



Workcover Guidelines on Injury Management Consultants

Workplace Injury Management and Workers Compensation Act 1998

I, Julie Newman, the Acting Chief Executive Officer of the WorkCover Authority of New South Wales, under sections 45A, 119(4) and 376 of the *Workplace Injury Management and Workers Compensation Act 1998*, issue the following guidelines.

Dated this 27th day of September 2012

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WorkCover Authority



Guidelines on Injury Management Consultants

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These guidelines are issued pursuant to sections 45A, 119 and 376 of the *Workplace Injury Management and Workers Compensation Act 1998*. The guidelines set out WorkCover's policy in respect to the approval and functions of injury management consultants as well as providing guidance on the referral process to an injury management consultant.

These guidelines will come into effect on 1 October 2012 and apply to approvals of injury management consultants and referrals made from that date. The previous *WorkCover Guidelines on Injury Management Consultants*, published in the *NSW Government Gazette* on 18 February 2011, are revoked.

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.

In these guidelines, an insurer is an insurer within the meaning of the 1987 Act and the 1998 Act and includes scheme agents of the Workers Compensation Nominal Insurer, and self and specialised insurers.

Contents

1. Introduction	4
1.1 Purpose and scope of the Guidelines.....	4
2. Definition of an injury management consultant	4
3. The role of the injury management consultant	4
4. Referrals to an injury management consultant.....	6
5. Injury management consultant reports.....	9
6. Injury management consultants and the Workers Compensation Commission ...	9
7. Selection criteria	10
8. Approval process	10
9. Term of approval.....	10
10. Re-approval	11
11. Appeal Process for Non-Selection or Non Re-approval	11
12. Complaints about an injury management consultant	12
13. Revocation of approval	13
14. Fees and payments	13
Attachment A.....	14
Attachment B.....	16

1. Introduction

1.1 Purpose and scope of the Guidelines

When differences arise between the nominated treating doctor, the employer, insurer and/or injured worker about return to work it may be appropriate for an injury management consultant to review the worker.

The purpose of these guidelines is to provide the basis for a shared understanding of the role and approval of injury management consultants in the NSW workers compensation system.

The guidelines also outline the process of referral to an injury management consultant and recommended reporting by injury management consultants.

This document is intended for use by:

- those who refer injured workers to injury management consultants
- injury management consultants
- injured workers, employers and their representatives.

2. Definition of an injury management consultant

An injury management consultant (IMC) is a registered medical practitioner experienced in occupational injury and workplace-based rehabilitation, approved under section 45A of the 1998 Act. Injury management consultants are facilitators who will assist insurers, employers, workers and treating doctors find solutions to problems in complex return to work plans and injury management.

3. The role of the injury management consultant

An injury management consultant is expected to assess the situation, examine the worker (if necessary), and discuss possible solutions with all parties (particularly the nominated treating doctor). Injury management consultants are not involved in the treatment of an injured worker, nor do they provide any opinion on the current treatment regime to the referrer. They assess the nature of the problem and attempt to mediate a solution. The role of the injury management consultant is distinctly different from that of the independent medical examiner. For further information on the role of the independent medical examiner please refer to the *WorkCover Guidelines on independent medical examinations and reports*.

An injury management consultant does not become involved in commenting to the referrer on:

- the appropriateness of treatment or diagnostic procedures
- liability for a workers compensation claim.

An injury management consultant's role with each of the parties is outlined below.

1. Nominated treating doctor

The injury management consultant MUST verbally discuss the injured worker's capacity for work with the nominated treating doctor. A minimum of three attempts at discussion must be made by the injury management consultant within the report submission time frames. The injury management consultant may discuss the following:

- issues in relation to treatment and diagnosis (if required) and options to overcome barriers to return to work
- current work capacity
- availability of suitable duties
- how the NSW workers compensation system operates
- the importance of timely, safe and durable return to work
- obtaining agreement on work capacity, prognosis for recovery and time frames for the return to work plan.

2. Injured worker

The injury management consultant will discuss return to work with the injured worker including:

- their recovery from injury
- the importance of timely, safe and durable return to work and potential impact on the workers health of absence from work
- relevant aspects of the workers compensation system
- issues and problems at work
- options for their return to work (including a possible tele-conference with the nominated treating doctor)
- their expectations regarding recovery and return to work.

The injury management consultant will often examine the worker to assist in their appraisal of the worker's capacity to return to work.

Where an injured worker has a union representative involved in their return to work, the injury management consultant will include that representative in discussions with the worker.

The union representative's role is to advise and support their member in achieving a timely, safe and durable return to work.

