

WORKCOVER MEDICAL ASSESSMENT GUIDELINES

I, Jon Blackwell, the Chief Executive Officer of the WorkCover Authority of New South Wales, under sections 328, 331 and 376 of the *Workplace Injury Management and Workers Compensation Act 1998* issue the following guidelines.

Dated, this twenty-fifth day of October 2006.

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Chief Executive Officer
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Explanatory note

These guidelines set out the procedures for the referral of medical disputes for assessment and appeal, and the procedures for assessment and on appeal under Part 7 of Chapter 7 of the 1998 Act and, in particular, refer to the following provisions of the 1998 Act :

- section 321 (referral of medical dispute for assessment)
- section 322 (assessment of impairment)
- section 323 (deduction for previous injury or pre-existing condition or abnormality)
- section 324 (powers of approved medical specialist on assessment)
- section 325 (medical assessment certificate)
- section 326 (status of medical assessment)
- section 327 (appeal against medical assessment)
- section 328 (procedure on appeal)
- section 329 (referral of matter for further medical assessment).

The guidelines commence on 1 November 2006. The guidelines replace guidelines dated 19 December 2003 and published in Government Gazette No 197 at page 11564.

Questions about these guidelines or medical assessments should be directed to the Registrar of the Workers Compensation Commission.

TABLE OF CONTENTS

	Page no.
Chapter A: Interpretation	3
Abbreviations used in these Guidelines	3
Words and Phrases Defined in these Guidelines	3
Chapter B: The Referral Process	4
Referral to an Approved Medical Specialist	4
Choice of Approved Medical Specialist	4
Basis for Registrar Appointment of an Approved Medical Specialist	4
Grounds for Objection to an Approved Medical Specialist the Registrar has Appointed	5
The Registrar Arranges the Assessment	5
Chapter C: The Assessment Procedure	6
Conflict of Interest	6
Examination by Approved Medical Specialist	6
Accompanying Person for the Worker at an Assessment	7
Interpreters	7
Non-attendance by the worker	7
Paying the worker's expenses	7
Chapter D: The Medical Assessment Certificate	7
Registrar's Action on The Medical Assessment Certificate	8
Errors in the Medical Assessment Certificate	8
Chapter E: Reviewing or Appealing the Medical Assessment Certificate	8
Time for Making an Appeal	8
Application for Appeal/Opposition	9
Procedure for Appeals against a Decision of Approved Medical Specialist	9
Referral for Appeal, Further Assessment or Reconsideration	9
Procedure of the Appeal Panel	9
Assessment Hearing	10
Revocation or Confirmation of the Medical Assessment Certificate	10

MEDICAL ASSESSMENT GUIDELINES

These guidelines set out the procedures for referring medical disputes for assessment and appeal and the procedures for assessment and on appeal under Part 7 of Chapter 7 of the 1998 Act.

These guidelines should be read in conjunction with the *WorkCover Guidelines on Independent Medical Examinations and Reports Guidelines*.

CHAPTER A: INTERPRETATION

Abbreviations used in these Guidelines

1. In these Guidelines, these abbreviations are used:

NAATI	National Accreditation Authority for Translators and Interpreters
MAC	Medical Assessment Certificate
WCC	Workers Compensation Commission
WPI	Whole Person Impairment

Words and Phrases Defined in these Guidelines

2. In this part, these words and phrases have the following meanings:

- *approved medical specialist* means a medical practitioner appointed under Part 7 of Chapter 7 of the 1998 Act as an approved medical specialist
- *day* or *days* means calendar days unless specified as working days
- *registrar* means the registrar of the Workers Compensation Commission
- *claimant* means a person who has made a claim under the 1998 Act
- *lead assessor* means an approved medical specialist nominated to co-ordinate the degree of whole person impairment resulting from complex injuries requiring assessment of multiple body systems
- *party* includes the claimant, an insurer or an employer
- *insurer* is an insurer within the meaning of the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and includes Scheme Agents, self and specialised insurers.
- *the 1998 Act* means the *Workplace Injury Management and Workers Compensation Act 1998*
- *WorkCover Guides* means the *WorkCover Guides for the Evaluation of Permanent Impairment*.

Chapter B: THE REFERRAL PROCESS**Referral to an Approved Medical Specialist**

3. A party to a dispute can request a matter be referred to an approved medical specialist.

A court or the WCC is to notify the registrar when a matter is to be referred to an approved medical specialist, either on their own motion or on the request of a party.

