

WORKCOVER GUIDELINES ON INDEPENDENT MEDICAL EXAMINATIONS AND REPORTS

I, John Watson, Acting Chief Executive Officer of the WorkCover Authority of New South Wales, under s119(4) and s376 of the *Workplace Injury Management and Workers Compensation Act 1998*, issue the following guidelines.

Dated, this 14th day of April 2009.

John Watson
A/ Chief Executive Officer
WorkCover Authority

WORKCOVER GUIDELINES ON INDEPENDENT MEDICAL EXAMINATIONS AND REPORTS

Workplace Injury Management and Workers Compensation Act 1998

These guidelines are issued under s119(4) and s376 of the *Workplace Injury Management and Workers Compensation Act 1998*. The guidelines set out WorkCover's policy in respect of independent medical examinations as well as the mandatory obligations for employers/insurers when referring a worker for a medical. They also provide guidance for all parties, including referrers, examining medical practitioners, and injured workers.

These guidelines replace guidelines dated 27 October 2006 and published in the Government Gazette No. 129.

These guidelines commence on 1 May 2009.

In this guideline, the *Workers Compensation Act 1987* is referred to as the *1987 Act*, and the *Workplace Injury Management and Workers Compensation Act 1998*, is referred to as the *1998 Act*.

Definition of Insurer

Insurer is an insurer within the meaning of the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and includes Scheme Agents, and self and specialised insurers.

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INTRODUCTION

Purpose and Scope of the Guidelines

Medical questions that arise in the context of managing a workers compensation claim should be directed to the treating medical practitioner(s) in the first instance. The nature of the relationship between the injured worker and the practitioner(s), and their knowledge of the worker's medical history, before and after the injury, make their input invaluable to the management of the worker's injury.

Referral for an independent medical examination is only appropriate when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent and where the referrer has been unable to resolve the problem directly with these practitioner(s).

Against this background, the purpose of these guidelines is to provide the basis for a shared understanding of the role of independent medical examinations in the management of compensable injuries in the NSW workers compensation system.

The guidelines outline mandatory [as per section 119(4) of the 1998 Act] and other obligations for the referral, conduct and reporting of independent medical examinations, and complaints management.

Mandatory obligations are set out in Part 1 of these guidelines. These are made in accordance with section 119(4) of the 1998 Act which states that an examination of a worker who has given notice of an injury must be in accordance with the WorkCover guidelines.

The other obligations set out in the Introduction and Part 2 of the guidelines apply to all independent medical examinations.

This document is intended for use by those who:

- refer injured workers for independent medical examinations
- undertake independent medical examinations and provide reports
- use independent medical examination reports in managing injuries, claims and disputes.

This document is also intended for use by injured workers and their representatives. A brochure is available from WorkCover for injured workers who are referred for independent medical examinations. The NSW Medical Board policy *Medico-Legal Guidelines* provides useful information for workers and referrers (available from their website www.nswmb.org.au).

This document covers referrals by employers/insurers and lawyers involved in the workers compensation system, but not referrals to approved medical specialists by the Workers Compensation Commission of New South Wales.

Definition of Independent Medical Examination

Independent medical examination means an impartial assessment based on the best available evidence that is requested by a worker, a worker's solicitor or employer/insurer and undertaken by an appropriately qualified and experienced medical practitioner (**who is not in a treating relationship with the worker**) for the purposes of providing information to assist with workers compensation injury and claims management.

PART 1 MANDATORY OBLIGATIONS FOR EMPLOYERS/INSURERS

Part 1 sets out the mandatory obligations (pursuant to section 119(4) of the 1998 Act for employers/insurers when they require a worker to attend an independent medical examination.

Referral for an independent medical examination is only appropriate when information from the treating medical practitioner(s) is inadequate, unavailable or inconsistent and where the referrer has been unable to resolve the issues related to the problem directly with the practitioners.

All referrals for independent medical examinations are to be arranged at reasonable times and dates and with adequate notice provided to the worker, as outlined on page 7, 'Notification and explanation to the worker'.

