

# Medical Assessment Guidelines

Version 5  
Effective from  
12 February 2021

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## Publication Note

These Guidelines are published by the State Insurance Regulatory Authority (the Authority).

Part of the NSW Department of Customer Service, the Authority is constituted under the *State Insurance and Care Governance Act 2015* and is responsible for regulating workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation insurance in NSW.

These updated Guidelines support the establishment of the Personal Injury Commission on 1 March 2021. Savings and transitional provisions under the *Personal Injury Commission Act 2020* provide that pending proceedings and unexercised rights must be determined by applying the law as if the *Personal Injury Commission Act 2020* had not been enacted. Accordingly, these Guidelines are needed to determine those pending proceedings and unexercised rights. For all other matters from 1 March 2021, practice and procedure is governed by the Personal Injury Commission Rules and these Guidelines do not apply.

All references to 'Motor Accidents Authority' in earlier versions of this publication have been changed to the 'State Insurance Regulatory Authority' (the Authority).

## Replacement and Transition

This new version of the Motor Accidents Medical Assessment Guidelines replaces in whole the previous versions of the Motor Accidents Medical Assessment Guidelines.

These Guidelines apply to all claims and applications made before or after the commencement of these Guidelines.

## Legislative Framework

The *Motor Accidents Compensation Act 1999* (the Act) establishes a scheme of CTP insurance and common law damages for people injured in motor accidents in New South Wales occurring between 5 October 1999 and 30 November 2017 inclusive. The objects of the Act, as described in section 5, are:

- (a) to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,*
- (b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,*
- (c) to promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure,*
- (d) to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,*
- (e) to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities,*
- (f) to ensure that insurers charge premiums that fully fund their anticipated liability,*

*(g) to deter fraud in connection with compulsory third-party insurance.*

The *Motor Accidents Compensation Regulation 2020* (the Regulation) contains provisions that support the implementation and operation of the Act.

## Guideline Making Powers

These Guidelines are made under section 44(1) of the *Motor Accidents Compensation Act 1999* with respect to:

- (a) the appropriate treatment of injured persons,*
- (b) the appropriate procedures with respect to the provision of rehabilitation services or attendant care services for injured persons (including the circumstances in which rehabilitation services or attendant care services are required to be provided),*
- (c) the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident,*
- (d) the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment and review of assessments, under Part 3.4.*

## Interpretation of the Guidelines

These Guidelines should be read in conjunction with relevant provisions of the Act and the Regulation, and in a manner that supports the objects of the Act as described in section 5 of the Act.

## Commencement of the Guidelines

The Guidelines come into effect on 12 February 2021 and apply to motor accidents occurring on or after 5 October 1999 and before 1 December 2017.

The Guidelines apply until the Authority amends, revokes or replaces them in whole or in part.

## Purpose of the Guidelines

The Guidelines support delivery of the objects of the Act and the Regulation by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme. The Authority expects stakeholders to comply with relevant parts of the Guidelines that apply to them.

## Application of the Guidelines

The Guidelines explain the operation of those sections of the Act relating to medical assessments and the Medical Assessment Service ('MAS'), a unit of the Authority. MAS was established to resolve medical

disputes as they arise during the course of a claim and usually before proceedings are commenced at the Claims Assessment and Resolution Service ('CARS') or Court.

The Guidelines apply to all new applications received at MAS on or after 12 February 2021 and all matters current at MAS on or after that date, that have not been determined, unless otherwise provided for in these Guidelines.

## **Compliance with the Guidelines**

The Authority will monitor and review compliance with the Guidelines. Compliance and enforcement will be undertaken in accordance with the Authority's Compliance and Enforcement Policy (July 2017).

# Division 1 - Introduction and registry

## Chapter 1 - Introduction and interpretation

### Introduction and commencement date

- 1.1 These Guidelines may be referred to as the 'Medical Assessment Guidelines' and are made pursuant to section 44(1)(d) of the *Motor Accidents Compensation Act 1999* (the Act). They apply in respect of a motor accident occurring on or after 5 October 1999 and before 1 December 2017.
- 1.2 These Guidelines replace the Medical Assessment Guidelines that came into effect on 1 October 2008 and will apply to all new applications received at MAS on or after 12 February 2021 and all disputes current at MAS on or after that date that have not been determined.
- 1.3 The development of these Guidelines meets the consultation requirements under section 44(6) of the Act.
- 1.4 As a transitional arrangement and to avoid requirements that might be unreasonable in the circumstances on any person or entity, the Authority or Proper Officer may waive observance of any part or parts of these Guidelines for any application that has been lodged with the registry before these Guidelines apply.
- 1.5 The Authority or Proper Officer may dispense with the formal requirements of these Guidelines after advising the parties to the dispute and considering any submissions by the parties.

### Definitions

- 1.6 The terms used in these Guidelines have the following meanings:

1.6.1	<b>Act</b>	<i>Motor Accidents Compensation Act 1999</i> , as amended from time to time.
1.6.2	<b>Allocation Review</b>	A consideration of an application and/or reply pursuant to Chapter 9.
1.6.3	<b>Applicant</b>	The party that initiates the referral of a dispute.
1.6.4	<b>Application</b>	The means by which a party requests the referral of a dispute for assessment or applies for a review.
1.6.5	<b>Assessment</b>	A medical assessment of a dispute referred under section 60(1).
1.6.6	<b>Assessor</b>	A Medical Assessor appointed by the Authority under section 59.
1.6.7	<b>Authority</b>	State Insurance Regulatory Authority (SIRA)

1.6.8	<b>CARS</b>	Motor Accidents Claims Assessment and Resolution Service of the Authority.
1.6.9	<b>Claims Assessor</b>	A Claims Assessor designated by the Authority under section 99.
1.6.10	<b>Certificate</b>	A certificate issued under section 61(1) including the reasons for any finding under section 61(9).
1.6.11	<b>Claimant</b>	A person who makes or is entitled to make a claim under the Act.
1.6.12	<b>Combined certificate</b>	A certificate issued under section 61(10)(b) including the reasons for any finding under section 61(10)(b).
1.6.13	<b>CTP</b>	Compulsory Third Party
1.6.14	<b>CTP Assist</b>	An advisory service to assist claimants in connection with claims for statutory benefits and claims for damages, and with dispute resolution.
1.6.15	<b>Dispute</b>	Any dispute about a medical assessment matter referred to in section 58.
1.6.16	<b>EDM system</b>	An electronic dispute management system established by the Authority.
1.6.17	<b>ED</b>	Executive Director
1.6.18	<b>ET Act</b>	<i>Electronic Transactions Act 2000</i> , as amended from time to time.
1.6.19	<b>Form</b>	A form approved by the Authority that may contain an application and/or a reply to an application.
1.6.20	<b>Further assessment</b>	A further assessment under section 62.
1.6.21	<b>Injured person</b>	A person who has suffered an injury that is the subject of a claim made under the Act.
1.6.22	<b>Insurer</b>	Any party against whom a claim is made under the Act.
1.6.23	<b>Licensed insurer</b>	An insurer that is the holder of a license granted under Part 7.1 of the Act and in force.
1.6.24	<b>MAS</b>	Motor Accidents Medical Assessment Service of the Authority.
1.6.25	<b>MAS Assessor</b>	A Medical Assessor appointed by the Authority under section 59.

1.6.26	<b>Matter</b>	The application, reply and all supporting documents and correspondence held by MAS in relation to one discrete application. Each matter lodged at MAS is given a discrete matter number.
1.6.27	<b>Officer of MAS</b>	An officer of the Authority undertaking work in relation to medical assessments or reviews as directed by, or as delegated by the Proper Officer.
1.6.28	<b>Person under legal incapacity</b>	Includes: (a) a child under the age of 18 years; (b) a temporary patient, continued treatment patient or forensic patient within the meaning of the <i>Mental Health Act 2007</i> ; (c) a person under guardianship within the meaning of the <i>Guardianship Act 1987</i> ; (d) a protected person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i> ; and (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.
1.6.29	<b>Proper Officer</b>	A Proper Officer of the Authority
1.6.30	<b>Reasons</b>	The reasons under section 61(9) for any finding by an Assessor in a certificate.
1.6.31	<b>Registry</b>	That part of the Authority that receives documents for the purpose of medical assessments.
1.6.32	<b>Reply</b>	The means by which a respondent answers an application.
1.6.33	<b>Respondent</b>	A party who is required to respond to an application.
1.6.34	<b>Review</b>	A review of a medical assessment by a panel of Medical Assessors under section 63.