3. Employer

The injury management consultant may liaise with the employer to confirm the availability and appropriateness of identified duties and where appropriate conduct a workplace assessment, if required.

4. Other Service Providers

The injury management consultant may liaise with other service providers to assist in determining fitness for work or identifying suitable duties.

4. Referrals to an injury management consultant

1. Reasons for referral

Prior to any referral to an injury management consultant there must be a specific return to work or injury management problem. Efforts should have been previously made to rectify the area(s) of concern without success. Following this, an insurer or employer can refer to an injury management consultant when there are:

- confused goals,
- complexity of injury or workplace environment
- poor communication between insurer, employer or nominated treating doctor
- perceived conflict between the nominated treating doctor's recommendations and the workplace requirements
- unexplained changes in work capacity
- disagreement about the suitability of duties offered to an injured worker
- worker not upgrading duties at work.

Where a nominated treating doctor identifies the need for an injury management consultant for any of the reasons stated above, they may contact the insurer to organise the referral on their behalf.

Where a referrer identifies the need for an injury management consultation but does not believe it is necessary for the injury management consultant to talk to the injured worker, then a file review may take place. The referral must still meet the criteria for referral (as listed above) and the injury management consultant must verbally discuss the case with the nominated treating doctor.

2. Responsibility of referrer

The referrer has a responsibility to ensure that:

- all parties are informed of the appointment details
- the worker is provided with an explanation of the reasons for the appointment, and details of the appointment including the nature of the appointment
- the worker's special needs are catered for eg interpreter, disabled access
- the injury management consultant is provided with details of the worker and reason for referral
- the nominated treating doctor is provided with a copy of the referral to the injury management consultant with a covering letter and the brochure *Doctors and WorkCover injury management consultants*.

3. Selection of an appropriate injury management consultant

Where a worker is required to attend an injury management consultant's rooms the location should be geographically close to the worker's home address 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.

The injury management consultant should be able to provide an appointment within a reasonable time.

The decision on which particular injury management consultant to engage should be made in consultation with the injured worker (and their union, if involved).

Where an employer is making the referral to an injury management consultant there should be no conflict of interest between the injury management consultant and the employer.

4. Communication with the injury management consultant

The format for the referral letter is attached at Attachment A.

The letter of referral to the injury management consultant must include:

- details of the worker
- specific reason for the referral
- details of the nominated treating doctor
- details of the employer and contact person
- all relevant reports and certificates of capacity.

Referrers are not to ask the injury management consultant to answer questions about the appropriateness of treatment or diagnostic procedures or liability for a workers compensation claim.

Where an injury management consultant is requested by a referrer to comment on issues outside the role, the injury management consultant will notify the referrer that they are unable to complete all aspects of the referral.

Complaints about inappropriate referrals to an injury management consultant may be referred to the WorkCover doctors' hotline on 1800 661 111 or by email to provider.services@workcover.nsw.gov.au.

5. Notification and explanation to the worker

The worker must be advised in writing at least 10 working days before the appointment, unless a shorter timeframe is agreed by all parties.

Advice about the appointment with an injury management consultant must include:

- the specific reason for the referral
- that the injury management consultation is an opportunity for them to actively participate in their return to work
- the name of the injury management consultant
- date, time and place of the appointment and contact details of the injury management consultant
- the expected duration of the appointment
- the need to be punctual
- to wear suitable clothing to allow examination
- a copy of the brochure *Doctors and WorkCover injury management consultants*
- the worker may be accompanied by a support person, with the agreement of the injury management consultant
- what to take, e.g. x-rays, rehab provider reports etc.
- how costs are to be paid and any charges that may be incurred for cancellation of the appointment without sufficient notice
- how complaints are to be managed
- that no one may be present during the actual physical/psychological examination of the injured worker, unless agreed by the worker and by the injury management consultant
- 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)
- that the injured worker will receive a copy of the report from the appointment
- where the injury management consultant's routine practice is to record the consultation on audio or video, the worker must be informed of this in writing and given the opportunity to decline should they not consent. Therefore the insurer will need to ascertain whether the injury management consultant records consultations at the time the appointment is scheduled.

Where the injury management consultant is conducting a file review the referrer should inform the injured worker that the injury management consultant will be reviewing the file and discussing their case with their nominated treating doctor to facilitate their return to work.

If a worker has any problem about the referral they can contact the WorkCover Claims Assistance Service on 13 10 50 or their union for assistance.

5. Injury management consultant reports

The format for the report is at Attachment B.

An injury management consultant's report will outline the action taken and outcome(s) agreed between the parties, or suggest alternative actions such as the need for a specialist opinion or referral to an approved workplace rehabilitation provider. The injury management consultant will ensure a copy of the report is provided on a confidential basis, to all parties involved in the consultation process including the nominated treating doctor, injured worker, employer (where involved) and insurer.