Referrals for an independent medical examination are only to be made when answers to one or more of the questions outlined on page 5, 'Reasons for referral', cannot be obtained from the treating medical practitioner(s). If an injured worker submits a report from an assessor of permanent impairment regardless of whether they are the worker's treating medical practitioner or not and questions regarding that assessment arise, they are to be posed to the author in the first instance. If the response from the assessor is inadequate, unavailable, inconsistent or not received in 10 working days, a referral to an independent medical examiner may proceed.

All referrals to independent medical examiners are to be to appropriately qualified medical practitioners who have the expertise to adequately respond to the question(s) outlined in the referral. The independent medical examiner is to be a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury. Care is to be taken when referring a worker with complex injuries. Referrers are to ensure that medical specialists with specific expertise are selected, eg. a hand or plastic surgeon for hand injuries, a spinal surgeon for complex back injuries, a neurosurgeon or rehabilitation specialist for head injuries.

If the worker has not been treated by a medical specialist, the referral is to be arranged with a medical practitioner with qualifications and expertise in the treatment of the worker's injury.

The employer/insurer must meet any reasonable costs incurred by the worker, including wages, travel and accommodation. This may include pre-payment of travel and accommodation expenses. If the worker is not reasonably able to travel unescorted, this may include expenses for the worker's escort. *Reference section 125 of the 1998 Act.*

A worker receiving weekly compensation payments can be required to submit themselves for subsequent independent medical examinations only when information from the treating medical practitioners remains inadequate, unavailable or inconsistent and where the referrer cannot resolve the issues related to the problem directly with the treating practitioner(s) and:

- the subsequent independent medical examination is with a specialist medical practitioner with qualifications relevant to the treatment of the injured worker's injury; and
- the employer/insurer has evidence that the worker's medical condition as a result of the injury has changed; or

- the employer/insurer has evidence of a change in the worker's health not resulting from the injury which will affect the worker's participation in the labour market; or
- the employer/insurer has evidence of a material change, or need for material change, in the manner or type of treatment; or
- the worker makes a claim for section 66 lump sum compensation or work injury damages; or
- the worker requests a review pursuant to a notice issued under section 54 of *the 1987 Act* or section 74 of the 1998 Act and includes additional medical information that the employer/insurer is asked to consider; or
- there has been at least 6 months since the last independent medical examination required by the employer/insurer; or
- the last independent medical examination was unable to be completed.

Subsequent independent medical examinations must be with the same medical practitioner unless they have ceased to practise (permanently or temporarily) in the specialty concerned, or they no longer practise in a location convenient to the worker, or both parties agree that a different medical practitioner is required.

If the worker considers the requirement to attend an independent medical examination is unreasonable, the worker is to advise the referrer of the reasons for their objection. The referrer must take account of this objection and advise the worker of their decision following this consideration. Benefits are not to be affected prior to adequate written notice being received by the worker following this consideration (see *WorkCover Guidelines for claiming compensation benefits, clause 9.3, Part 2*). Any decision to suspend payment of weekly compensation can only be made after the worker has had an opportunity to comply with a reasonable request and must be made on the basis of sound evidence and the worker advised in writing of the reasons for the suspension. The worker may contact WorkCover's Claims Assistance Service on 13 10 50 or their union for assistance in relation to such requests and decisions. The insurer is to respond to these requests.

PART 2 OBLIGATIONS FOR ALL INDEPENDENT MEDICAL EXAMINATIONS

Part 2 sets out the obligations for all independent medical examinations (in addition to the mandatory obligations set out in Part 1).

1. Referral for Independent Medical Examination

Reasons for referral

An independent medical examination is appropriate where the information required relates to:

- diagnosis of an injury reported by the worker and determining the contribution of work incidents, duties and/or practices to that injury
- diagnosis of the worker's ongoing condition and whether it still results from the injury
- recommendations and/or need for treatment
- fitness for pre-injury duties and hours, and the likelihood of, and timeframe for recovery
- fitness for other jobs/duties, including those in the worker's recent employment history (descriptions of such duties are to be provided to the independent medical examiner)
- what past and/or ongoing incapacity results from the injury
- physical capabilities and any activities that must be avoided

- an assessment of permanent loss (injuries pre 1 January 2002) or whole person impairment (injuries on and after 1 January 2002) resulting from the injury, including any proportion to be deducted that is due to a pre-existing injury, abnormality or condition.