1.7 A reference in these Guidelines to a section 'X' is a reference to a section of the *Motor Accidents Compensation Act 1999 (NSW)*.

1.8 A reference to a party in these Guidelines includes the plural.

1.9 A reference in these Guidelines to a number of days is a reference to a number of working days, unless otherwise stated.

1.10 A reference in these Guidelines to a service copy of material is a reference to a separate (duplicate) set of the documents that are attached to and lodged with, or in support of, an application or reply.

1.11 The Authority will provide and maintain CTP Assist to assist claimants in connection with the medical assessment procedures under the Act.

## Objects of MAS

1.12 The objects of MAS set out in clause 1.13 should be used as an aid to the interpretation of these Guidelines.

1.13 The **objects of MAS** in dealing with medical disputes referred are:

1.13.1 to provide a timely, fair and cost-effective system for the assessment of medical disputes under the *Motor Accidents Compensation Act 1999* that is accessible, transparent, independent and professional;

1.13.2 to assess medical disputes fairly and according to the substantial merits of the application with as little formality and technicality as is practicable and minimising the cost to the parties;

1.13.3 to ensure the quality and consistency of MAS decision making;

1.13.4 to make appropriate use of the knowledge and experience of MAS Assessors; and

1.13.5 to establish and maintain effective communication and liaison with stakeholders concerning the role of MAS.

1.14 The objects of MAS set out in clause 1.13 are consistent with, and are in support of the objects of the Act as can be gleaned from the Act as a whole, as amended from time to time, including from the 'Objects of the Act' set out in section 5(1) and the 'Acknowledgements of the Act' set out in section 5(2).

1.15 In exercising their functions and interpreting the provisions of these Guidelines, the Authority, Proper Officer, MAS Assessors and officers of MAS must have regard to the objects of MAS, in addition to the objects of the Act.

**(Note:** At the time of publication of these Guidelines, some of the Objects and Acknowledgements in those specific sections of the Act referred to above most relevant to these Guidelines include:

**Objects** - Section 5(1)(a) - to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities; and

Section 5(1)(b) - to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation **claims**; and

Section 5(1)(e) - to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities.

**Acknowledgements** - Section 5(2)(a) - that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable; and

Section 5(2)(b) - that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries; and

Section 5(2)(c)(i) - that the premium pool from which each insurer pays claims consists at any given time of a finite amount of money; and

Section 5(2)(c)(iii) - that the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place; and

Section 5(2)(c)(iv) - that the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.)

## Chapter 2 - Jurisdiction

2.1 An application may be made to MAS for assessment, further assessment, or a review of an assessment of a medical dispute in accordance with Part 3.4. Section 58 defines these disputes as:

2.1.1 whether treatment provided, or to be provided, to the injured person (a 'treatment dispute') is:

2.1.1.1 reasonable and necessary in the circumstances (a 'reasonable and necessary treatment dispute');

2.1.1.2 related to the injury caused by the motor accident (a 'related treatment dispute');  
or

2.1.2 whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10% (a 'permanent impairment dispute').

2.2 An officer of MAS may reject an application or any part thereof as not duly made if the officer is satisfied that the application or part thereof does not establish that it relates to one of the above types of disputes.

2.3 An officer of MAS may reject an application made on behalf of, or in respect of, a personal injury claim made by a person who has died after the claim has been made, unless it is accompanied by a grant of probate or letters of administration or equivalent, and confirmation that the estate seeks to pursue the claim.

## Chapter 3 - Referrals to the MAS registry

3.1 The Authority shall establish and maintain a registry for the referral of applications:

3.1.1 The MAS office is located at 1 Oxford Street, Darlinghurst, Sydney, and is open to the public for lodgement of documents and general enquiries from 8:30am to 5:00pm except on Saturdays, Sundays and public holidays. The registry may be kept open to the public for business or closed for business at such times and on such days as the Executive Director may direct.

3.1.2 MAS may make provision for lodgement of documents electronically and also outside the usual opening hours. Any documents lodged electronically after 11:59pm will be deemed to have been received on the next day that DRS is open to the public for lodgement of documents in person.

3.2 A claimant may lodge an application with MAS by:

3.2.1 **application form** – by completing the approved MAS application form, and lodging it with MAS by post, email, or in person;

3.2.2 **online application process** – by completing an approved online MAS application process through any electronic dispute management (EDM) system; or

3.2.3 **telephone** – a claimant who is making an application may contact MAS by telephone to make an application, which MAS will confirm in writing to the parties, confirming the nature and extent of the application.

3.3 MAS will, as soon as practicable, and preferably within two working days, acknowledge receipt of the application, and will give notice of the application to the other party, providing them with access to the application and all supporting documents and materials.

3.4 An insurer or its representative may only lodge an application with MAS by completing an approved online MAS application through the electronic dispute management (EDM) system. If the EDM system is unavailable at the time of lodgement, the insurer may complete a MAS application form and lodge it with MAS by post, email or in person.

The contact details for MAS are:

Phone: 1800 34 77 88

Address: Level 19, 1 Oxford St, Darlinghurst, NSW 2010

Email: [drsenquiries@sira.nsw.gov.au](mailto:drsenquiries@sira.nsw.gov.au)

3.5 The registry shall, notwithstanding clause 3.1.1, be kept open to the public for business or closed for business, at such times and on such days as the Authority shall direct.

3.6 The Authority shall arrange for all applications made under these Guidelines to be allocated a matter number and registered. All subsequent correspondence concerning the application is to quote that matter number.

3.7 All correspondence to, and communication with, an Assessor in relation to a medical dispute, either in respect of a current or concluded assessment, must, unless the Authority, Proper Officer or the Assessor directs otherwise, be directed to the Assessor care of the registry.

3.8 If a legal practitioner or agent represents the claimant in respect of the medical dispute being assessed:

3.8.1 it is sufficient notification for the Authority, Proper Officer, an officer of MAS or an insurer to send any document required to be sent to the claimant, to the legal practitioner or agent; and

3.8.2 the Authority, Proper Officer or an officer of MAS may, notwithstanding that the claimant has legal or other representation, contact the claimant directly in relation to a medical assessment.

3.9 If a legal practitioner or agent represents the insurer in respect of the medical dispute being assessed:

3.9.1 it is sufficient notification for the Authority, Proper Officer, an officer of MAS or a claimant to send any document required to be sent to the insurer to the legal practitioner or agent; and

3.9.2 the Authority, Proper Officer or an officer of MAS may, notwithstanding that the insurer has legal or other representation, contact the insurer directly in relation to a medical assessment.

3.11 If a party, represented by a legal practitioner or agent, requests MAS to do so, the Authority, Proper Officer or an officer of MAS may at their discretion send a copy of any document required to be sent to that party, to the party direct, in addition to that party's legal representative or agent.

3.12 If after an application or reply is lodged at MAS, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify the Authority and the other party in writing within 5 days of the date of the retainer or change in representation.

3.13 If after an application lodged at MAS has been allocated to an Assessor, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify the Authority and the other party in writing within 5 days of the date of the retainer or change in representation.

## Exchange and lodgement of application and reply

### What must an application include?

3.14 An application to MAS must include:

3.14.1 all requirements specified in any approved application form, or

3.14.2 all requirements specified in any approved online application process through any EDM system, or

3.14.3 all information requested by an officer of MAS while a telephone application is being made.

3.15 A claimant making an application should list all documents relevant to the application. Copies of documents the claimant has already provided to the insurer do not need to be attached to the application. The claimant must attach copies of any documents or materials not previously provided to the insurer and on which the claimant seeks to rely.

3.16 If the insurer is making the application, the insurer must attach to the application all of the documents or materials in their possession relevant to the dispute. When providing the documents through the EDM, the insurer must upload the documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents lodged by an insurer, may result in an application being rejected.

3.17 MAS may decline to accept an application if the application does not comply with the above, and may notify the parties as soon as practicable, providing brief reasons for its decision.

### Can an applicant withdraw or amend an application?

3.18 An applicant may withdraw or amend an application to MAS online, by letter, telephone, email, or in person at any time before MAS notifies the parties of the outcome. DRS will confirm the withdrawal or amendment of the application in writing to the parties.