The notification must be in the form approved by the registrar for that purpose.

4. Only the registrar has the power to refer disputes regarding the level of permanent impairment. These disputes are commenced by the filing of an application to resolve a dispute which is limited to or includes lump sum compensation.

All disputes about the level of permanent impairment are referred to an approved medical specialist.

Choice of Approved Medical Specialist

5. The parties to the dispute must advise the registrar in writing of the name of the approved medical specialist they have agreed to appoint at the time of filing the application and/or reply or within 7 days after the dispute is referred.
6. If the parties do not advise the registrar as set out above, the registrar is to choose the approved medical specialist who is to assess the dispute and advise the parties in writing of the name of the approved medical specialist.
7. If the chosen approved medical specialist is not available within a period of 2 months, parties should select another approved medical specialist or the registrar will appoint one.
8. In the rare case of a complex injury where different assessors are required to assess different body systems, a lead assessor should be agreed between the parties and advised to the registrar at the time of filing the application and/or reply or within 7 days after the dispute is referred.
9. If the parties do not advise the registrar the name of the lead assessor within this time the registrar is to appoint the lead assessor and advise the parties in writing of the name of the approved medical specialist.

Basis for Registrar Appointment of an Approved Medical Specialist

10. When choosing an approved medical specialist, the parties or the registrar should consider:
 - the approved medical specialists on the WCC's list who are appropriate given the body systems to be assessed
 - which location would be most convenient to the worker and the approved medical specialist
 - the availability of the approved medical specialist within 2 months.

Grounds for Objection to an Approved Medical Specialist the Registrar has Appointed

11. A party may apply to the registrar to have the matter reallocated on the grounds that the approved medical specialist to whom the matter has been allocated has a conflict of interest. To do that, the party must apply:
 - within 7 days of receiving notification of the name and contact details of the approved medical specialist
 - in writing, detailing the reasons.
12. The registrar is to decide on the application for reallocation within 7 days of receipt. If the registrar is of the opinion that there are reasonable grounds for believing that the appointed approved medical specialist may have a conflict of interest (eg someone previously treated or examined or where there is a personal relationship) the registrar must reallocate the matter.

The Registrar Arranges the Assessment

13. The registrar is to contact the agreed or appointed approved medical specialist to obtain an appointment for assessment. An appointment for assessment is usually provided within 21 days of the request.
14. The registrar advises the parties of the date and location of the assessment.
15. If an interpreter is required, the registrar is to organise for a NAATI accredited interpreter to assist with the assessment.
16. When the registrar refers the matter to the approved medical specialist, the registrar is to provide the approved medical specialist with:
 - all information and documentation on which the parties are relying in connection with the particular medical dispute referred and which have been lodged with the Commission and which comply with the *Workers Compensation Regulation 2003*, any applicable provisions of the *Workers Compensation Commission Rules 2006* and any orders of a Court or the WCC
 - where the referral is in connection with the assessment of permanent impairment, videos and other electronic records obtained as part of lay investigators' reports shall not be disclosed to the approved medical specialist.
17. The registrar may communicate with the parties, or any of the worker's treatment or service providers to clarify the matter or matters in dispute.
18. The parties are not to communicate directly with the approved medical specialist at any time with the exception of the worker during the examination. The parties are not to provide additional information to the approved medical specialist at any time, unless requested by the approved medical specialist.
19. An approved medical specialist may decline to accept a referral for valid reasons conveyed to the registrar within 7 days of receiving the referral documents.

CHAPTER C: THE ASSESSMENT PROCEDURE

Conflict of Interest

20. An approved medical specialist to whom a matter is allocated must not accept a referral if there is a known conflict of interest (eg someone previously treated or examined or where there is a personal relationship). For the purpose of identifying any potential conflict of interest, the approved medical specialist is to review the referral documents within 7 days of receiving them.
21. If the approved medical specialist considers that there may be a conflict of interest the approved medical specialist is to immediately notify the registrar and return the referral documents. The matter will then be reallocated to another approved medical specialist by the registrar.