Barriers in relation to return to work and difficulties in communicating with a treating doctor might best be resolved through use of an Injury Management Consultant (refer to WorkCover's *Guidelines on the Appointment and Functions of Injury Management Consultants*).

Responsibility of referrer

The referrer has a responsibility to ensure that:

- the referral is made to an appropriate medical practitioner
- an appointment can be made within a reasonable period of time (usually 4 weeks)
- all parties are informed of the appointment details of the examination
- the worker is provided with an explanation of the nature of the examination and the details of the appointment
- the worker's special needs are catered for, eg interpreter, disabled access
- the independent medical examiner is provided with details of the worker and the specific reason for the referral
- all the information relevant to the referral question(s) is provided to the independent medical examiner
- the independent medical examiner is paid promptly for providing the service at the rate set out in the Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order in force at the time of the examination (www.workcover.nsw.gov.au).
- there is no conflict of interest in relation to the worker and referrer.

It is not acceptable to list standard questions that are not relevant to the specific aspect of the claim leading to this referral.

Selection of an appropriate medical practitioner for the examination

It is important that the independent medical examiner who is selected to provide the examination is appropriately qualified and has the expertise to competently provide an opinion on the question(s) in the referral. The independent medical examiner is to be a medical specialist with qualifications relevant to the treatment of the injured worker's injury. If the worker has not been treated by a medical specialist, an appointment is to be arranged with a medical practitioner in a specialty relevant to the treatment of the worker's injury. If the referral includes a question of causation or treatment, the independent medical examiner is to be in current clinical practice.

If the medical report relates to a claim for permanent impairment, it must be completed in accordance with the *WorkCover Guides for the Evaluation of Permanent Impairment* by a medical specialist with qualifications and training relevant to the body system being assessed who has been trained in the WorkCover Guides.

If there is more than one impairment that requires assessment by different medical specialists, one specialist must be nominated as the lead assessor and determine the final amount of whole person impairment.

A subsequent examination is to be with the same independent medical examiner who conducted the original examination, whenever practical.

The location of the independent medical examiner's rooms should be as geographically close to the worker's home address as possible or accessible by direct transport routes. The rooms should contain appropriate facilities, including access for people with ambulatory difficulties, and accommodate the worker's specific physical needs.

Special requirements of the worker relating to gender, culture or language are to be accommodated.

If the worker wishes to have an accompanying person with them at the examination, the independent medical examiner's agreement to the presence of a companion is to be obtained.

The independent medical examiner should be able to provide an appointment within a reasonable time, usually 4 weeks, and a report of the examination within 10 working days, unless different arrangements are agreed by the parties.

Where it is the independent medical examiner's routine practice to record the examination on audio or video, the worker must be informed of this and be in agreement prior to the examination being scheduled. The recording of the examination is only to proceed if the worker consents.

Communication with the selected medical practitioner

The letter of referral to the independent medical examiner must provide clear direction about the question(s) to be addressed and the medical opinions sought.

Documents to be included

The independent medical examiner must be provided with all the information that is relevant to the questions to be addressed. Documents could include a claim form, medical certificates, witness reports, employer reports of injury, clinical notes/reports of treating doctors, medical reports, medical investigation reports, rehabilitation and functional assessment reports, job descriptions and duty statements, details of work with other employers and details of other settlements or awards.

Independent medical examiners are not able to order additional radiological or similar investigations so the results of all existing investigations are to be made available to the independent medical examiner.

Reports and/or electronic records of lay investigators are not to be provided with referrals for assessment of permanent impairment.

Documents are to be provided to the independent medical examiner at least 10 days prior to the arranged appointment. They should be provided in a manner that facilitates review/perusal by the independent medical examiner.

Notification and explanation to the worker

The worker is to be first advised in writing at least 10 working days before the appointment, unless a shorter time is required because of exceptional and unavoidable circumstances and agreed to by the parties, eg a need to consider an urgent request for treatment.