### How is a reply lodged?

3.19 A reply should be lodged as soon as practicable by a respondent and within 20 days of the application being sent by MAS.

3.20 A claimant may lodge a reply to an application with DRS by:

3.20.1 **reply form** – by completing the approved DRS reply form, and lodging it with MAS by post, email, or in person

3.20.2 **online reply process** – by completing an approved online MAS reply process through any EDM system, or

3.20.3 **telephone** – by contacting DRS by telephone, which MAS will confirm in writing to the parties, confirming the nature and extent of the claimant’s reply.

3.21 An insurer or their representative may lodge a reply with MAS by completing an approved online DRS application through the EDM. If the EDM system is unavailable at the time of lodgement, the insurer can complete a DRS application form and lodge it with DRS by post, email or in person.

3.22 As soon as practicable, DRS will acknowledge receipt of the reply to the respondent, and will give notice of the reply to the applicant, providing them with access to the reply and all supporting documents and materials.

3.23 A reply lodged with MAS after the time limit in clause 3.19 has expired may be accepted by the Authority or Proper Officer if they are satisfied that the respondent has a reasonable explanation for the delay. A reply sought to be lodged after the time limit in clause 3.19 has expired must attach an explanation for the delay, and must first have been provided to the applicant who is to be given an opportunity to make a submission on the issue.

### **What must a reply include?**

3.24 A reply to an application must include:

3.24.1 all requirements specified in any approved reply form for responding to an application, or

3.24.2 all requirements specified in any approved online reply process through any EDM system for responding to an application, or

3.24.3 all information requested by an officer of DRS while a telephone reply is being made.

3.25 A claimant who is lodging a reply should list all documents relevant to their reply, but they do not need to attach copies of documents or materials they have previously provided to the insurer. The claimant only needs to provide copies of documents or materials not previously provided.

3.26 The insurer must provide to DRS all of the documents or materials in their possession relevant to the application and reply, including documents and materials listed in the reply that the claimant has previously supplied to the insurer. After receiving the claimant’s reply, the insurer must upload each of the listed documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents may result in the reply being rejected.

3.27 MAS may decline to accept a reply if the reply does not comply with clause 3.24 (above).

3.28 MAS may proceed to hear and determine an application in the absence of a reply.

3.29 If the reply is rejected, an officer of MAS shall issue a rejection notice to both parties setting out brief reasons for the rejection within 5 days of receipt of the reply in the registry.

## **Expedited applications**

3.30 Either party to a dispute may apply at any time for a matter to be expedited by doing so in writing to MAS, and giving notice to the other party setting out full details of the basis on which expedition of the application is sought

3.31 In considering whether they are satisfied that an application for expedition should be granted, the Proper Officer shall consider all relevant factors and circumstances surrounding the matter including, but not limited to:

3.31.1 the objects of the Act;

3.31.2 the objects of MAS;

3.31.3 the interests of both parties to the matter; and

3.31.4 the interests of other parties to other disputes, particularly regarding the equity of prioritising the matter seeking expedition ahead of other matters.

3.32 If the Proper Officer is satisfied that the matter warrants being expedited, having considered any submissions from the parties, the Proper Officer will take all reasonable steps to ensure the matter is dealt with by MAS as quickly as possible.

3.33 The types of exceptional circumstances that may warrant an application for expedition being accepted may include, but are not limited to, issues such as:

3.33.1 Claimants with seriously deteriorating health requiring an urgent assessment;

3.33.2 claimants who are only able to remain in the country for a limited period of time due to matters outside their control; and/or

3.33.3 claimants with matters currently being heard before a Court or CARS.

## **Chapter 4 - Interpreters**

4.1 If a party indicates that an interpreter is required, an officer of MAS will arrange for an interpreter to be present at any assessments.

4.2 Interpreters accredited by National Accreditation Authority for Translators and Interpreters (NAATI) should be used during the course of an assessment if an interpreter is required.

4.3 In the absence of a NAATI interpreter, a non-NAATI interpreter may be used at the discretion of the Authority or Proper Officer, as long as that person is not a person accompanying the claimant to a medical examination.

## **Chapter 5 - Time**

### **Abridgement or extension of time**

5.1 The Authority or Proper Officer may, if the circumstances justify, and on terms, abridge or extend any time limit fixed by these Guidelines, including any time limit affecting the Authority, Proper Officer, an officer of MAS, or an Assessor.

5.2 The Authority or Proper Officer may extend time under clause 5.1 after the time expires, whether or not an application is made before the time expires, or at all.

## Reckoning of time

5.3 Any period of time fixed by these Guidelines for the doing of any act or in connection with any assessment or request by the Authority, Proper Officer or an Assessor shall be reckoned in accordance with clauses 5.4, 5.5 and 5.6.

5.4 Where a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

5.5 Where, apart from this sub-clause, the period in question, being a period of 5 days or less, would include a day on which the registry is closed for lodgement in person, that day shall be excluded.

5.6 Where the last day for doing a thing is a day on which the registry is closed for lodgement in person, the thing may be done on the next day on which the registry is open for lodgement in person.

## Chapter 6 - Delivery of documents

6.1 For matters lodged other than via the EDM system, for the purpose of these Guidelines where a claimant or insurer notifies in any document lodged an address for delivery or receipt of documents, then leaving a document at that address, or sending a document to that address, shall be taken to be received by the person as follows:

6.1.1 in the case of a physical address, on the day the document is left at that address;

6.1.2 in the case of a physical or postal address, on a day 5 days after the document is sent;

6.1.3 in the case of an email address, on the day the email or email attachment is sent if sent before 5:00pm, or on the day after the email or email attachment is sent if sent at or after 5:00pm;  
or

6.1.4 in the case of a facsimile number, on the day the facsimile is sent if sent before 5:00pm, or on the day after the facsimile is sent if sent at or after 5:00pm.

## Chapter 7 - Electronic case management system

### Establishment of an EDM system

7.1 The Authority may establish an EDM system to help support the objects of MAS, including to:

7.1.1 enable applications and replies to MAS to be created, lodged, exchanged and accessed in an electronic form

7.1.2 enable documents with respect to applications to MAS to be created, exchanged, lodged, issued and accessed in electronic form by the parties and MAS

7.1.3 enable parties to applications to MAS to communicate in an electronic form with MAS and with other parties

7.1.4 enable information concerning the progress of applications to MAS to be provided in an electronic form to parties to those disputes, and/or

7.1.5 enable officers of MAS and decision-makers to communicate in an electronic form with parties to applications to MAS.

7.2 MAS may issue an information sheet for the use of the EDM system, and establish requirements for persons to become registered users of the EDM system, in addition to decision-makers and officers of MAS.

7.3 Such an information sheet may specify, among other things, the level of access to the EDM system to which persons or specified classes of persons are entitled, the conditions of use of the EDM system applicable to persons generally or persons of any such class, the security methods by which persons using the EDM system are identified and verified, and how users gain access to the EDM system.

7.4 Subject to any information sheet, a person other than a decision-maker and an officer of MAS may not use the EDM system for a particular application unless they are a registered user of the EDM system and is:

7.4.1 a party to the application to MAS, or

7.4.2 a legal practitioner or agent representing a party to the application to MAS.

7.5 In relation to any application, the level of access to the EDM system to which a user is entitled, and the conditions of use applicable to a user, are subject to any decision of MAS.

7.6 Documents and information lodged via the EDM system may be dealt with in accordance with the provisions of the *Electronic Transactions Act 2000* (NSW).

7.7 When MAS sends documents or forwards correspondence to a party who is a registered user of the EDM system, it will generally only do so via electronic communication to that party through the EDM system.

7.8 The *Motor Accidents Compensation Act 1999* may prescribe methods for service of documents (see Sections 222, 223 and 224 of the Act).

## Division 2 - Primary application types

### Chapter 8 - Application for medical assessment (section 60)

8.1 An application for assessment, or reply to an application, must:

8.1.1 be in the form approved by the Authority; or

8.1.2 be in a form as directed by the Authority or Proper Officer; and

8.1.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

### Treatment disputes (MAS forms 1A and 1R)

8.2 An application for assessment of a treatment dispute may be lodged at any time, and should be lodged as soon as practicable after the treatment dispute arises between the parties, to enable the outcome of the assessment of the treatment dispute to have as early an opportunity as possible of influencing the treatment and rehabilitation of the claimant.