Any key benchmarks identified within the report should be followed up at the time they fall due by the insurer to ensure the integrity of the process and successful resolution of any issues. If benchmarks are not met or other problems emerge, the insurer is to refer back or discuss alternatives with the same injury management consultant.

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

6. Injury management consultants and the Workers Compensation Commission

A worker or an employer can request the Workers Compensation Commission to resolve a dispute about the suitability of employment.

If there is an application to resolve a dispute regarding suitable duties, the Workers Compensation Commission may request an injury management consultant to conduct a workplace assessment and provide an opinion regarding the availability of suitable duties. These assessments are conducted within five days of receiving the request and the report is provided to the Registrar of the Workers Compensation Commission within seven days of conducting the assessment. The report is available on a confidential basis to the involved parties.

The role of the injury management consultant for the Workers Compensation Commission is to assist the Commission in resolving a dispute about return to work. For further information please refer to the Workers Compensation Commission website at <http://www.wcc.nsw.gov.au>.

7. Selection criteria

An injury management consultant must have:

- registration as a medical practitioner with the Medical Board of Australia (through the Australian Health Practitioner Regulation Agency), with no restrictions placed on that registration
- at least 12 months experience in workplace based rehabilitation
- knowledge of the NSW workers compensation system
- demonstrated adherence to all legislation, guidelines and fees schedules in the workers compensation system
- good communication and negotiation skills
- references supporting their approval from employers, insurers and/or unions.

8. Approval process

Section 45A of the 1998 Act provides for approval of injury management consultants by WorkCover.

The approval process for an injury management consultant is outlined below:

- medical practitioner completes application form demonstrating ability to meet all of the selection criteria
- WorkCover's Provider Services Branch reviews the application to ensure applicant meets all selection criteria and seeks further information as necessary
- WorkCover contacts referees to obtain reports on applicants who meet all selection criteria
- the Director, Claims considers all information and as the delegate under the Act, approves or rejects the approval
- the applicant is advised of the outcome of the application
- applicants who are not successful are advised of the reason for rejection and the appeal process
- following approval, an injury management consultant must undertake training in mediation/negotiation skills as arranged by WorkCover.

9. Term of approval

The initial term of approval is 12 months with a review after that time.

Subsequent terms of approval are for a maximum period of 3 years.

10. Re-approval

An injury management consultant is required to seek re-approval by providing information to WorkCover regarding their activities as an injury management consultant, together with referees who can support their re-approval.

Re-approval of an injury management consultant is based on the following criteria:

- must meet all selection criteria for approval as an Injury Management Consultant
- works within boundaries of the injury management consultant role
- negotiates with nominated treating doctor to establish clear agreed outcomes from injury management consultation
- adheres to all WorkCover legislation, guidelines and fees orders
- completes mediation/negotiation skills training
- no complaints warranting revocation of approval, with regard to any role they fulfil within the workers compensation system
- no evidence of fraudulent conduct
- the medical practitioner has completed at least one injury management consultation in the previous 12 months.

The re-approval process for an injury management consultant is outlined below:

- WorkCover's Provider Services Branch will contact the injury management consultant informing them of the need for re-approval and ask them to complete an "Application for re-approval as an injury management consultant", providing the following information:
 - their intent to continue work as an injury management consultant
 - confirmation that they are a registered medical practitioner with the Medical Board of Australia, with no restrictions placed on that registration
 - a summary of the last 3 injury management consultations they have undertaken
 - provision of contact details of 3 referees who can discuss the medical practitioner's work in the role of an injury management consultant
 - provision of a copy of their latest referral and associated report
- WorkCover's Provider Services Branch reviews the application to ensure the applicant meets all selection criteria and seeks further information as necessary and contacts referees to obtain reports on applicants who meet all criteria
- the Delegate considers all information and approves or rejects the re-approval.

11. Appeal Process for Non-Selection or Non Re-approval

A person who is not approved as an injury management consultant or not re-approved as an injury management consultant can appeal against the decision by submitting additional information in support of their application to the General

Manager, Workers Compensation Insurance Division, WorkCover who will consider the original application/re-approval application and all additional information.

The 1998 Act provides for the Administrative Decisions Tribunal to review decisions in relation to revocation of approval under ss45A (6).

12. Complaints about an injury management consultant

If the worker has concerns about the conduct of the injury management consultant during the appointment, they should raise those issues with the doctor at the time of the appointment. The doctor 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 consultation. 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 in writing to WorkCover and/or the Medical Council of NSW and/or the Health Care Complaints Commission.