Advice about the appointment with the independent medical examiner must include:

- the specific reason for the examination
- an explanation of why the response from the treating practitioner or author of the assessment report to the insurer's enquiry was inadequate, inconsistent or unavailable
- the likely duration of the examination
- name, specialty and qualifications of the examiner
- date, time and location of the appointment and contact details of the examiner's offices and appropriate travel directions
- the need to be punctual
- what to take, eg x-rays, reports of investigations/tests, comfortable clothing to enable an appropriate examination to be conducted
- how costs are to be paid
- that a failure to attend the examination or an obstruction of the examination may lead to –
 - a suspension of weekly compensation and/or
 - the right to recover compensation under the 1987 Act
- that the worker may be accompanied by a person other than their legal representative with the agreement of the independent medical examiner, however, the accompanying person must not participate in the examination and may be required to withdraw from the examination if the examiner requests it
- that no one may be present during the actual physical/psychological examination of the injured worker, unless agreed by the worker and by the medical examiner
- whether the travel costs for an accompanying person will be met (this usually only applies if the worker requires an attendant as a result of the injury)
- how complaints are to be managed
- that the workers compensation legislation gives the worker or a nominee a right to a copy of any report relevant to a decision made by a referrer to dispute liability for, or reduce, compensation benefits.

A WorkCover brochure about independent medical examinations is to be provided to the worker with the written notice of the appointment.

2. Conduct of an Independent Medical Examination

The NSW Medical Board's policy *Medico-Legal Guidelines* provides principles for the independent medical examiner's conduct during the examination.

If the worker provides the independent medical examiner with any additional information at the time of the examination, this information is to be noted in the examiner's report.

If the injured worker fails to attend the examination, the independent medical examiner must notify the referrer as soon as possible.

3. Reporting an Independent Medical Examination

The suggested format for the report is attached as Attachment A.

The report is to be written in plain English and use accepted medical terminology as the intended audience is insurer staff, workers and workers' representatives, eg unions, legal representatives.

The report is to answer the referrer's question(s) and include other information elicited during the examination that is relevant to those questions. The independent

medical examiner's report will list the material reviewed, any facts relied upon, the relevant medical history, examination findings, and the medical reasons for their conclusions.

The report should be provided to the referrer within 10 working days of the examination, or within a different timeframe if agreed between the parties.

4. Corrections and Updating of Reports

Where a report contains an obvious error, the referrer may request the independent medical examiner to clarify and correct the report at no extra cost. Such requests are to be made in writing.

Where the referrer requests that the examiner review additional information and seeks a supplementary report, that report will attract an additional cost.

5. Complaints about Independent Medical Examinations

If the worker has concerns about the conduct of the independent medical examiner during the examination, they should raise those issues with the examiner at the time of the examination. The examiner should record the complaint and forward this to the referrer with their report and advise the worker to do likewise.

If the worker does not feel confident enough to do this, the worker should raise their concerns with the referring party as soon as possible after the examination. All insurers have in place a complaints management process. Making such a complaint can be facilitated by a union.

If the complaint is unable to be satisfactorily resolved, the worker may forward their complaint to WorkCover. WorkCover will advise the independent medical examiner of the complaint and provide an opportunity for the examiner to respond to the complaint.

WorkCover may refer the matter to the Health Care Complaints Commission, if it meets the criteria for such referral, eg more than 5 complaints about one independent medical examiner are received within a 12 month period and found to be justified, or if professional misconduct or fraudulent action are alleged. The worker may at any time make a complaint to WorkCover, the insurer, the Health Care Complaints Commission, or the NSW Medical Board.

6. Complaints about Workers

Independent medical examiners should report any unreasonably late or non-attendance by the worker to the referring party. Similarly, any inappropriate behaviour or behaviour which impeded the examination should likewise be brought to the notice of the referrer within 2 days.

7. Fees and Payments for Properly Completed Reports

The maximum fees to be charged and paid are those set out in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order* in force at the time of the examination.