8.3 The parties must have first made some attempt to resolve the specific treatment dispute in question before the dispute will be assessed by MAS.

8.4 Before allocating the application for assessment of a treatment dispute to an Assessor, the Proper Officer will require evidence from the parties to substantiate that:

8.4.1 the claimant has requested specific treatment and the insurer disputes that the treatment is reasonable and necessary in the circumstances or that the treatment relates to the injury caused by the motor accident; and

8.4.2 the insurer has had a reasonable opportunity to respond to the request from the claimant and either has not responded, or has rejected the specific treatment requested by the claimant.

8.5 In conducting an Allocation Review pursuant to Chapter 9 the Proper Officer may seek such submissions, clarifications, or further information from the parties to the assessment that the Proper Officer believes will assist in considering that Allocation Review.

### Permanent impairment disputes (MAS forms 2A and 2R)

8.6 An application for assessment of a permanent impairment dispute may be lodged at any time. If there is a dispute about whether the claimant is entitled to claim damages for non-economic loss in accordance with section 132(1), the application should be lodged as soon as possible after the dispute arises. Submitting an application as soon as possible after a dispute arises will assist the parties in attempting to resolve the dispute as a whole.

**(Note:** In the vast majority of claims the degree of impairment is able to be accurately assessed at 12-18 months post-accident. MAS strongly recommends that applications for assessment of impairment should be lodged by 18 months post-accident at the latest.)

8.7 The parties must have first made some attempt to the dispute about whether or not the claimant is entitled to claim damages for non-economic loss before the permanent impairment dispute will be assessed by MAS.

8.8 As required by the Claims Handling Guidelines, where the insurer rejects a claimant's claim to be entitled to damages for non-economic loss, as it believes the claimant's degree of whole person permanent impairment is not greater than 10%, the insurer should give written reasons to the claimant for that

rejection and advise the claimant of their right to apply to MAS for assessment of the permanent impairment dispute.

8.9 Before allocating the application for assessment of a permanent impairment dispute to an Assessor, the Proper Officer will require evidence from the parties to substantiate that:

8.9.1 the claimant has put the insurer on notice that the claimant believes the claimant is entitled to damages for non-economic loss by either:

8.9.1.1 making a request or offer of settlement to the insurer seeking an entitlement to damages for non-economic loss;

8.9.1.2 requesting that the insurer concede that the claimant is entitled to claim damages for non-economic loss; or

8.9.1.3 indicating to the insurer that it believes the claimant's degree of whole person impairment is greater than 10%.

8.9.2 the insurer has had an opportunity to respond to the claimant's claim to be entitled to damages for non-economic loss and either has not responded, or has rejected the claim.

8.10 The insurer's written reasons for rejecting the claimant's claim to be entitled to damages for non-economic loss should be included in any application to MAS for assessment of a permanent impairment dispute lodged by the claimant or insurer.

8.11 In conducting an Allocation Review pursuant to Chapter 9 the Proper Officer may seek such submissions, clarifications, or further information from the parties to the assessment that the Proper Officer believes will assist in considering that Allocation Review.

## Division 3 - Allocations and assessments

### Chapter 9 - Allocation

#### Allocation Review

9.1 When an application is made under Chapters 8, 14, 15, or 16, an officer of MAS is to arrange for the Allocation Review of the matter to determine:

9.1.1 the eligibility of the dispute for assessment in accordance with Chapter 2;

9.1.2 whether any application and/or reply are properly made in accordance with Chapter 3 and Chapters 8, 14, 15, and 16 as far as they apply to the dispute;

9.1.3 whether further information or documentation is required (see clause 9.4);

9.1.4 whether a matter is ready for assessment or whether the assessment should be deferred (see clause 9.7);

9.1.5 whether the application should be dismissed (see Chapter 10); and

9.1.6 the way in which an assessment is to proceed (see clause 9.10).

9.2 The Proper Officer is to ensure that within 10 days of the due date for a reply under clause 3.19, the parties are advised of the outcome of the Allocation Review in accordance with the remainder of this chapter.

9.3 If no reply is received within the time provided, referred to in clause 3.19, the Proper Officer may allocate the matter in the absence of a reply.

### Further information or documentation required

9.4 In the case of clause 9.1.3, if an officer of MAS is satisfied that further information or documentation is required or is likely to assist in the resolution of the dispute, the officer may:

9.4.1 request that further information or documentation be provided and notify the other party; and

9.4.2 proceed with processing the application in the absence of the requested further information or documentation.

9.5 The Proper Officer may, but only with the consent of the claimant and the insurer, communicate with any of the injured person's treating health practitioners or service providers in order to clarify the issue or issues in dispute or to identify the existence of relevant documentation.

9.6 The Proper Officer or an Assessor may, at their discretion, communicate with any of the claimant's treating health practitioners in relation to health or physical safety issues noted by an Assessor as being of an urgent or serious nature, where necessary to prevent or lessen a serious or imminent threat to life or health, or with the consent of the claimant.

### Defer allocation

9.7 In the case of clause 9.1.4, an officer of MAS may defer the allocation of the dispute, for a period not exceeding 6 months at a time in circumstances where the officer of MAS is satisfied that:

9.7.1 further information or documentation has been requested (see clause 9.4);

9.7.2 there are other issues in dispute or likely to be in dispute which would more conveniently be determined at the same time;

9.7.3 there has not been a genuine attempt by one or both parties to settle the dispute, and it may be capable of resolution (see clause 9.8);

9.7.4 a MAS Assessor has previously declined under section 132(3) to assess the claimant's permanent impairment arising from the injuries sustained, and any pre-conditions to the impairment becoming assessable that were identified by the Assessor, have not as yet been satisfied; or

9.7.5 there are other good reasons to defer the allocation of the matter.

9.8 In the case of clause 9.7.3, if the officer of MAS is satisfied that the matter is capable of resolution by the parties, the officer of MAS may defer allocating the dispute to an Assessor for a period not

exceeding 2 months to allow the parties an opportunity to settle the matter and/or the claim. Either party can apply to MAS to proceed with the assessment, at any time, if settlement negotiations fail.

9.9 If the allocation of a matter is deferred in total for more than 6 months, it will be marked as a 'deferred' matter and the Proper Officer or an officer of MAS may from time to time conduct fresh Allocation Reviews of the matter as needed, seeking submissions from the parties, to assess the readiness of the matter for allocation and to consider whether or not the matter would more appropriately be dismissed in accordance with Chapter 10, rather than continuing to be deferred.

## Allocation for assessment

9.10 When a dispute is considered ready to be allocated for assessment, an officer of MAS shall determine the way in which an assessment is to proceed and may:

9.10.1 request that a claimant attend a medical or other examination or examinations at a designated location (see clause 9.11);

9.10.2 request that one or more MAS Assessors assess the dispute on the documentary material provided, having considered any submissions from the parties on this issue (see clauses 9.11 and 9.12);

9.10.3 request that the parties attend a conference to clarify issues and/or explore settlement of the dispute (see clause 9.13); or

9.10.4 refer the matter to an officer of MAS to attempt to facilitate resolution of the dispute (see clause 9.14).

9.11 In the case of clauses 9.10.1 and 9.10.2, an officer of MAS shall:

9.11.1 refer the dispute to one or more MAS Assessors having regard to the nature of the injury and any continuing disabilities, the nature of the dispute, the location of the claimant, the location of the Assessor, and any other relevant fact or issue;

9.11.2 in permanent impairment disputes ensure that impairment resulting from a physical injury is assessed separately from any impairment resulting from psychological injury;

9.11.3 make arrangements with the Assessor or Assessors to whom the dispute has been allocated for an examination or an assessment on the documentary material provided;

9.11.4 notify the parties of the name of the Assessor or Assessors allocated and the time, date and location of any examinations; and

9.11.5 provide the Assessor or Assessors with:

9.11.5.1 a copy of the application and reply and all documents and material in support of the application and reply;

9.11.5.2 the notification sent to the parties under clause 9.11.4;

9.11.5.3 a copy of any other applications and replies and/or MAS certificates in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents; and

9.11.5.4 details of any other Assessor allocated to also assess the dispute and the injuries referred to them, if the dispute is to be assessed by more than one Assessor.

