairment is a clinical assessment and the final amount specified must be in accordance with a properly completed report by a trained assessor of permanent impairment. A Benefit payable for lump sum compensation must be in accordance with the permanent impairment percentage contained in a properly completed report by a trained assessor.

Injuries received before 1 January 2002 also require an assessment of whole person impairment to establish whether a Worker has a level of permanent impairment that meets or exceeds the thresholds for compensation for Work Injury Damages or Commutation.

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Approved Medical Specialists

Section 326 of the 1998 Act provides for the *President of the Workers Compensation Commission* (WCC) to appoint Approved Medical Specialists (AMS) to manage dispute resolution of general medical issues or dispute resolution of evaluation of permanent impairment. When a dispute is lodged the WCC organizes a referral to an appropriate AMS.

An AMS (general medical disputes) considers disputes about:

- (a) causes of the medical condition
- (b) reasonably necessary treatment
- (c) the Workers' fitness to undertake duties offered by an Employer, their fitness for particular types of duties, or their incapacity to work.

Decisions by the AMS (general medical disputes) are not binding but will be used by the arbitrator in achieving a resolution to the dispute.

For disputes about permanent impairment:

- If the date of Injury was before 1 January 2002, an AMS (permanent impairment) considers disputes about the level of permanent impairment and loss of function using the old *Table of Disabilities* from the 1987 Act.
- If the Injury was after 1 January 2002, the AMS will consider:
 - (a) whether the extent of the impairment is ascertainable
 - (b) the degree of pre-existing impairment
 - (c) whether the impairment is permanent
 - (d) the amount of permanent impairment that is attributable to the current Injury
 - (e) the nature and extent of any hearing loss.

An AMS (permanent impairment) is trained in the use of the *WorkCover Guides for the Evaluation of Permanent Impairment* and their decisions are binding. The *WorkCover Guides* have been made under section 376 of the 1998 Act. Appeals against decisions are possible but they are limited to:

- (a) deterioration of the Worker's condition that results in an increase in the degree of permanent impairment
- (b) availability of additional relevant information – i.e. evidence that was not available to the appellant before the medical assessment was appealed, or evidence that could not have been reasonably obtained by the appellant before the medical assessment
- (c) the assessment being made on the basis of incorrect criteria
- (d) the medical assessment certificate containing a demonstrable error.

A list of Approved Medical Specialists is available from the WorkCover and WCC websites.

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REFERENCES

Workers Compensation Act 1987

Workplace Injury Management and Workers Compensation Act 1998

WorkCover Guides for the Evaluation of Permanent Impairment

WorkCover Guidelines for claiming compensation benefits (27 October 2006)

WorkCover Guidelines in Independent Medical Examinations and reports (27 October 2006)

Guidelines for the appointment and functions of IMCs

IMC fees order

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REFERRAL TO AN INJURY MANAGEMENT CONSULTANT

Name of consultant: _____ Phone: _____

We have referred _____ to you and request that you:

- (a) assess the attached documentation
- (b) contact the Nominated Treating Doctor to discuss the Return To Work management
- (c) consult the Worker's Employer to identify the availability of duties, if necessary
- (d) assess the Worker, if necessary.

Worker's details

Name _____ Claim number _____

Date of birth ____/____/____ Date of Injury ____/____/____ Date last worked ____/____/____

Injury _____ Occupation _____

Employer's details

Employer's name _____ Contact person _____

Phone _____ Fax _____

Nominated Treating Doctor's details

Name _____

Address _____

Phone _____

Fax _____

Reason for referral

- Lack of information about work capacity
- Conflict over the suitability of work duties
- Suitable duties have not progressed
- Other (please specify)

Please forward a copy of the report, which explains the agreed outcome between yourself and the Nominated Treating Doctor, to the undersigned and the Nominated Treating Doctor. You may wish to suggest alternative action that could assist in achieving Return To Work

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Documentation enclosed:

- q history of Injury, treatment, any surgical interventions, current ongoing treatment and relevant reports from the Nominated Treating Doctor, the treating medical specialist and any other treatment providers
- q rehabilitation progress, including Return To Work restrictions, medical status of the injured Worker, the involvement of a rehabilitation provider.

Name of Scheme Agent/referrer _____

Contact person _____

Phone _____

Fax _____

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