

1 May 2009

Workers Compensation Law alert

New WorkCover Guideline on Independent Medical Examinations and Reports

WorkCover have introduced a new guideline on independent medical examinations, to replace the previous guideline, dated 27 October 2006.

This new guideline **takes effect on 1 May 2009**.

Set out below, is how the new guideline is applied compared to the previous guideline. The numbering of affected parts of the guideline listed below are referenced to their numbering in the guideline.

Part 1 - Mandatory Obligations for Employers/Insurers (page 4 of the Guideline)

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

The requirement for workers receiving weekly compensation benefits, to submit themselves to a subsequent independent medical examination, has been changed. The requirement to attend with a specialist medical practitioner of the same speciality who has treated the worker has been removed. Now workers can be examined by a specialist medical practitioner with qualifications relevant to the treatment of the workers injury.

Part 2 - Obligations for all Independent Medical Examinations (page 5)

Responsibility of referrer (page 6)

A referrer must not ask the independent medical examiner **questions** that are **not relevant** to the specific aspect of the claim leading to the referral. The guideline clearly indicates that it is not acceptable to simply provide a standardised list of questions.

Selection of an appropriate medical practitioner for the examination (page 6)

The obligations under this subparagraph relating to circumstances where a worker might wish to have someone accompanying them at the examination have been altered. Now the independent medical examiner's permission to the presence of the companion **is to be** obtained, rather than **"should"** be obtained, as previously.

Where the examination is to be recorded on audio or video, the recording of the examination is only to proceed if the worker consents prior to the examination being scheduled. Previously, the worker's consent was required at the time of the examination. The amendment makes clear the authority's intention to protect the interests of the worker.

Notification and explanation to the worker (pages 7 to 8)

The notification and explanation to a worker must include the details listed in the previous guideline, together with the following **additional information**:

- the specific reason for the examination
- an explanation of why the response from the treating practitioner or author of the assessment report to the insurer's enquiry was inadequate, inconsistent, or unavailable.

4. Correction and Updating of reports (page 9)

This section is largely unchanged, however where a report contains an obvious error any request for change **must be in writing**.

7. Fees and Payment for Properly Completed reports (pages 9 to 11)

The authority has rearranged this section to make it easier to read. The fee rate is addressed in the first paragraph in the following terms:

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

The insurer is to either:

- (a) Agree to the category of the report being requested and confirm the request in writing, indicating that payment will be made within 10 days of receipt of a properly completed report or invoice; or
- (b) Pay in accordance with a contractual arrangement between the medical practitioner and the referring body on receipt of a properly completed tax invoice.

Either arrangement cannot agree to a fee above the maximum fee prescribed in the *Workers Compensation (Medical Examinations and Reports) Order*.

The classification of problems into standard, moderately complex, and complex, has been changed and defined as follows:

(a) Standard Reports

These reports relate solely to a single event or injury in relation to:

- causation or
- fitness for work or
- treatment or
- simple permanent impairment assessment of 1 body system.

(b) Moderately Complex Reports

These reports relate to issues involving a combination of 2 of the following:

- causation
 - fitness for work
 - treatment
 - single permanent impairment or reports of simple permanent impairment of 2 body systems
- or
- reports of simple permanent impairment of 2 body systems or more than 1 injury to a single body system.

(c) Complex Reports

These reports relate to issues involving 3 or more of the following:

- causation
 - fitness for work
 - treatment
 - simple permanent impairment assessment of 1 body system
- or
- A complex method of permanent impairment assessments on single body systems or multiple injuries involving more than 1 body system.

There are no changes to:

- Communication with the selected medical practitioner (page 7)
- Documents to be included (page 7)
- Conduct of an Independent Medical Examination (page 8)
- Reporting an Independent Medical Examination (page 8 to 9)
- Complaints about Independent Medical Examinations (page 9)
- Complaints about Workers (page 9 to13).

For further information please contact:

Anthony Morrissey, Sydney (City)	+61 2 9391 3023	amorrissey@hunthunt.com.au
Justine Matthews, Newcastle	+61 2 4925 5500	jmatthews@hunthunt.com.au
Michael Inger, Sydney (City)	+61 2 9391 3184	minger@hunthunt.com.au
Helen Li, Sydney (City)	+61 2 9391 3080	hli@hunthunt.com.au
Gina Tasoulis, Sydney (City)	+61 2 9391 3250	gtasoulis@hunthunt.com.au
Nicole Compton, Sydney (City)	+61 2 9391 3244	ncompton@hunthunt.com.au
Philippa Briggs, Sydney (City)	+61 2 9391 3156	pbriggs@hunthunt.com.au

Disclaimer: The information contained in this e-alert is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au