9.12 In the case of clause 9.10.2, an officer of MAS may determine that a matter be assessed without a medical examination if the officer of MAS is satisfied that:

9.12.1 the parties consent;

9.12.2 an examination is considered unnecessary or impractical; or

9.12.3 there are other reasons why an examination is not feasible or appropriate.

9.13 In the case of clause 9.10.3, the Proper Officer may request that the parties attend a conference to clarify issues and/or explore settlement of the dispute, by notifying the parties of the proposed time, date and location of the conference.

9.14 In the case of clause 9.10.4, the Proper Officer may refer the dispute to an officer of MAS to attempt to facilitate resolution of the dispute.

9.15 A party may, within 10 days of the date of sending of notification of the name of the Assessor, apply to the Proper Officer to have the dispute reallocated to a different Assessor. Such an application must be made in writing and be accompanied by a detailed statement of facts and/or reasons as to why the Assessor might no longer be an appropriate Assessor to assess the matter, and a copy must first be provided to all other parties to the matter.

9.16 The Proper Officer shall within 5 days of receiving an application under clause 9.15 make a decision on such an application and may re-allocate the dispute if satisfied that there are reasonable grounds for believing that the Assessor might no longer be an appropriate Assessor to assess the matter.

9.17 The Proper Officer shall within 5 days of making such a decision under clause 9.16 advise the parties of the decision, providing brief reasons.

9.18 The Proper Officer may reallocate a matter to a different Assessor for assessment if the original Assessor becomes unwell, or is otherwise unable to assess the matter or is no longer an appropriate Assessor to assess the matter.

## Chapter 10 - Dismissal

10.1 The Proper Officer may at any stage dismiss an application for medical assessment in circumstances where they are satisfied that:

10.1.1 the applicant has withdrawn the application;

10.1.2 the application is not likely to be ready to be assessed within the next 12 months;

10.1.3 the applicant fails without reasonable excuse to comply with the Proper Officer or Assessor's directions;

10.1.4 it appears that the claimant is not pursuing or prosecuting the application or the claim;

10.1.5 the application is frivolous, vexatious, misconceived or lacking in substance;

10.1.6 the application is being used for an improper purpose or is otherwise an abuse of process;  
or

10.1.7 the application is made by a person who has died after the application was referred to MAS, unless a copy of the grant of probate or letters of administration or equivalent are provided, and the Proper Officer is satisfied that the estate seeks to pursue the CTP claim or the application.

10.2 A matter may be dismissed on the application of a party, or of the Proper Officer's own initiative, by the Proper Officer, after having given all parties the opportunity to make submissions about the proposed dismissal of the matter.

## Chapter 11 - Assessment procedure

### Assessor's role

11.1 In conducting an assessment an Assessor, including a member of any Review Panel, may determine the Assessor's own procedure and is not bound by the rules of evidence and may inquire into any issue in such manner as they think fit.

11.2 The Assessor is to take such measures as are reasonably practicable to:

11.2.1 ensure that the claimant understands the nature of the application and the issues to be considered, the role of the Assessor as an independent decision-maker, and the conclusive nature of any certificate that is to be issued; and

11.2.2 explain to the claimant any aspect of the procedure of any medical examination that the claimant does not apparently understand.

11.3 The Assessor is to inform him or herself on any issue as they see fit.

11.4 The Assessor is to take into account the objects of the Act and objects of MAS at all times.

11.5 The Assessor is to progress the assessment of the dispute as quickly, fairly and cost effectively as is practicable.

### Persons who may be present during medical examinations

11.6 A parent, legal guardian, carer or other support person may be present during a medical assessment examination if the person being examined is a person under a legal incapacity. If the person being examined is not a person under a legal incapacity then a support person may only be present during a medical assessment examination if the Assessor conducting the examination is satisfied it is reasonable in the circumstances.

11.7 Legal, medical or other representatives of the claimant or any other party to a dispute may not be present during a medical examination unless the Proper Officer gives prior approval and is satisfied that the circumstances warrant it.

11.8 During the conduct of a medical examination any person other than the claimant who has been permitted to be present may not respond to questions or speak on behalf of the claimant, unless invited to do so by the Assessor, unless the person is a parent, legal guardian, carer or other support person of a person being examined who is a person under a legal incapacity.

## Failure to attend medical assessment examination

11.9 If a claimant becomes aware that they will be unable to attend a medical assessment examination or Review Panel examination arranged for them, the claimant should advise MAS immediately.

11.10 MAS may then cancel the examination and re-schedule a new examination with the same Assessor or another Assessor. This will enable the dispute to be assessed as promptly as possible, and minimise the cost of cancellation and non-attendance fees payable by MAS to Assessors and interpreters.

11.11 If a claimant notifies MAS under clause 11.9 that they will be unable to attend an examination:

11.11.1 72 hours or more before the scheduled time for an examination, the claimant will not be required to pay a cancellation fee, as that allows sufficient time for MAS to cancel the examination and to avoid MAS being required to pay any cancellation fees to the Assessor and any interpreter; or

11.11.2 less than 72 hours before the scheduled time for an examination, the claimant will be required to pay a cancellation fee, equal to the amount of any cancellation fees that MAS is required to pay to the Assessor and any interpreter.

11.12 If a claimant fails to notify MAS under clause 11.9 that they will be unable to attend a medical assessment examination and the claimant fails to attend that examination at all, or attends that examination late resulting in the assessment being cancelled by the Assessor, the claimant will be required to pay a cancellation fee, equal to the amount of any cancellation fees that MAS is required to pay to the Assessor and any interpreter.

11.13 If MAS is required to pay a cancellation fee to an Assessor or interpreter under clause 11.11, or 11.12, MAS will, within 5 days of the scheduled examination, send a tax invoice to the claimant seeking payment of the cancellation fee.

11.14 A new date for an examination will be scheduled if, within 1 calendar month of the cancellation fee invoice being sent to the claimant, the Proper Officer is satisfied that:

11.14.1 MAS has received payment from the claimant of the full amount of the cancellation fee;

11.14.2 MAS has received a signed 'Irrevocable Authority and Direction' in a form approved by the Authority, addressed to the insurer directing the insurer to pay the full amount of the cancellation fee from the claimant's settlement monies when they are paid out;

11.14.3 the claimant has provided to MAS in writing a reasonable excuse for the non-attendance; or

11.14.4 MAS is satisfied the payment of the cancellation fee would cause the claimant financial hardship.

11.15 If the Proper Officer is not satisfied that the requirements set out in clause 11.14 have been satisfied within 1 calendar month of the cancellation fee invoice being sent to the claimant, the Proper Officer will determine how the assessment of the dispute will proceed and may decide not to re-schedule a new date for an examination and may instead refer the dispute to an Assessor to be assessed without an examination under clause 9.10.2 and clause 9.12 on the documentary material provided.

11.16 If the claimant subsequently becomes liable to pay another cancellation fee under clause 11.11 or clause 11.12 in relation to any other examination regarding the same dispute or any other dispute, the

Proper Officer will determine how the assessment of that dispute will proceed and may decide not to re-schedule a new date for an examination and may instead refer the dispute to an Assessor to be assessed without an examination under clause 9.10.2 and clause 9.12 on the documentary material provided.

11.17 When re-scheduling a new date for such an examination the dispute may be referred to the same Assessor or a different Assessor.

11.18 If the Proper Officer is satisfied under clause 11.14.2 that MAS has received a signed 'Irrevocable Authority and Direction' in a form approved by the Authority, MAS will provide a copy of that 'Irrevocable Authority and Direction' to the insurer within 5 days of receiving that document.

## Chapter 12 - Documentation and other supporting material

12.1 Whenever a party submits copies of documents and other material (including videotape, CD, DVD, electronic image or file, film or photographs) in support of an application or reply, the party lodging the material must have already provided a copy of the material to each other party to the dispute.

12.2 Only copies of documents are to be lodged at MAS.

12.3 An officer of MAS, or any Assessor is not to take into consideration any documentation or information that has not been provided to the other party, except as provided in this chapter.

### Language of documents and other supporting material

12.4 All documents and other supporting material lodged must be in the English language, except where the document or other supporting material:

12.4.1 is accompanied by an English translation of the document; and

12.4.2 the English translation is supported by a declaration, made by the translator, in the English language, that the translation is an accurate translation of the document or other supporting material.