Complaints about an injury management consultant are investigated by WorkCover's Provider Services Branch as follows:

- details of the complaint are discussed with the complainant and other parties as appropriate
- the injury management consultant is invited to offer a response to the complaint
- WorkCover assesses the information from all parties
- WorkCover advises the complainant and injury management consultant of the outcome of the investigation and takes further action as necessary.

Following the investigation WorkCover may:

- take no further action
- refer the matter to the Medical Council of NSW and/or the Health Care Complaints Commission to consider, if the complaint is about clinical practice
- revoke the injury management consultant's approval.

The worker may at any time make a complaint to WorkCover, the insurer, the Health Care Complaints Commission, and/or the Medical Council of NSW.

13. Revocation of approval

WorkCover may revoke the approval of an injury management consultant on the following grounds:

- no longer meets all selection criteria for approval as an injury management consultant
- complaints about performance found to be justified with regard to any role they perform within the workers compensation system
- does not adhere to WorkCover legislation, guidelines and fees orders
- non-performance as an injury management consultant for a consecutive period of 12 months
- fraudulent conduct
- failure to perform the role of the injury management consultant
- failure to attend mediation-negotiation training
- failure to adhere to these guidelines
- such other reason as the Authority thinks appropriate.

An injury management consultant may apply to the Administrative Decisions Tribunal for a review of WorkCover's decision to revoke the Consultant's approval.

14. Fees and payments

The maximum fees to be charged and paid are those set out in the *Workplace Injury Management and Workers Compensation (injury management consultants) Order* in force 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

Injury management consultant- Referral format

An insurer or employer refers an injured worker to an injury management consultant. All relevant reports and work capacity certificates are to be attached to the referral to assist the injury management consultant to determine the nature of the problem, the worker's medical status and rehabilitation progress.

Injury management consultant details

Name _____

Phone _____

We have referred (Worker's name and claim number) _____

to you because

Reason for referral (tick appropriate box(es))

- confused goals
- complexity of injury or workplace environment
- poor communication between insurer, employer or nominated treating doctor
- perceived conflict between the nominated treating doctor's recommendations and the workplace requirements
- unexplained changes in capacity certification
- disagreement about the suitability of duties offered to an injured worker
- worker not upgrading duties at work
- other (please specify)

Insurer is to expand on above and describe the specific problem / reason for referral

and request that you: (tick appropriate box(es))

- assess the attached documentation
- contact the nominated treating doctor to discuss facilitating capacity for employment
- consult the worker's employer to identify the availability / suitability of duties, if necessary
- examine the worker
- develop a strategy to improve capacity for employment in agreement with these parties

Worker details

Name _____ Claim number _____

Date of Birth: _____ Date of Injury: _____ Date Last Worked: _____

Injury _____

Occupation _____

Nominated treating doctor details

Name _____

Address _____

Phone _____ Fax _____

Employer details

Name of Employer _____

Contact Person _____

Address _____

Phone _____ Fax _____

Union details (if involved)

Name of Union _____

Contact Person _____

Address _____

Phone _____ Fax _____

Please forward a copy of the report that explains the agreed outcomes to the nominated treating doctor and all parties involved in the consultation process including the worker, insurer and employer (where still involved).

Documentation enclosed

- history of injury, any surgical interventions, current ongoing treatment and relevant reports from the nominated treating doctor, the treating medical specialist and any other treating personnel.
- rehabilitation progress, including capacity restrictions, medical status of the injured worker, the involvement of a rehabilitation provider

Insurer/referrer details

Name _____

Contact person _____

Phone _____ Fax _____

Attachment B

Injury management consultant - Report format

Dear _____
Referrer's name

Re: _____
Worker's name and claim number

Thank you for referring the abovementioned worker to me.

The reason for referral was _____

The documents reviewed included _____

Consultation with the nominated treating doctor involved _____

Comment on:

- outcome of treatment to date
- issues identified as impacting on return to work/capacity for work
- outcome of discussion

Consultation with the employer _____

Comment on:

- availability of suitable duties
- other relevant issues

Examination and consultation with worker _____

As a result of the review, it is concluded that _____

Action Plan

Summarise the action taken and the outcomes agreed with the nominated treating doctor, including timeframes and milestones to reach the agreed outcome.

Agreed Action	Outcome to Be Achieved	By Whom	By When

If agreement is not reached, suggest alternative actions to the referrer eg. Referral for independent medical examination, referral to an approved workplace rehabilitation provider.

Yours sincerely

Injury management consultant

cc. nominated treating doctor and all parties involved in the consultation process including the worker, insurer and employer (where still involved)