The referrer is to either:

- a. agree the category of report being requested with the independent medical examiner and confirm the request in writing indicating that payment will be made within 10 days of receipt of a properly completed report and invoice; or

- b. pay in accordance with a contractual arrangement between the medical practice and the referring body on receipt of a properly completed tax invoice. Either arrangement cannot agree to a fee above the maximum fee prescribed in the *Workers Compensation (Medical Examinations and Reports) Order*.

The referrer's liability to pay for a report will be contingent on the report containing the information listed in the standard format, or as agreed between the parties.

If it involves an assessment of permanent impairment for an injury on or after 1 January 2002, the assessment must be in accordance with the *WorkCover Guides for the evaluation of permanent impairment*.

In some instances, the referrer will require an assessment in accordance with the *WorkCover Guides for the evaluation of permanent impairment*, even though the injury is before 1 January 2002. The independent medical examiner must be advised if this is the case.

Use of an interpreter, multiple system injuries and more complex matters will attract a surcharge in addition to the basic fees. These are listed in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order* current at the time of the examination.

The *Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order* classifies the problems to be addressed into standard, moderately complex and complex. Definitions of these are:

A. Standard Reports are reports relating solely to a single event or injury in relation to:

- causation; or
- fitness for work; or
- treatment; or
- simple permanent impairment assessment of one body system.

B. Moderately Complex Reports are:

- reports relating to issues involving a combination of two of the following:
 - causation
 - fitness for Work
 - treatment
 - simple permanent impairment assessment of one body system

or

- reports of simple permanent impairment assessment of two body systems or more than one injury to a single body system.

C. Complex Reports are:

- reports relating to issues involving a combination of 3 or more of the following:
 - causation

- fitness for Work
- treatment
- simple permanent impairment assessment of one body system.

or

- A complex method of permanent impairment assessment on single body system or multiple injuries involving more than one body system.

The referrer is to indicate the expected level of complexity on referral and the independent medical examiner should advise the reason for any difference from this level.

Fees for cancellations, non-attendance or late cancellation by the worker or another party, such as an interpreter, are included in the *Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order* current at the time of the examination.

Complaints about patterns of late or non-payment by insurers should be referred for investigation to the WorkCover doctors' hotline on 1800 661 111 or by email to provider.services@workcover.nsw.gov.au

ATTACHMENT A

Report format

- **Worker's details including:**
 - ❑ date of examination
 - ❑ worker's name
 - ❑ date of birth/age
 - ❑ details of who attended the examination (ie interpreter, family member or friend).
- **General history including:**
 - ❑ date of injuries
 - ❑ brief history of the circumstances of the injuries
 - ❑ job description/work tasks (when relevant).
- **Clinical history including:**
 - ❑ summary of injuries received and diagnoses made of the worker's condition.
 - ❑ summary of all treatment provided
 - ❑ details and dates of clinical investigations carried out
 - ❑ details of any previous or subsequent injuries, condition or abnormality.
- **Examination findings including:**
 - ❑ list of injuries assessed
 - ❑ your findings on comprehensive clinical examination, including negative findings
 - ❑ your comments on consistency of presentation and, where appropriate, how this compares to the medical reports and other material sighted.
- **Conclusions**
 - ❑ Your opinion in relation to the **specific questions** asked in the letter of referral (refer to page 5).
- If the referral is about **permanent loss of use** as a result of injuries received before 1 January 2002 or for **whole person impairment** for injuries received on or after 1 January 2002, questions regarding maximum medical improvement, whether the condition has resulted in a permanent impairment, and whether there is any deduction for a pre-existing condition must be addressed. A summary table (see Table 1) and a copy of all calculations must be included.

Table 1– Whole Person Impairment (WPI)

Body part or system	Date of injury	Chapter, page and paragraph number in WorkCover Guides	Chapter, page, paragraph, figure and table numbers in AMA5 Guides	% WPI	% WPI deductions pursuant to S323 for pre-existing injury, condition and abnormality	Sub-total/s % WPI in whole numbers (after any deductions in column 5)
1.						
2.						
3.						
Total % WPI (the Combined Table values of all sub-totals in whole numbers)						