12.5 MAS may reject any documentation or other supporting material which does not comply with clause 12.4.

### Surveillance images

12.6 In the case of surveillance images in any format:

12.6.1 the images are to be provided to MAS in an unedited digital format; and

12.6.2 any investigator's or loss adjuster's report concerning those surveillance images must be provided with the images when provided to each other party, and must be lodged at MAS with the images; and

12.6.3 surveillance images cannot be lodged at MAS or submitted to an Assessor unless they have been provided to each party.

12.7 If surveillance images have been provided by an insurer in support of an application or a reply, the claimant will be offered an opportunity to respond to the surveillance images and unless the claimant indicates otherwise, the claimant will be taken to have no objection to the Assessor considering the surveillance images.

## Radiological scans

12.8 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging or other radiological or similar investigations:

12.8.1 all documents including any film or scans and any associated reports must be plainly identified and listed by the parties in the application or reply in order for them to be considered by the Assessor;

12.8.2 original film or scans are not to be submitted to the MAS registry without the consent of the Proper Officer; and

12.8.3 any original films or scans listed by the parties in the application or reply must be taken by the claimant, or sent by the insurer, to any relevant medical examination with an Assessor.

12.9 Irrespective of whether they have been provided to the other party, a MAS Assessor may take into consideration any such radiological scans and their accompanying reports that are taken to the examination, and:

12.9.1 where these documents have not previously been included in the documentation supporting the application or reply exchanged by the parties, the MAS Assessor will list those documents in their certificate and will attach a copy of all such reports to their certificate; and

12.9.2 the party in possession of those scans shall make those scans available to the other party to inspect on request.

## Late additional documents

12.10 No additional documents or information sought to be added to the list of documents to be referred to the Assessor may be lodged by either party after the lodgement of their application or their reply, except:

12.10.1 by consent of the other party;

12.10.2 in response to a specific request or direction from the Proper Officer, an Assessor or an officer of MAS, in circumstances where the Proper Officer is satisfied that any such document would be of assistance to the conduct of the assessment; or

12.10.3 if the Proper Officer is satisfied that exceptional circumstances exist; and any such documents must have been provided to the other party.

# Chapter 13 - Certificates

13.1 A certificate required under clause 13.3, 13.5 or 13.7 is to be provided by the Assessor to MAS within 15 days of the completion of the medical examination or assessment on the papers.

13.2 The certificate shall include written reasons for the determination in the form approved by the Authority.

## Treatment disputes

13.3 An Assessor or Assessors to whom a treatment dispute is referred is to send to MAS a certificate certifying:

13.3.1 in the case of a reasonable and necessary treatment dispute under section 58(1)(a), whether the particular treatment in dispute in relation to the injuries caused by the accident, was or is reasonable and necessary in the circumstances; and/or

13.3.2 in the case of a related treatment dispute under section 58(1)(b), whether the particular treatment in dispute relates to the injury caused by the accident.

13.4 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt.

## Permanent impairment disputes

### No combined certificate required

13.5 An Assessor to whom a permanent impairment dispute is referred requiring either a psychiatric or psychological injury assessment, or requiring a physical injuries assessment by a single Assessor, that does not require the issuing of a combined certificate, is to send to MAS a certificate certifying:

13.5.1 the list of the injuries referred and whether they were each found to have been caused by the accident;

13.5.2 the degree of permanent impairment of the injured person as a result of each of those injuries referred that were found to be caused; and

13.5.3 whether the degree of permanent impairment of the injured person as a result of those injuries referred that were found to be caused, is greater than 10%.

13.6 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt.

### **Combined certificate required**

13.7 An Assessor to whom a permanent impairment dispute is referred regarding physical injuries that requires more than one assessment, by more than one Assessor, and that requires the issuing of a combined certificate (see clause 13.9), is to send to MAS a certificate certifying:

13.7.1 the list of the injuries referred and whether they were each found to have been caused by the accident;

13.7.2 the degree of permanent impairment of the injured person as a result of each of those injuries referred that were found to be caused.

In this circumstance, no certificate is required from the single Assessor certifying whether the degree of permanent impairment of the injured person as a result of those injuries referred is greater than 10%, as a combined certificate is required combining the assessments of more than one MAS Assessor to address that issue.

13.8 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt of the combined certificate, enclosing at the same time the combined certificate under clause 13.9 and all single Assessor's certificates under clause 13.7.

### **Combined certificate**

13.9 In the case of clause 13.7, within 5 days of the receipt of all single Assessors' certificates on a dispute, the Proper Officer will refer the dispute to an Assessor for the completion of a combined certificate certifying whether the degree of permanent impairment of the injured person as a result of those injuries referred is greater than 10%.

13.10 A combined certificate required under clause 13.9 is to be provided by the Assessor to MAS within 5 days of the referral of the dispute to the Assessor.

13.11 An officer of MAS shall provide a copy of any such combined certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days, enclosing at the same time all single Assessor's certificates under clause 13.7.

### **Assessor declines to assess**

13.12 In the case of the assessment of a permanent impairment dispute an Assessor may under section 132(3) decline to assess the impairment of one or more injuries referred, if the Assessor is unable to assess the impairment because the Assessor is satisfied that the impairment caused by the injury has not yet become permanent.

13.13 When an Assessor does decline to assess one or more injuries referred, the Assessor is to include in the certificate they send to MAS under either clause 13.5 or 13.7 a statement certifying:

13.13.1 the list of the injuries that they have declined to assess;

13.13.2 detailed reasons for declining to assess the injuries; and

13.13.3 an estimate of when the Assessor believes the impairment caused by those injuries is expected to become permanent and capable of assessment.

13.14 When an Assessor does decline to assess one or more injuries referred, the Assessor is to certify that fact (see clause 13.13) within the certificate required to be sent to MAS under either clause 13.5 or 13.7.

13.15 In addition to the certification required under clause 13.13, the Assessor is still required to issue the certificates of assessment required by either clause 13.5 or 13.7 certifying the outcome of the assessment for all injuries that the Assessor did assess, excluding those injuries the Assessor declined to assess.

13.16 When an Assessor issues a certificate under clause 13.13 the Proper Officer is to review the matter and is to determine how the matter will proceed after considering any submissions of the parties and in particular whether the application shall be:

13.16.1 allocated again, in accordance with clauses 9.10 to 9.18;

13.16.2 deferred, in accordance with clauses 9.7 and 9.8 to allow the provision of further information or documentation under clauses 9.4 to 9.6 and/or marked as a 'long deferral' matter in accordance with clause 9.9; or

13.16.3 dismissed, in accordance with Chapter 10.

## Privacy

13.17 MAS assessments are conducted in private and are not open to the public, under clause 11.6, 11.7 and 11.8, and a certificate and/or statement of reasons issued by an Assessor or Review Panel are not available to the public.

## Incomplete certificates

13.18 Section 61(1) requires that a MAS Assessor to whom a dispute is referred is to give a certificate 'as to the matters referred for assessment'. If a MAS Assessor or Review Panel provides a certificate to MAS which does not comply with this requirement, an officer of MAS may remit the matter to the Assessor or Review Panel to ensure it complies with section 61(1).

13.19 The officer of MAS may make such a request of their own initiative prior to the issue of the certificate to the parties, or on the request of the parties.

13.20 Examples of incomplete certificates include, but are not limited to:

13.20.1 disputes and/or injuries referred;

13.20.2 disputes and/or injuries not referred;

13.20.3 unsigned certificates submitted; or

13.20.4 certificates and/or parts of certificates omitted.

13.21 In considering whether or not the certificate may be incomplete the officer of MAS may seek submissions from all parties to the dispute.

13.22 On becoming aware of an incomplete certificate prior to the issue of such a certificate, the officer of MAS will, within 5 days, refer the matter back to the MAS Assessor or Review Panel concerned. The officer of MAS will advise the parties that such a request has been made to the MAS Assessor or Review Panel concerned.

13.23 The MAS Assessor or Review Panel may require a re-examination of the claimant.

13.24 The MAS Assessor or Review Panel may issue a completed certificate satisfying the requirements of section 61(1). If a completed certificate is issued, the completed certificate is to:

13.24.1 be sent to MAS within 5 days of the request or any re-examination;

13.24.2 replace any previous certificate sent to MAS;

13.24.3 have the same status as any other certificate; and

13.24.4 an officer of MAS shall provide a copy of any such certificate to all parties within 5 days of receipt.