Examination by Approved Medical Specialist

22. The *Medico-Legal Guidelines* of the NSW Medical Board, as in force from time, to time apply to examinations by approved medical specialists.
23. The procedures set out in the WorkCover Guides apply to the conduct of assessments relating to whole person impairment. The applicable Guides are those in force at the time of the assessment. The Table of Disabilities applies when assessing permanent loss for injuries pre 1 January 2002.
24. The approved medical specialist may do any one or more of the following:
 - consult with any medical practitioner or other health care professional who is treating, or has treated, the worker
 - call for medical records (including x-rays and the results of other tests) and other information that the approved medical specialist considers necessary or desirable to assess the dispute
 - require the worker to submit himself or herself for examination by the approved medical specialist.
25. For the majority of matters, a medical examination of the worker will be necessary for the approved medical specialist to be able to form an opinion.
26. However, the approved medical specialist may make an assessment without a medical examination if satisfied that the information provided is sufficient to enable determination of the issues. In exercising the discretion not to conduct a medical examination, the approved medical specialist must consider:
 - the nature and complexity of the issues in dispute
 - the likely impact of non-examination on the outcome of the dispute
 - the extent and detail of the information provided
 - any submission by the parties as to why a medical examination is required.

If no examination is to be conducted, the worker will not attend an appointment with the approved medical specialist.
27. The approved medical specialist will confirm in the Medical Assessment Certificate (MAC) that a clinical examination was conducted or the reasons that it was not required.

Accompanying Person for the Worker at an Assessment

28. A support person nominated by the worker may accompany the worker to a medical assessment if it is reasonable in the circumstances and the approved medical specialist agrees. A union representative or legal practitioner instructed to act for the worker in the WCC must not accompany a worker to a medical assessment.
29. The accompanying person is to conduct himself or herself appropriately during the examination. The approved medical specialist has the right to ask the person to withdraw if their behaviour interferes with the conduct of the examination.

Interpreters

30. Interpreters accredited by NAATI should be used for assessments when an interpreter is required. If appointed, an interpreter should disclose any potential conflict of interest and the registrar will then determine whether another interpreter is required.
31. In the absence of a NAATI accredited interpreter, a non-NAATI interpreter may be used at the discretion of the registrar as long as that person holds appropriate qualifications as an interpreter and can demonstrate that there is no conflict of interest eg personal or financial relationship with the worker or assessor.

Non-attendance by the Worker

32. The approved medical specialist must notify the registrar in writing if the worker did not attend the scheduled appointment. The notification is to be provided within 2 working days of the scheduled appointment.
33. Failure to attend on two occasions without a reasonable excuse will be evidence of a failure to proceed with the application and will result in the proceedings being dismissed.

Paying the Worker's Expenses

34. The insurer must meet any reasonable costs incurred by the worker, including wages, travel and accommodation. This may include pre-payment of travel and accommodation expenses. If the worker is not reasonably able to travel unescorted, this may include expenses for the worker's escort. *Refer Section 330 of the 1998 Act.*

CHAPTER D: THE MEDICAL ASSESSMENT CERTIFICATE

35. The approved medical specialist is to provide the registrar with a completed MAC within 10 working days of the assessment.
36. The MAC must be in the form approved by the registrar and must include the following information:
 - details of the matters referred for assessment
 - the approved medical specialist's opinion with respect to those matters
 - total amount of whole person impairment (where applicable)
 - the facts on which that opinion is based
 - the approved medical specialist's reasons for that opinion

- in matters related to permanent impairment, correct reference to the Table of Disabilities (injuries pre 1 January 2002) or to the WorkCover Guides (injuries from 1 January 2002).

Registrar's Action on Medical Assessment Certificate

37. Prior to issuing a MAC to the parties, the registrar is to ensure that the matters referred for assessment by the registrar are addressed in the MAC.

The registrar will then issue the MAC and if the MAC addresses the level of the worker's permanent impairment and other matters that are conclusively presumed to be correct, each of the parties must also be provided with a notice advising of the appeal provisions.

Matters conclusively presumed to be correct in proceedings before the WCC are:

- the degree of permanent impairment of the worker as a result of an injury
- whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality
- the nature and extent of loss of hearing suffered by a worker
- whether impairment is permanent
- whether the degree of impairment is fully ascertainable.

The MAC may also contain other matters which are evidence but not conclusive evidence in proceedings. These matters are:

- the worker's condition (including the worker's prognosis), aetiology of the condition and the treatment proposed or provided
- the worker's fitness for employment.