## Division 4 - Further assessment and review applications

### Chapter 14 - Application by a party for further medical assessment (section 62(1)(a))

#### Applications (MAS forms 4A and 4R)

14.1 An application by either party for further assessment of a medical dispute referred to in section 62(1)(a), or a reply to an application by either party, must:

14.1.1 be in the form approved by the Authority; or

14.1.2 be in a form as directed by the Authority or Proper Officer; and

14.1.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

14.2 An application for further assessment of a medical dispute may be lodged by either party but only after:

14.2.1 that dispute has previously been assessed by a MAS Assessor;

14.2.2 all certificates pertaining to that dispute have been issued {including combined certificates and Review Panel certificates};

14.2.3 the time period for lodging an application for either a correction of an obvious error or review, arising from the original assessment of that dispute has expired; and

14.2.4 any application for correction of an obvious error or for a review of the assessment of the dispute has been completed; and

in any case when the requirements of section 62(1) may be established.

## Proper Officer determination

14.3 The Allocation Review of an application for further assessment is to be conducted in accordance with Chapter 9.

14.4 When conducting an Allocation Review of an application for further assessment pursuant to Chapter 9, the Proper Officer is to determine whether the application is suitable for referral for further assessment.

14.5 When determining whether a matter should be referred for further assessment under section 62 whilst conducting an Allocation Review, the Proper Officer shall have regard to:

14.5.1 the application and any reply;

14.5.2 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents; and

14.5.3 the objects of the Act and the objects of MAS.

14.6 If the Proper Officer is not satisfied that the deterioration of the injury or the additional information about the injury is such as to be capable of having a material effect on the outcome of the previous medical assessment, in accordance with subsections 62(1)(a) and (1A), the Proper Officer may not refer the matter again for assessment and may dismiss the application.

14.7 The Proper Officer is to provide the parties with brief written reasons for the decision at the same time as, or as part of the notification to the parties, of the outcome of the Allocation Review as required by clause 9.2.

## Assessment of further applications

14.8 When the Proper Officer decides to refer a matter for further assessment, the Proper Officer shall determine how the application is to proceed in accordance with the provisions of Chapter 9 and, in particular, determine an appropriate MAS Assessor or Assessors to conduct the further medical assessment, also having regard to:

14.8.1 the application and any reply;

14.8.2 all injuries assessed by the original Assessor and any additional injuries listed in the application and reply;

14.8.3 the nature of the deterioration of the injury or the additional relevant information submitted by the parties;

14.8.4 the requirement that in permanent impairment disputes, impairment resulting from a physical injury is to be assessed separately from any impairment resulting from psychiatric or psychological injury; and

14.8.5 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents.

14.9 When the Proper Officer decides to refer a dispute for further assessment, the dispute may be referred to the original Assessor if available within a reasonable period and if, in the Proper Officer's view, it is appropriate in the circumstances, otherwise the dispute may be referred to a different Assessor.

14.10 An officer of MAS will provide the Assessor or Assessors with the information referred to in clause 9.11.5 as well as:

14.10.1 the written reasons for accepting the further assessment application under clause 14.8; and

14.10.2 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been advised of the details of these documents.

14.11 The further assessment will involve consideration of all aspects of the assessment afresh subject to this clause and clause 14.12 and may include:

14.11.1 assessment of all the injuries assessed by the original Assessor in any previous assessment of this dispute; and

14.11.2 any additional injuries listed on the application for further assessment and any reply.

14.12 In permanent impairment disputes, where the deterioration of the injury or the additional relevant information:

14.12.1 relates to physical injury, the further assessment will be limited to consideration of the physical injury; and

14.12.2 relates to psychiatric or psychological injury, the further assessment will be limited to consideration of the psychiatric or psychological injury.

## Chapter 15 - Referral by a Claims Assessor or a Court (sections 60(1), 62(1)(b), 61(5))

### Applications (MAS forms 6A and GR)

15.1 A Claims Assessor or a Court may refer a medical dispute for assessment under section 60(1).

15.2 A Claims Assessor or a Court may refer a medical dispute that has previously been assessed for further medical assessment under section 62(1)(b).

- 15.3 If the Court has rejected a certificate under section 61(4), it may refer a medical dispute that has previously been assessed for assessment again under section 61(5).
- 15.4 An application in relation to a referral under clauses 15.1, 15.2 or 15.3:
- 15.4.1 may be made directly by the Claims Assessor or Court, or by a party directed or requested to do so by the Claims Assessor or the Court; and
  - 15.4.2 must attach either:
    - 15.4.2.1 a copy of a signed request or direction by a Claims Assessor if available;
    - 15.4.2.2 a copy of a sealed order of the Court referring the medical dispute to MAS if available; or
    - 15.4.2.3 written confirmation from both parties attesting to the existence of, and terms of, the Court or Claims Assessor referral to MAS.
- 15.5 An application in relation to a referral under clauses 15.1, 15.2 or 15.3, or a reply to an application by either party, must:
- 15.5.1 be in the form approved by the Authority; or
  - 15.5.2 be in a form as directed by the Authority or Proper Officer; and
  - 15.5.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.
- 15.6 The provisions of Chapter 3 also apply to an application made under this chapter. If the application is made directly by the Claims Assessor or Court, then both parties are to be treated as being respondents to the application and both parties are to be given the opportunity to lodge a reply under clause 3.19.

## Chapter 16 - Reviews of medical assessments (section 63)

### Applications (MAS forms 5A and 5R)

- 16.1 Either party to a dispute may apply under section 63(1) for review of the assessment of a single MAS Assessor once the Assessor has issued a certificate:
- 16.1.1 under section 58(1)(a) or 58(1)(b) and in accordance with clause 13.3 regarding a treatment dispute, certifying whether or not treatments are reasonable and necessary, and/or certifying whether or not treatments relate to the injury caused by the accident;
  - 16.1.2 under section 58(1)(d) and in accordance with clause 13.5 regarding a permanent impairment dispute, certifying whether or not the degree of whole person permanent impairment is greater than 10%; and/or
  - 16.1.3 under section 58(1)(d) and in accordance with clause 13.7, regarding a permanent impairment dispute, certifying the degree of permanent impairment of the injured person as a result of the injuries assessed by that Assessor.

16.2 A combined certificate issued under section 61(10)(b) and clause 13.9 regarding a permanent impairment dispute, which combines the results of more than one assessment by a single MAS Assessor, cannot be the subject of a review application. A separate application is required to be made in respect of each separate assessment by a single MAS Assessor on which a review is sought.

16.3 An application for review of an assessment by a single MAS Assessor must be received:

16.3.1 in a treatment dispute, within 30 days after the date on which the certificate of the single MAS Assessor under clause 13.3 (or a replacement certificate under clause 17.11) was sent by MAS to the parties;

16.3.2 in a permanent impairment dispute assessed by a single MAS Assessor without a combined certificate required, within 30 days after the date on which the certificate of the single MAS Assessor under clause 13.5 (or a replacement certificate under clause 17.11) was sent by MAS to the parties; or

16.3.3 in a permanent impairment dispute assessed by more than one MAS Assessor with a combined certificate required, which will be based in part on the decision of the single MAS Assessor sought to be reviewed:

16.3.3.1 not before the combined certificate under clause 13.9 is sent by MAS to the parties (or a replacement combined certificate under clause 17.11);

16.3.3.2 within 30 days after the date on which that combined certificate (or replacement combined certificate) was sent by MAS to the parties.

Clauses 16.3.3.1 and 16.3.3.2 do not refer to a new combined certificate issued under clause 16.21.6 combining the result of a review of an assessment of a single MAS Assessor with the results of any other assessments included in that original combined certificate. If subsequent to a Review Panel determination a Review Panel or Assessor issues a new combined certificate, the issuing of that combined certificate does not start an additional period of time for lodging a review on any of the other original assessments by single MAS Assessors that were incorporated in that combined certificate.

16.4 An application for review lodged after the dates set out in clause 16.3 will not be considered, except as provided for in clause 16.5.

16.5 The Proper Officer may extend the time to lodge an application for review only if:

16.5.1 an application for review of that certificate has previously been made and dismissed by the Proper Officer and the Proper Officer has specified conditions under which the application may be lodged again in respect of the same assessment;

16.5.2 a respondent indicates in a reply to an application for review that in addition to the assessment under review it now seeks to have another assessment of the same claimant also reviewed; or

16.5.3 the Proper Officer is satisfied that exceptional circumstances exist that justify the lodgement of a late application, having regard to the submissions of the parties.

16.6 An application by either party for review of a medical assessment under section 63, or reply to an application by either party, must:

16.6.1 be in the form approved by the Authority; or

16.6.2 be in a form as directed by the Authority or Proper Officer; and

16.6.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

16.7 If no reply is received within the time provided, the Proper Officer may consider the application in the absence of a reply.

16.8 In this chapter a reference to the 'original Assessor' is a reference to the single MAS Assessor whose assessment, referred to as the 'original assessment', is the subject of an application for review.

16.9 Chapter 3 'Referrals to the MAS registry' applies to applications for review, modified as necessary by the operation of clauses 16.1 to 16.8.

16.10 Chapter 12 'Documentation and other supporting material' applies to any documentation and material in support of an application for review or reply to such an application.

### **Proper Officer determination**

16.11 The Proper Officer is to consider the application for review within 10 days of the due date for compliance with the requirements of clause 3.19.

16.12 If the Proper Officer is not satisfied that there is reasonable cause to suspect the assessment of the single MAS Assessor is incorrect in a material respect, the Proper Officer may dismiss the application.

16.13 The Proper Officer shall advise the parties as to whether the application is accepted and will be referred to a Review Panel or is dismissed, supported by a brief statement of reasons, within 5 days of considering the application.

### **Further information or documentation required**

16.14 If the Proper Officer is satisfied that further information or documentation is required or is likely to assist in the review, the Proper Officer may:

16.14.1 request that additional information or documentation be provided by a party within a period of up to 20 days and notify the other party;

16.14.2 proceed with processing the application in the absence of the requested further information but only after the passing of any period of time specified for the submission of that additional documentation or information; or

16.14.3 admit into evidence any document despite non-compliance with any time limit in relation to that document or service of it.

### **Referral to a Review Panel**

16.15 The Proper Officer will, within 5 days of advising the parties that the matter is to be referred to a Review Panel:

16.15.1 convene a Review Panel consisting of at least 3 MAS Assessors to undertake the review from the Authority's list of MAS Assessors, having regard to the nature of the injury and any

continuing disabilities, the nature of the dispute, the location of the claimant, the location of the Assessors, and any other relevant information; and

16.15.2 arrange for a Chairperson of the Review Panel to be appointed.

16.16 The Proper Officer or an officer of MAS is to advise the parties of the arrangements for the review within 5 days of the convening of the panel.

16.17 The Proper Officer or an officer of MAS shall act as secretary to the Review Panel and provide administrative support to the Review Panel, and shall arrange for copies to be sent to each member of the Review Panel of:

16.17.1 all the material that was before the original Assessor;

16.17.2 all certificates issued by the original Assessor;

16.17.3 the review application and reply, and any supporting submissions or documents;

16.17.4 any other applications and replies and/or MAS certificates in relation to the same claimant, not limited to the same matter, after the parties have been provided with copies of these documents;

16.17.5 the determination of the Proper Officer under clause 16.14 and

16.17.6 any additional information or documentation under clause 16.15.

16.18 Neither the Review Panel, nor individual Review Panel members, may delegate their functions to the Proper Officer.

## Review Panel assessment

16.19 The Review Panel is to hold an initial meeting or teleconference within 30 days of the date the panel was convened and, at that meeting or in subsequent meetings, is to:

16.19.1 consider afresh all aspects of the assessment under review;

16.19.2 determine whether re-examination of the claimant is required, and if so set a timetable for that to occur;

16.19.3 determine whether additional information is required in order to make a decision;

16.19.4 determine whether each of the certificates issued by the original Assessor is to be confirmed or revoked;

16.19.5 if revoked, determine what new certificates are to be issued;

16.19.6 where the original assessment certificate was issued under clause 13.7 and included in a combined certificate under clause 13.9, determine whether the panel is to issue a new combined certificate, combining the result of the review with the results of the other assessments included in that combined certificate;

16.19.7 determine which member of the panel will sign any certificates on behalf of the panel;

16.19.8 determine whether a further meeting of the panel is required; and

16.19.9 advise the Proper Officer of any determinations under this clause.

16.20 In the case of clause 16.19.2 where there is to be a re-examination, clause 9.11.4 and clause 9.11.5, and Chapters 10, 11, 12 and 18 apply to the re-examination.

16.21 In the case of clause 16.19.9 the Proper Officer will advise the parties of any determinations made in a panel conference within 5 days of being advised of those determinations.

16.22 Within 20 days of the final meeting of the panel, and in any case within 60 days of the initial meeting, the panel shall issue its determination and any certificates, accompanied by written reasons for the determination, in the form approved by the Authority, to the secretary who shall within 5 days of the issuing of any certificates, provide them to the parties and the original Assessor.

16.23 If the Review Panel members are unable to agree on an aspect of the assessment, the determination of the majority of the Review Panel will be the determination of the Review Panel, or in the case of an evenly divided panel, the view supported by the Chairperson will be the determination of the Review Panel, and that determination will include a statement as to the opposing view.

16.24 The Review Panel is to act as expeditiously as practicable in the circumstances.

## Division 5 - Corrections and costs

### Chapter 17 - Corrections by Assessor

17.1 If a party to an assessment, or an Assessor considers that an Assessor or Review Panel has made an obvious error in a certificate, that party may make an application to the Proper Officer to have the error corrected by the MAS Assessor or review panel within 30 days after the date on which the certificate under either clause 13.3, 13.5, 13.9 or 16.23 was sent by MAS to the parties.

**(Note:** This period is different to the obvious error correction period at CARS, which is set at 21 calendar days after the CARS certificate of assessment was issued, which is timed to be consistent with the period for accepting a CARS assessment. Instead this MAS obvious error correction period is timed to be generally consistent with the period of time for lodging a MAS review as set out in Chapter 16 of these Guidelines.)

17.2 Any such application is to be made in writing to the Proper Officer, setting out details of the obvious error and the terms of the suggested correction.

17.3 The party making the application is to send a copy of the application to the other party.

17.4 Examples of obvious errors in the certificate include, but are not limited to:

17.4.1 a clerical or typographical error in the certificate;

17.4.2 an error arising from an accidental slip or omission;

17.4.3 a defect of form; or

17.4.4 an obvious inconsistency between the certificate and the reasons explaining the certificate.

17.5 The Proper Officer shall acknowledge the application by writing to both parties, and refer the matter to the Assessor or Review Panel.

## Proper Officer referral to Assessor

17.6 The Proper Officer shall

17.6.1 write to the Assessor or Review Panel concerned referring the matter back to them for consideration; and

17.6.2 write to the parties advising them of the Proper Officer's referral.

## Assessor's determination

17.7 In deciding whether or not there is an obvious error in the certificate the Assessor or Review Panel may seek submissions from the parties to the assessment.

17.8 In accordance with section 61(11), if the Assessor or Review Panel is satisfied that there is an obvious error in a certificate, the Assessor or Review Panel may issue a replacement certificate that corrects the obvious error that was sought to be corrected and that will replace the previous certificate.

17.9 If a replacement certificate is issued, the replacement certificate is to:

17.9.1 be titled as a 'replacement' certificate;

17.9.2 be dated the same day as the original certificate, and also identify the date the replacement certificate was issued; and

17.9.3 be taken to be the decision of the Assessor or Review Panel.

17.10 If the certificate is replaced, the Assessor or Review Panel must provide the Proper Officer with a copy of the replacement certificate within 10 days of receiving the Proper Officer's referral under clause 17.6.

17.11 If a replacement certificate is received, the Proper Officer must provide the parties with a copy of the replacement certificate within 5 days of receiving it.

## Chapter 18 - Costs of assessment

18.1 The insurer must pay the reasonable expenses of the claimant and an accompanying person attending any medical or other examination arranged by MAS.

#### Disclaimer

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Catalogue no. SIRA09122 | ISBN 978-0-7347-4645-0 © State Insurance Regulatory Authority NSW 0121