Errors in the Medical Assessment Certificate

38. If the registrar identifies that a MAC contains an obvious error the registrar must consult the approved medical specialist. Typographical and calculation errors may be corrected by the registrar and confirmed in writing by the approved medical specialist or the MAC will be returned to the approved medical specialist for correction.
39. If the MAC is corrected, the replacement MAC is taken to be the decision of the approved medical specialist.
40. The registrar is to provide the parties and the approved medical specialist with a copy of the replacement MAC.

CHAPTER E: REVIEWING OR APPEALING THE MEDICAL ASSESSMENT CERTIFICATE

Time for Making an Appeal

41. An appeal application (on the grounds that the assessment was made on the basis of incorrect criteria or the MAC contains a demonstrable error), must be lodged within 28 days after the date the MAC is issued, unless special circumstances apply.

If the appeal application is lodged after 28 days, the appealing party may lodge a submission setting out the special circumstances to be considered by the registrar.

A party cannot appeal against a medical assessment if the WCC has already issued a Certificate of Determination.

Application for Appeal/Opposition

42. Parties lodging an appeal, or opposition to an appeal, must use the approved forms and attach relevant submissions. For further information on completing WCC forms refer to *Guides for Completing Forms* available on WCC website at <http://www.wcc.nsw.gov.au/>.

If the party lodging the appeal does not use the approved form and attach relevant submissions, the appeal will be rejected. If the appeal is subsequently lodged out of time, submissions addressing the special circumstances that apply will also be required.

Procedure for Appeals Against a Decision of Approved Medical Specialist

43. If an appeal against a decision of an approved medical specialist is accepted for filing, the application and copies will be sealed and issued to the appealing party. A standard timetable will be issued to ensure that the parties comply with the legislation and guidelines.

The appealing party must lodge a Certificate of Service (Form 4) within 14 days of the date of acceptance of the application by the registrar or by the date referred to in the standard timetable, certifying service of the application and timetable on the other parties.

The other parties to the appeal may lodge an opposition within 21 days of acceptance of the application by the registrar. The filing party should serve an unsealed copy of the opposition on each other party (including the insurer) prior to lodgement with the WCC.

Referral for Appeal, Further Assessment or Reconsideration

44. Where the registrar is satisfied on the face of the application and any submissions made to the registrar that a ground of appeal has been made out, the registrar may refer the matter for determination of the appeal by a medical appeal panel or for further assessment or reconsideration by the approved medical specialist who issued the MAC, as an alternative to an appeal.

The power of an AMS to reconsider a decision, which is provided for under section 378 of the 1998 Act, can only be exercised where a matter is referred back to the AMS by the Registrar as an alternative to an appeal.

The registrar will reject an appeal if not satisfied that a ground of appeal has been made out.

Procedure of the Appeal Panel

45. An appeal panel consists of two approved medical specialists and one arbitrator. The appeal panel may adopt any of the following procedures in accordance with the needs of the individual case:
- preliminary review (in all matters),
 - 'on the papers' review,
 - further medical examination by an approved medical specialist on the appeal panel,
 - assessment hearing.

Where a further medical examination is required, the registrar will advise the worker of the time and place of the examination. A support person (other than an agent or legal adviser) may accompany a worker to the examination. The worker should not bring any additional medical or other reports to the examination, unless specifically asked to do so. If it is necessary to bring x-rays or similar documents the worker will be advised of this in the letter from the registrar.

The registrar must be advised in advance if an interpreter is required for the examination.

Assessment Hearing

46. Where the appeal panel determines a matter is not capable of determination on the papers, either with or without a further medical examination, an assessment hearing will be arranged.

The appeal panel assessment hearing will be informal and non-legalistic, and will afford the parties a full opportunity to present oral submissions in support of their claims. The assessment hearing is non-adversarial and in most cases no evidence will be taken or cross-examination permitted. A party is entitled to be represented at the assessment and may choose to be accompanied by a person (including but not limited to a legal adviser or agent) to assist in the presentation of their case. The assessment will be sound recorded and a copy of the recording will be available to the parties on request. The parties may seek clarification of matters raised with the assistance of the panel members.

Revocation or Confirmation of the Medical Assessment Certificate

47. The appeal panel can:

- confirm the MAC issued by the approved medical specialist; or
- revoke that MAC and issue a new certificate.

The decision of a majority of the members of an appeal panel is the decision of the appeal panel.

In all cases where the appeal panel decides to revoke the medical assessment certificate and issue a new certificate, the new certificate will be sent to the parties by the registrar.